

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 12 of 2010

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* Denotes Private Member's Bill	

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

8A Functions with respect to Bills

- (1) The functions of the Committee with respect to Bills are:
 - (a) to consider any Bill introduced into Parliament, and
 - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - (i) trespasses unduly on personal rights and liberties, or
 - (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
 - (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
 - (iv) inappropriately delegates legislative powers, or
 - (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny
- (2) A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations:

- (1) The functions of the Committee with respect to regulations are:
 - (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
 - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
 - (i) that the regulation trespasses unduly on personal rights and liberties,
 - (ii) that the regulation may have an adverse impact on the business community,
 - (iii) that the regulation may not have been within the general objects of the legislation under which it was made,
 - (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,
 - (v) that the objective of the regulation could have been achieved by alternative and more effective means,
 - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
 - (vii) that the form or intention of the regulation calls for elucidation, or
 - (viii) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
 - (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- (2) Further functions of the Committee are:
 - (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
 - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.
- (3) The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament. Following a brief description of the Bill, the Committee considers each Bill against the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987* (see page iii).

Section B: Ministerial correspondence – Bills previously considered

This section contains the Committee's reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee's scrutiny criteria.

Part Two – Regulations

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the *Digest*. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the *Digest* drawing the regulation to the Parliament's "special attention". The criteria for the Committee's consideration of regulations is set out in s 9 of the *Legislation Review Act 1987* (see page iii).

Regulations for the special attention of Parliament

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

Regulations about which the Committee is seeking further information

This table lists the Regulations about which the Committee is seeking further information from the Minister responsible for the instrument, when that request was made and when any reply was received.

Copies of Correspondence on Regulations

This part of the *Digest* contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought information. The Committee's letter to the Minister is published together with the Minister's reply.

Appendix 1: Index of Bills Reported on in 2010

This table lists the Bills reported on in the calendar year and the *Digests* in which any reports in relation to the Bill appear.

Appendix 2: Index of Ministerial Correspondence on Bills

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Bill and correspondence appear.

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2010

This table specifies the action the Committee has taken with respect to Bills that received comment in 2010 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

Appendix 4: Index of correspondence on Regulations reported on

This table lists the recipient and date on which the Committee sent correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Regulation and correspondence appear.

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010

Issue: Lack of Fairness; Onus of Proof

- 20. Firstly, the Committee acknowledges that recouping the loss of having a film or game classified from a defendant found guilty of a classification offence presents an additional financial burden for the accused. The Committee notes that a penalty scheme already exists for individuals convicted of classification offences under the Principal Act and it is not proposed that this Bill reduce the maximum amounts liable under these offences.**
- 21. While it is generally regarded that an individual found guilty of an offence should not have to bear all or part of the costs incurred by their prosecution, the Committee notes that Section 60 of the Principal Act specifically states that if a person is convicted of an offence under the Act, the court may order the person to pay by way of costs, in addition to any other costs that the court may order, the amount of any fee incurred by the prosecution for the classification of the material concerned (i.e. for the classification certificate) and for the provision of an evidentiary certificate.**
- 22. Secondly, the Committee is concerned with the power imbalance between the prosecution and the accused, with a well resourced and knowledgeable prosecution trying to enter into an agreement with a likely less resourced and knowledgeable accused. This situation may also be potentially intimidating and there is a risk that the accused may agree to the classification notice sent by the prosecution without proper consideration or being properly informed of the issues and risks in doing so. The Committee also has concerns with this process insofar that it circumvents the proper channels for film or game classifications by bypassing the need for an application to the Classification Board for appropriate determination.**
- 23. Thirdly, this process also displaces the evidentiary burden, which traditionally lies on the prosecution to prove the elements of an offence, by enabling the prosecution to come to an agreement with the accused to produce material that could then be used to prosecute the accused. On this issue, the Committee is concerned that this process makes it easier on the prosecution to meet the evidentiary burden.**
- 24. Lastly, the Committee notes that the Bill provides that if the prosecution serves a notice on the accused that a film or game should be classified at a certain rating, the accused fails to sign and return that notice, and then the Classification Board classifies that film or game at a higher rating than that specified in the notice, then the notice operates as if the notice had specified that higher classification.**

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| 25. | The Committee notes that a similar provision in which the Classification Board's decision which stipulates that a particular film or game is at a <i>lower</i> rating than that specified in a notice given by the prosecution to the accused, then the notice operates as if the notice had specified that <i>lower</i> classification, does not exist in the Bill. On this issue, the Committee notes the inherent unfairness in the current scope of the existing provision. |
| 26. | The Committee considers that these issues may be an undue trespass on personal rights and liberties as there is a lack of fairness in their scope and operation and potentially puts the accused at a significant disadvantage. To this end, the Committee refers these matters to Parliament for its consideration |

2. Constitution Amendment (Recognition of Aboriginal People) Bill 2010

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| 5. | The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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3. Industrial Relations Advisory Council Bill 2010

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| 7. | The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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4. National Parks and Wildlife Amendment (Adjustment of Areas) Bill 2010

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| 7. | The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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Part One – Bills

SECTION A: COMMENT ON BILLS

1. CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) ENFORCEMENT AMENDMENT BILL 2010

Date Introduced: 8 September 2010
House Introduced: Legislative Assembly
Minister Responsible: The Hon John Hatzistergos MLC
Portfolio: Attorney General

Purpose and Description

1. The object of this Bill is to make miscellaneous amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (the Principal Act) for various reasons:
2. Firstly, to provide for the mutual recognition in New South Wales of notices that call in publications for classification under a law of another State or a Territory.
3. Secondly, to provide that advertisements for computer games and films contained within another computer game or film must be of the same or a lower classification as a principal game or film;
4. Thirdly, to enable all certificates issued by the Director and Deputy Director of the Classification Board and the Convenor of the Review Board under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth to be admissible and prima facie evidence in proceedings for offences under the Principal Act or the *Crimes Act 1900*.
5. Lastly, to provide that the prosecution and the accused in criminal proceedings under the Principal Act may agree to the classification of relevant publications, films and computer games.

Background

6. Under the national classification scheme, the Commonwealth is responsible for classifying, films, computer games and certain other material, while the States and Territories are responsible for enforcing these classification decisions.
7. These arrangements are embodied in an intergovernmental agreement, which also provides that State and Territory enforcement agencies are entitled to 100 free applications for classification and evidentiary certificates for use in classification prosecutions. Once this quota is exhausted, the enforcement agencies must pay the fees prescribed.

8. The NSW Police Force consistently exhausts its annual quota of free applications. For example, in the 2008 – 09 financial year, NSW Police made 161 applications to the Classification Board. It is estimated that a 120 minute DVD costs \$700 to be classified by the Classification Board.
9. It is intended that this Bill will help alleviate the cost pressure of the NSW Police Force by removing unnecessary evidentiary requirements, which currently require a classification certificate and a separate evidentiary certificate in classification prosecutions. This is to be achieved by removing the separate evidentiary certificate requirement. In addition, a new scheme whereby the prosecution may give the accused a notice to agree to the relevant classification of the publication, film or computer game concerned. This notice is to become evidence of the classification and dispenses with the need for classification and evidentiary certificates.

The Bill

10. Outline of Provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of *Classification (Publications, Films and Computer Games) Enforcement Act 1995* No 63

Schedule 1 [1] provides for the mutual recognition of notices that call in publications for classification. Specifically, the amendment substitutes the definition of **submittable publication** in section 4 (1) of the Principal Act to include publications called in for classification by the Director of the Classification Board under a provision of an Act of another State or a Territory that corresponds to section 46 of the Principal Act. The effect of this amendment is that a publication called in (whether in NSW or elsewhere in Australia) becomes a submittable publication and therefore is subject to the prohibitions and controls of the Principal Act (eg section 19 of the Principal Act prohibits the sale of submittable publications).

Schedule 1 [2]–[5] make amendments to provide that advertisements for computer games and films contained within another computer game or film must be of the same or a lower classification as the principal game or film. The Principal Act already provides that an advertisement for a computer game contained within another computer game, and an advertisement for a film contained within another film, must be of the same or a lower classification as the principal game or film (as relevant).

The amendments are made necessary by the emerging practice of advertising computer games within films and vice versa.

Schedule 1 [6] makes an amendment to provide that all certificates issued by the Director and Deputy Director of the Classification Board and the Convenor of the Review Board under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth (rather than only certificates under section 87 of that Act) are, in proceedings for offences under the Principal Act or the *Crimes Act 1900*, admissible and prima facie evidence of the matters stated in those certificates. The amendment will enable

other certificates (such as classification certificates under section 25 of the Commonwealth Act) to be used in such proceedings.

Schedule 1 [7] inserts proposed section 58A into the Principal Act to provide for a scheme under which the prosecution and the accused in criminal proceedings under the Principal Act may agree to the classification of relevant publications, films and computer games. Under the scheme the prosecution may, prior to trial, give the accused a notice to agree to the relevant classification of the publications, films or computer games concerned. If the accused agrees and signs the notice, the notice becomes evidence of, and in the absence of evidence to the contrary is proof of, the matter agreed. If a person served with a notice does not agree but is subsequently found guilty of the offence specified in the notice, the prosecution is entitled, on application to the court making the finding of guilt, to recover from the person an amount equal to the fee for classification of the relevant publications, films or computer games or the fee for obtaining a certificate under section 58 of the Principal Act.

The proposed section is based on section 141A of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* of Western Australia.

Schedule 1 [8] makes an amendment consequential on the enactment of proposed section 58A.

Schedule 1 [9] enables regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

Issues Considered by the Committee

Trespasses on personal rights and liberties [s 8A(1)(b)(i) LRA]

Issue: Lack of Fairness; Onus of Proof

11. Proposed section 58A of the Bill enables a scheme whereby the prosecution may, after the accused has been charged and prior to trial, give the accused a notice to agree that the film or game concerned would be classified at a certain rating. For example, the prosecution may put to the accused that an unclassified film would be classified as R18+ if it were submitted to the Classification Board. The accused is able to view the material concerned to make an informed decision and, if they sign the notice, then that notice becomes (prima facie) evidence of, in the absence of evidence to the contrary, of the matter agreed that the film is R18+.
12. In circumstances where the accused fails to agree on the classification rating put by the prosecution or where the accused fails to respond to the notice, the police would ordinarily then be required to take the film or game concerned to the Classification Board for formal classification. Proposed section 58A1(d) enables the police to then recoup the fees expended for formal classification from the accused if they are subsequently found guilty of a classification offence. The Committee understands the fees for formal classification vary, but a 120minute DVD will cost approximately \$700.00.
13. The Committee has identified a number of concerns with this scheme.

14. Firstly, the Committee acknowledges that recouping the loss of having a film or game classified from a defendant found guilty of a classification offence presents an additional financial burden for the accused. The Committee notes that a penalty scheme already exists for individuals convicted of classification offences under the Principal Act and it is not proposed that this Bill reduce the maximum amounts liable under these offences.
15. While it is generally regarded that an individual found guilty of an offence should not have to bear all or part of the costs incurred by their prosecution, the Committee notes that Section 60 of the Principal Act specifically states that if a person is convicted of an offence under the Act, the court may order the person to pay by way of costs, in addition to any other costs that the court may order, the amount of any fee incurred by the prosecution for the classification of the material concerned (i.e. for the classification certificate) and for the provision of an evidentiary certificate.
16. Secondly, the Committee is concerned that in allowing the prosecution and the accused to come to an agreement on what the appropriate classification for an unclassified film or game should be, this process circumvents the proper channels for film or game classifications by bypassing the need for an application to the Classification Board for appropriate determination. The Committee is particularly concerned that it takes the decision-making abilities out of the statutorily recognised body for classifications and into the hands of individuals who have a far more limited understanding of classification ratings and laws (especially the accused).
17. On this issue, the Committee also notes the power imbalance between the prosecution and the accused, with a well-resourced and knowledgeable prosecution trying to enter into an agreement with a likely less resourced and knowledgeable accused. This situation may also be potentially intimidating and there is a risk that the accused may agree to the classification notice sent by the prosecution without proper consideration or being properly informed of the issues and risks in doing so.
18. Thirdly, this process also displaces the evidentiary burden, which traditionally lies on the prosecution to prove the elements of an offence, by enabling the prosecution to come to an agreement with the accused to produce material that could then be used to prosecute the accused. On this issue, the Committee is concerned that this process makes it easier on the prosecution to meet the evidentiary burden.
19. Lastly, the Committee notes that proposed section 58A(8) provides that if the prosecution serves a notice on the accused that a film or game should be classified at a certain rating, the accused fails to sign and return that notice, and then the Classification Board classifies that film or game at a higher rating than that specified in the notice, then the notice operates as if the notice had specified that higher classification. The Committee appreciates that the Classification Board is the appropriate body to make such determination and, absent any such agreement between the prosecution and the accused, the Classification Board's decision should take precedent. However, the Committee notes that a similar provision in which the Classification Board's decision which stipulates that a particular film or game is at a *lower* rating than that specified in a notice given by the prosecution to the accused, then the notice operates as if the notice had specified that *lower* classification, does not exist in the Bill. Although the existing provision in the Bill appears to just clarify the authority of the Classification Board, in the interests of fairness, the supplementary provision just identified could be included. As it is not the purpose of

this Committee to recommend additional provisions to Bills, the Committee identifies the inherent lack of fairness with the current scope of the existing provision.

- 20. Firstly, the Committee acknowledges that recouping the loss of having a film or game classified from a defendant found guilty of a classification offence presents an additional financial burden for the accused. The Committee notes that a penalty scheme already exists for individuals convicted of classification offences under the Principal Act and it is not proposed that this Bill reduce the maximum amounts liable under these offences.**
- 21. While it is generally regarded that an individual found guilty of an offence should not have to bear all or part of the costs incurred by their prosecution, the Committee notes that Section 60 of the Principal Act specifically states that if a person is convicted of an offence under the Act, the court may order the person to pay by way of costs, in addition to any other costs that the court may order, the amount of any fee incurred by the prosecution for the classification of the material concerned (i.e. for the classification certificate) and for the provision of an evidentiary certificate.**
- 22. Secondly, the Committee is concerned with the power imbalance between the prosecution and the accused, with a well resourced and knowledgeable prosecution trying to enter into an agreement with a likely less resourced and knowledgeable accused. This situation may also be potentially intimidating and there is a risk that the accused may agree to the classification notice sent by the prosecution without proper consideration or being properly informed of the issues and risks in doing so. The Committee also has concerns with this process insofar that it circumvents the proper channels for film or game classifications by bypassing the need for an application to the Classification Board for appropriate determination.**
- 23. Thirdly, this process also displaces the evidentiary burden, which traditionally lies on the prosecution to prove the elements of an offence, by enabling the prosecution to come to an agreement with the accused to produce material that could then be used to prosecute the accused. On this issue, the Committee is concerned that this process makes it easier on the prosecution to meet the evidentiary burden.**
- 24. Lastly, the Committee notes that the Bill provides that if the prosecution serves a notice on the accused that a film or game should be classified at a certain rating, the accused fails to sign and return that notice, and then the Classification Board classifies that film or game at a higher rating than that specified in the notice, then the notice operates as if the notice had specified that higher classification.**
- 25. The Committee notes that a similar provision in which the Classification Board's decision which stipulates that a particular film or game is at a *lower* rating than that specified in a notice given by the prosecution to the accused, then the notice operates as if the notice had specified that *lower* classification, does not exist in the Bill. On this issue, the Committee notes the inherent unfairness in the current scope of the existing provision.**

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| <p>26. The Committee considers that these issues may be an undue trespass on personal rights and liberties as there is a lack of fairness in their scope and operation and potentially puts the accused at a significant disadvantage. To this end, the Committee refers these matters to Parliament for its consideration</p> |
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The Committee makes no further comment on this Bill.

2. CONSTITUTION AMENDMENT (RECOGNITION OF ABORIGINAL PEOPLE) BILL 2010

Date Introduced:	8 September 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Paul Lynch MP
Portfolio:	Minister for Aboriginal Affairs

Purpose and Description

1. The object of this Bill is to amend the *Constitution Act 1902* to provide for recognition of the Aboriginal people by New South Wales in preamble of the Constitution of New South Wales.

Background

2. Similar legislative recognition of indigenous peoples has been conferred in Victoria (by way of a similar enactment) and in Queensland (by way of one of the statements in a constitutional preamble).
3. During the Agreement in Principle speech, the Premier stated:

‘... this Act included in its preamble an important statement by the Parliament on the spiritual, social, cultural and economic significant of land to the Aboriginal people of New South Wales.

We now understand that this recognition should extend further and it should not be bound to a single issue or Act but expressed as a principle of our democratic foundation. Today we are enshrining fundamental truth: the truth that our Aboriginal people are the first inhabitants of New South Wales; the truth of the spiritual, cultural and economic ties that bind our Aboriginal people to their traditional land and waters and the truth in the diverse and unique contributions that our many Aboriginal nations, cultures and communities make to the life, the economy and the character of our State.’

The Bill

4. Outline of Provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 amends the *Constitution Act 1902* to declare that the Parliament, on behalf of the people of New South Wales, acknowledges and honours the Aboriginal people as the State’s first people and nations, and recognises that Aboriginal people, as the traditional custodians and occupants of the land in New South Wales:

(a) have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and

(b) have made and continue to make a unique and lasting contribution to the identity of the State.

The provision also makes it clear that this recognition does not create any legal right or liability, or give rise to or affect any civil cause of action or right to review an administrative action, or affect the interpretation of any Act or law in force in New South Wales. This is similar to provisions included in legislation relating to the recognition of Aboriginal people in Victoria and Queensland.

The proposed legislative recognition in New South Wales is contained in a replacement section 2 of the *Constitution Act 1902* that will be the first substantive enactment after the short title or citation of the Act. The existing section 2 (and related provisions of the First Schedule) that will be repealed contain spent provisions relating to the repeal of Acts and associated savings provisions enacted in 1902.

Issues Considered by the Committee

<p>5. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</p>

The Committee makes no further comment on this Bill.

3. INDUSTRIAL RELATIONS ADVISORY COUNCIL BILL 2010

Date Introduced:	8 September 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Paul Lynch MP
Portfolio:	Minister for Industrial Relations

Purpose and Description

1. The object of this Bill is to establish the Industrial Relations Advisory Council to provide, in the public interest, a regular and organised means by which representatives of the Government, employers and employees, and other persons invited by the Minister, may consult together on industrial matters of State-wide concern.

Background

2. In late 2009, the New South Wales Government referred its industrial relations powers to the Commonwealth through the *New South Wales Industrial Relations (Commonwealth Powers) Act 2009*. This referral was made following passage of the Commonwealth's *Fair Work Act 2009*.
3. The New South Wales Government referred its powers on the basis of adherence to certain fundamental workplace relations principles. Both the Commonwealth *Fair Work Act 2009* and the *New South Wales Industrial Relations (Commonwealth Powers) Act 2009* contain seven elementary principles, including minimum employment standards and protection from unfair dismissal, amongst others.
4. It is expected that the formation of the Industrial Relations Advisory Council will provide its members with an appropriate forum to ensure the workplace relations principles are being met by the new system.
5. As well as monitoring the new national industrial relations system, the council is intended to be an important focal point for making and implementing industrial relations policy in New South Wales. It is the intention of this Bill to enable the council to assist the Minister for Industrial Relations and the New South Wales Government in formulating industrial relations policy and then act as a source of direct information about the implementation of that policy.

The Bill

6. Outline of Provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 sets out the object of the proposed Act as set out in the Overview above.

Part 2 Industrial Relations Advisory Council

Clause 5 establishes the Council.

Clause 6 provides that the Council is to consist of the following members:

- (a) the Minister,
- (b) the Director-General of the Department of Premier and Cabinet,
- (c) the Director-General of the Department of Services, Technology and Administration,
- (d) 7 persons nominated by Unions NSW,
- (e) one person nominated by the NSW Business Chamber,
- (f) one person nominated by the Australian Industry Group (NSW Branch),
- (g) one person nominated by the Australian Federation of Employers and Industries,
- (h) one person nominated by the Local Government and Shires Associations of New South Wales,
- (i) one person nominated by the Catholic Commission for Employment Relations,
- (j) one person nominated by the Law Society of New South Wales,
- (k) one person nominated by the Bar Association of New South Wales.

Clause 7 sets out the functions of the Council (including assisting the Minister in formulating, and to advise the Minister on implementing, policies affecting industrial relations and employment in the State).

Clause 8 provides that the Council may establish committees for specified purposes to assist it in connection with the exercise of its functions.

Clause 9 provides that views expressed by individual members of the Council (as distinct from the views or decision of the Council as a whole) must be kept confidential and that the Minister may remove a member from office for contravening that provision.

Part 3 Miscellaneous

Clause 10 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 11 provides for the review of the proposed Act in 5 years.

Schedule 1 Provisions relating to members of Council

Schedule 1 contains provisions relating to membership and procedure of the Council.

Issues Considered by the Committee

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| <p>7. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</p> |
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The Committee makes no further comment on this Bill.

4. NATIONAL PARKS AND WILDLIFE AMENDMENT (ADJUSTMENT OF AREAS) BILL 2010

Date Introduced:	9 September 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Frank Sartor MP
Portfolio:	Minister for Climate Change and the Environment

Purpose and Description

1. The object of this Bill is to amend the *National Parks and Wildlife Act 1974* to revoke the reservation of certain land currently reserved as part of Beni State Conservation Area and Gwydir River State Conservation Area.

Background

2. There are instances in which the revocation of lands reserved under the *National Parks and Wildlife Act 1974* are required, but usually undertaken as an avenue of last resort and only where appropriate.
3. This Bill identifies two such instances to enable safety upgrades to public infrastructure in two locations: the maintenance of Copeton Dam, 35 kilometres southwest of Inverell; and the upgrade of the intersection at Boothenba Road and the Golden Highway near Dubbo.
4. In the Inverell instance, the Bill proposes the revocation of 144 hectares from Gwydir River State Conservation Area to enable it to be transferred to State Water for future management of the Copeton Dam. Recent studies have shown that the existing spillway for Copeton Dam has insufficient capacity to deal with an extreme flood event. To ensure a conservation benefit to the region, the Bill proposes to transfer a parcel of land to the Gwydir River State Conservation Area of equal or greater value to offset the revoked land.
5. In the Dubbo instance, the Bill proposes the revocation of 1.2 hectares from Beni State Conservation for the dedication of a public road, as well as enabling a safety upgrade to take place at a nearby intersection. The proposal also includes the transfer of an eight-hectare parcel of land of high conservation value forest to the national parks system to offset the revoked land.

The Bill

6. Outline of Provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of *National Parks and Wildlife Act 1974* No 80

Schedule 1 inserts proposed Schedule 2 into the Principal Act, which revokes the reservation or dedication of certain land under the Principal Act. It also inserts proposed Part 1 of Schedule 2, which contains the provisions specifically relating to the proposed Act. Proposed clause 1 of Schedule 2 revokes the reservation of land that is part of Beni State Conservation Area (being approximately 1.47 hectares) and vests that land in Dubbo City Council.

Proposed clause 2 of Schedule 2 revokes the reservation of land that is part of Gwydir River State Conservation Area (being approximately 140 hectares) and vests that land in the State Water Corporation. However, proposed clause 2 (3) of Schedule 2 provides that the revocation and vesting do not have effect until a day appointed by the Minister by notice published in the Gazette. Proposed clause 2 (4) and (5) of Schedule 2 provide that the Minister must not publish such a notice until other land has been transferred into the national park estate as compensation for the excision of the land within Gwydir River State Conservation Area.

Schedule 2 Amendment of *Native Title (New South Wales) Act 1994* No 45

Schedule 2 makes a consequential amendment to section 104A of the *Native Title (New South Wales) Act 1994*, which saves native title rights and interests with respect to the vesting of land in state conservation areas.

Issues Considered by the Committee

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| <p>7. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</p> |
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The Committee makes no further comment on this Bill.

Appendix 1: Index of Bills Reported on in 2010

	Digest Number
Adoption Amendment (Same Sex Couples) Bill 2010*	10
Adoption Amendment (Same Sex Couples) Bill (No. 2) 2010*	11
Appropriation Bill 2010	9
Appropriation (Parliament) Bill 2010	9
Appropriation (Special Offices) Bill 2010	9
Banana Industry Repeal Bill 2010	8
Building and Construction Industry Long Service Payments Amendment Bill 2009	1
Carers Recognition Bill 2010*	3
Carers Recognition Bill 2010*	5
Carers (Recognition) Bill 2010	5
Casino Control Amendment Bill 2010	2
Charter of Budget Honesty Amendment (Independent Election Costings) Bill 2010*	5
Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010	10
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	4
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010	12
Coal Mine Health and Safety Amendment Bill 2010	4
Coastal Protection and Other Legislation Amendment Bill 2010	9
Community Relations Commission and Principles of Multiculturalism Amendment Bill 2010	8
Companion Animals Amendment (Dogs in Outside Eating Areas) Bill 2010*	4
Companion Animals Amendment (Outdoor Dining Areas) Bill 2010	5
Constitution Amendment (Recognition of Aboriginal People) Bill 2010	12
Court Information Bill 2010	4
Courts Legislation Amendment Bill 2010	9
Credit (Commonwealth Powers) Bill 2010	2
Crimes (Administration of Sentences) Amendment Bill 2010	2
Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010	9
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	3
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	4
Crimes Amendment (Police Pursuits) Bill 2010	2
Crimes Amendment (Terrorism) Bill 2010	11
Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010	10

	Digest Number
Duties Amendment (NSW Home Builders Bonus) Bill 2010	10
Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010	8
Electronic Transactions Amendment Bill 2010	10
Environmental Planning and Assessment Amendment (Development Consents) Bill 2010	5
Evidence Amendment Bill 2010	11
Fair Trading Amendment (Unfair Contract Terms) Bill 2010	9
Firearms Legislation Amendment Bill 2010*	8
Game and Feral Animal Control Repeal Bill 2010*	10
Gas Supply Amendment Bill 2009	1
Health Legislation Amendment Bill 2010	8
Home Building Amendment (Warranties and Insurance) Bill 2010	10
Housing Amendment (Community Housing Providers) Bill 2009	1
Industrial Relations Advisory Council Bill 2010	12
Industrial Relations Amendment (Public Sector Appeals) Bill 2010	9
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment Bill 2009	1
Jury Amendment Bill 2010	8
Law Enforcement and National Security (Assumed Identities) Bill 2010	10
Macedonian Orthodox Church Property Trust Bill 2010*	9
Marine Parks Amendment (Moratorium) Bill 2010*	8
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	5
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010	2
National Park Estate (Riverina Red Gum Reservations) Bill 2010	5
National Parks and Wildlife Amendment Bill 2010	2
National Parks and Wildlife Amendment (Adjustment of Areas) Bill 2010	12
National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010	8
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	5
Ombudsman Amendment (Removal of Legal Professional Privilege) Bill 2010*	10
Paediatric Patient Oversight (Vanessa's Law) Bill 2010*	5
Parliamentary Contributory Superannuation Amendment Bill 2010	10
Parliamentary Electorates and Elections Amendment Bill 2010	4
Personal Property Securities Legislation Amendment Bill 2010	10
Plant Diseases Amendment Bill 2010	10

	Digest Number
Plantations and Reafforestation Amendment Bill 2010	11
Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010	9
Privacy and Government Information Legislation Amendment Bill 2010	10
Registrar-General Legislation (Amendment and Repeal) Bill 2010	4
Relationships Register Bill 2010	5
Residential Tenancies Bill 2010	8
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010	4
State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010	5
State Revenue Legislation Amendment Bill 2010	9
State Senate Bill 2010	2
Statute Law (Miscellaneous Provisions) Bill 2010	9
Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010	10
Superannuation Legislation Amendment Bill 2010	9
Sydney Olympic Park Authority Amendment Bill 2009	1
Terrorism (Police Powers) Amendment Bill 2010	10
Trees (Dispute Between Neighbours) Amendment Bill 2010	5
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	3
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)	4
Weapons and Firearms Legislation Amendment Bill 2010	4
Workers Compensation Amendment (Commission Members) Bill 2010	2
Workers Compensation Legislation Amendment Bill 2010	10

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1			
Casino Control Amendment Bill 2010	Minister for Gaming and Racing and Attorney General	08/03/10	18/03/10				2, 5
Civil Liability Legislation Amendment Bill 2008	Attorney General	28/10/08			12		
Contaminated Land Management Amendment Bill 2008	Minister for Climate Change and the Environment	22/09/08	03/12/08		10	1	
Credit (Commonwealth Powers)	Minister for Fair Trading	08/03/10					2
Crimes (Administration of Sentences) Amendment Bill 2008	Attorney General and Minister for Justice	2/12/07			15		
Crimes (Administration of Sentences) Amendment Bill 2009	Minister for Corrective Services	08/08/09				10	
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	06/02/09		9		
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07		1		2	
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1		
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning		12/06/08		8		
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7			
Home Building Amendment	Minister for Fair Trading		30/10/08		10, 13		
Liquor Legislation Amendment Bill 2008	Minister for Gaming and Racing	24/11/08	05/01/09		14	2	
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07		1		2	
Parking Space Levy Bill 2009	Minister for Transport	23/03/09	26/05/09			3, 8	
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1,2			

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1			
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2	

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2010

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Building and Construction Long Service Payments Amendment Bill 2009				N	
Casino Control Amendment Bill 2010	N, R, C		N, R		
Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010	N			N	
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	N				
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010	N, R				
Coal Mine Health and Safety Amendment Bill 2010	N, R			N, R	
Coastal Protection and Other Legislation Amendment Bill 2010	N, R	N, R		N	
Court Information Bill 2010	N, R			N	
Courts Legislation Amendment Bill 2010	N, R				
Credit (Commonwealth Powers) Bill 2010	N, R, C			N, R, C	
Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010	N, R		N, R	N	
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	N			N	
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	N, R				
Crimes Amendment (Police Pursuits) Bill 2010	N, R				
Crimes Amendment (Terrorism) Bill 2010	N				
Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010	N, R				

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010				N	
Electronic Transactions Amendment Bill 2010				N	
Environment Planning and Assessment Amendment (Development Consents) Bill 2010			N, R		
Evidence Amendment Bill 2010				N	
Fair Trading Amendment (Unfair Contract Terms) Bill 2010				N	
Game and Feral Animal Control Repeal Bill 2010	N, R				
Gas Supply Amendment Bill 2009				N	
Health Legislation Amendment Bill 2010	N, R			N, R	
Home Building Amendment (Warranties and Insurance) Bill 2010	N				
Housing Amendment (Community Housing Providers) Bill 2009	N				
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment 2009				N	
Jury Amendment Bill 2010	N, R			N	
Macedonian Orthodox Church Property Trust Bill 2010*				N	
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	N, R				
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010				N	N
National Parks and Wildlife Amendment Bill 2010	N, R			N, R	
National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010				N	
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	N, R			N	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Ombudsman Amendment (Removal of Legal Professional Privilege) Bill 2010*	N				
Parliamentary Contributory Superannuation Amendment Bill 2010	N				
Personal Property Securities Legislation Amendment Bill 2010				N	
Plantation and Reafforestation Amendment Bill 2010	N, R			N	
Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010				N	
Privacy and Government Information Legislation Amendment Bill 2010				N	
Relationships Register Bill 2010	N			N	
Residential Tenancies Bill 2010	N, R			N, R	
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010				N, R	
Statute Law (Miscellaneous Provisions) Bill 2010	N				
Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010	N, R				
Superannuation Legislation Amendment Bill 2010				N	
Sydney Olympic Park Authority Amendment Bill 2009	N, R			N	
Terrorism (Police Powers) Amendment Bill 2010				N	
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	N			N	
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)				N	
Weapons and Firearms Legislation Amendment Bill 2010	N, R			N	
Workers Compensation Legislation Amendment Bill 2010				N	

Key

R Issue referred to Parliament

C Correspondence with Minister/Member
N Issue Noted

Appendix 4: Index of correspondence on regulations

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008	Digest 2009	Digest 2010
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12		
Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010	Attorney General	23/02/10	28/04/10			1, 5
Fisheries Management Legislation Amendment (Fishing Closures) Regulation 2009	Minister for Primary Industries	23/11/09	11/01/10		16	1
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08	5/01/09	10	2	
Retirement Villages Regulation 2009	Minister for Fair Trading	22/02/10				1, 8
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10		