

PARLIAMENT OF NEW SOUTH WALES



# Legislation Review Committee

## LEGISLATION REVIEW DIGEST

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No 14 of 2008

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24 November 2008

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Assembly. Legislation Review Committee.

Legislation Review Digest, Legislation Review Committee, Parliament NSW Legislative Assembly. [Sydney, NSW] : The Committee, 2008, viii, 41 p; 30cm

Chair: Mr Allan Shearan MP

24 November 2008

ISSN 1448-6954

1. Legislation Review Committee—New South Wales
  2. Legislation Review Digest No. 14 of 2008
- I Title.
- II Series: New South Wales. Parliament. Legislative Assembly. Legislation Review Committee Digest; No. 14 of 2008

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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

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information. The Committee's letter to the Minister is published together with the Minister's reply.

## Appendix 1: Index of Bills Reported on in 2008

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 for 2008

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 2008

This table specifies the action the Committee has taken with respect to Bills that received comment in 2008 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 in 2008

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. Animals (Regulation of Sale) Bill 2008\*

7. The Committee has not identified any issues under section 8A(1)(b) of the Legislation Review Act.

#### 2. Liquor Legislation Amendment Bill 2008

**Issue: Retrospectivity – Schedule 1 [1] – proposed Section 11A (1) and (4) Special licence condition – 6-hour closure period for licensed premises:**

21. The Committee considers that any retrospective provision where it is taken to have commenced on the date of the announcement of reforms or before the date of assent, and which may adversely affect a person or impose liabilities on a person such as a licensee, could trespass on that person's right to be able to rely on the law at any given time. Accordingly, the Committee refers subsections (1) and (4) of proposed section 11A to Parliament.

**Issue: Oppressive Official Powers – Schedule 2 [1] Amendment of *Local Government Act 1993* – proposed Section 642 Confiscation of alcohol in alcohol-free zones; Schedule 2 [2] omit sections 647 and 649; and Schedule 2 [4] omit “642” from section 679 (1) Penalty notices for certain offences:**

27. The Committee resolves to write to the Minister to seek information on the reasons why warning is not to be provided in the proposed section 642 for the proposed powers to confiscate or dispose of alcohol in alcohol-free zones particularly, given that it will no longer be an offence attracting a penalty notice.

28. The Committee further seeks information from the Minister to clarify on whether a police officer may exercise the powers of arrest in circumstances related to or escalating from the person's non-compliance with the amended section 642 rather than the option of a penalty notice that could have been otherwise available under the current legislation and which would have imposed less adverse impact on the affected person. This is particularly if members of marginalised groups could be more adversely and disproportionately affected in alcohol-free zones such as those who may tend to use public space or be more highly visible such as young people, Indigenous people, people who are homeless, and those with mental health, drug and/or alcohol related problems.



29. The Committee notes that the current Local Government Act under section 656 (guidelines for alcohol-free zones), already provides for the inclusion of a list of names of the councils that are required to advise the Anti-Discrimination Board under section 644A (3), where the Board may make any representations or objections within 40 days. This reflects the recognition that the operation of alcohol-free zones may sometimes affect differentially, or impact disproportionately on certain members from marginalised groups. The Committee is concerned that the removal of an offence by a penalty notice under the Bill's proposed amendments may unintentionally lead to escalated incidents arising from the enforcement of the new section 642, which may lead to the unintended consequence of increasing arrests in the absence of an alternative option to serve a penalty notice, which may impact disproportionately on individuals from marginalised or disadvantaged groups. Therefore, the Committee resolves to write to the Minister and seek his advice on these concerns.

### 3. Public Sector Employment and Management Further Amendment Bill 2008

11. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987

### 4. Rural Lands Protection Amendment Bill 2008

#### **Issue: Procedural Fairness – Schedule 5 [24] – amendments to *Rural Lands Protection Act 1998* - proposed removal of sections 159 – 162 and 168:**

41. Considering that there are obligations to comply with the individual eradication order once served, and that there are penalties for non-compliance once the order has been served, the Committee is, therefore, concerned the proposed omission by Schedule 5 [24] of sections 159 to 162 and 168, may be an undue trespass on the right to procedural fairness by legislating away the need to give prior notice and to hear representations concerning the proposed intention of the board to make an individual eradication order before the order was made and served. Notwithstanding, it is noted that the right to appeal against the order will still be available under section 164 and appeal against the individual eradication order will still be available under section 165. Accordingly, the Committee refers this to Parliament.

#### **Issue: Ill And Wide Defined Powers – Schedule 1 [30] – proposed Schedule 1A Part 2, Clause 4 (2) Vacancy in office of member; and Clause 6 (3) Chairperson and Deputy Chairperson:**

43. The Committee is concerned that clause 4 (2) and clause 6 (3) of proposed Schedule 1A, Part 2, may create uncertainty and considers that they may make the office membership of the Policy Council, including that of the Chairperson and Deputy Chairperson, and the circumstances for their removal appear unduly dependent on insufficiently defined administrative powers. The Committee refers this to Parliament.

5. Statute Law (Miscellaneous Provisions) Bill (No 2) 2008

**Issue: Retrospective operation of various provisions in Schedules 1 and 2 of the proposed Act and of Regulations made under Schedule 5**

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| 6. The Committee is satisfied that the retrospective provisions of Schedule 1 and 2 and of the regulation making powers do not trespass unduly on personal rights and liberties. |
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**Issue: Revocation of repeal – Clause 4 of Schedule 5**

## Part One – Bills

### SECTION A: COMMENT ON BILLS

# 1. ANIMALS (REGULATION OF SALE) BILL 2008\*

Date Introduced:	14 November 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Ms Moore, MP
Portfolio:	Independent

## Purpose and Description

1. The purpose of this Bill is to protect the lives and well-being of cats, dogs and other mammals, (but not livestock). It proposes to do this by prohibiting the keeping of cats and dogs at shops or markets for the purposes of their sale; by prohibiting the sale of cats and dogs at or from shops or markets; by prohibiting the display of mammals other than cats or dogs in shop windows or in parts of shops visible to passers-by; by regulating the advertising of the sale of cats and dogs; by requiring any person who offers a cat or dog for sale to inform prospective purchasers of the basic care requirements of the animal; and by restricting who can carry on the business of selling cats or dogs, or breeding cats or dogs for sale. The proposed Act does not affect any provision of the *National Parks and Wildlife Act 1974*, the *Prevention of Cruelty to Animals Act 1979* or any other Act or statutory rule that regulates or prohibits the keeping or sale of a mammal.

## Background

2. Ms Moore MP, in her Agreement in Principle speech, states that the present Bill follows an earlier Bill introduced in 2007 and that the current Bill addresses some concerns raised by the Government and Opposition in relation to the earlier Bill. She states that a new code of conduct for pet shops introduced by the Government, while making life more comfortable for animals in pet shops, has done nothing to stop cruel mass breeding practices and impulse buying and fails to regulate classified sales. She advises that thousands of dogs and cats will continue to be dumped every year and be euthanased.
3. Ms. Moore says the Bill will ban the sale of cats and dogs in pet shops and markets. People will still be able to buy cats and dog from recognised breeders, animal shelters, rescuers, council pounds and vets who re-home pets. Animal shelters will be able to sell abandoned cats and dogs through pet shops. She advises that other mammals such as rabbits and guinea pigs will be banned from shop window displays. Only recognised breeders, animal shelters, rescuers and vets, who re-home pets will be able to advertise the sale of cats and dogs, and advertisements will have to direct people to a statement about the animal's basic husbandry requirements.

4. The Bill provides for the making of regulations was so as to set mandatory standards for recognised breeders. The Bill also makes it an offence to fail to collect an animal from a council pound, or to fail to collect or surrender a companion animal at an animal shelter, after being notified that it is there.
5. Ms. Moore states that pet shops encourage impulse buying and, unlike shelters and rescuers, not do de-sex animals before they are sold, which can lead to millions of unwanted litters in the community. She states that there is no guarantee that pets sold in pet shop and markets do not come from unregulated backyard breeders and intensive mass breeding mills. She advises that many registered breeders will not sell to pet shops, which makes it unlikely that pets in pet shops are sourced from reputable breeders. She says that puppy farms and pet mills are massive breeding facilities where animals are kept in overcrowded, unsanitary conditions and females are forced to continue to breed until they are incapable of breeding any longer and then they are put down. These breeding practices do not involve public screening to detect and prevent genetic and behavioural problems making it more likely, says Ms Moore, that companion animals will incur unexpected problems and cost to their owners. The aim of these puppy farms and kitten mills, says Ms. Moore, is to mass-produce cute kittens and puppies to get more impulse sales in pet shops.

## The Bill

### 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 a date that is 3 months after the date of assent, or on an earlier proclaimed date.

**Clause 3** states the object of the proposed Act, which is to protect the lives and well-being of dogs, cats and other mammals (but not livestock).

**Clause 4** defines certain words and expressions used in the proposed Act.

**Clause 5** provides that the proposed Act does not affect any provision of the *National Parks and Wildlife Act 1974*, the *Prevention of Cruelty to Animals Act 1979* or any other Act or statutory rule that regulates or prohibits the keeping or sale of a mammal.

#### Part 2 Regulation of sale of cats and dogs

##### Division 1 Regulation of sale of cats and dogs at shops and markets

**Clause 6** regulates the keeping of cats and dogs at shops or markets for the purpose of selling them.

**Clause 7** regulates the sale or offering for sale of cats and dogs at or from shops or markets.

**Clause 8** regulates the negotiation of the sale of cats and dogs at shops or markets.

##### Division 2 Provision of basic care information about cats and dogs

**Clause 9** requires persons who display cats or dogs for sale, or cause or permit other persons to display cats or dogs for sale, to provide prospective purchasers with written prescribed basic care information, that is, with a written statement about the basic care requirements of the animals prescribed under proposed section 21.

**Clause 10** requires an authorised seller who sells a cat or dog, or a person who sells a cat or dog on behalf of an authorised seller, to provide the purchaser with written prescribed basic care information about the animal.

### **Division 3 Regulation of advertising of cats and dogs**

**Clause 11** regulates the advertising of the sale of cats and dogs at shops or markets and elsewhere.

### **Division 4 Regulation of business of selling or breeding cats and dogs**

**Clause 12** prohibits the carrying on of the business of selling cats and dogs or breeding cats and dogs for sale. Neither of the prohibitions apply to a recognised breeder, and the prohibition on carrying on the business of selling animals does not apply to an approved animal shelter, a council pound, the practice of a veterinary practitioner or an approved animal welfare organisation.

### **Part 3 Regulation of sale of mammals other than cats and dogs**

**Clause 13** prohibits the display of mammals other than cats or dogs in shop windows or any other part of a shop that can easily be seen by a person outside the shop.

### **Part 4 Regulation of recognised breeders**

**Clause 14** provides for the regulations to prescribe standards that are required to be complied with by recognised breeders.

**Clause 15** makes it an offence for a recognised breeder to fail to comply with the prescribed standards.

**Clause 16** provides that an inspector under the *Prevention of Cruelty to Animals Act 1979* may exercise certain powers under that Act if the inspector believes on reasonable grounds that a recognised breeder has failed to comply with any of the standards prescribed by the regulations that apply to the breeder.

### **Part 5 Proceedings for offences**

**Clause 17** provides that offences under the proposed Act are to be dealt with summarily before a Local Court or by the Supreme Court in its summary jurisdiction.

**Clause 18** deals with offences by corporations.

**Clause 19** provides for the issue of penalty notices for offences under the proposed Act.

### **Part 6 Miscellaneous**

**Clause 20** provides for the making of regulations under the proposed Act.

**Clause 21** provides for the regulations to prescribe basic care information in relation to cats and dogs. The information will be required to cover such matters as the usual life-span of the animal, the minimum requirements for the humane shelter, accommodation, exercising and socialising of the animal and the costs associated with feeding, registering and keeping the animal and obtaining veterinary care for the animal.

**Clause 22** provides that, in certain circumstances, there will be a presumption that a person carries on a business of selling cats, dogs or other mammals.

**Clause 23** provides that the proposed Act binds the Crown.

**Clause 24** gives effect to the amendments to Acts and regulations specified in Schedule 1.

**Clause 25** provides for the review of the proposed Act.

### **Schedule 1 Amendment of Acts and regulations**

**Schedule 1.1, 1.2 and 1.3** make amendments that are consequential on the fact that cats and dogs will no longer be permitted to be sold or kept for sale at pet shops or markets.

**Schedule 1.4** provides for the administration of penalty notices issued under the proposed Act to be carried out under the *Fines Act 1996*.

**Schedule 1.5** makes it an offence under the *Impounding Act 1993* for a person to fail to collect an impounded animal if the person is notified by an impounding authority that the animal has been impounded.

**Schedule 1.6 [1]** makes it clear that the prohibition on abandoning animals set out in section 11 of the *Prevention of Cruelty to Animals Act 1979* includes dumping animals.

**Schedule 1.6 [2]** makes it an offence under the *Prevention of Cruelty to Animals Act 1979* for a person to fail to claim or surrender an animal if the person is notified by the RSPCA, or another organisation that operates an animal shelter, that the animal has been taken or otherwise come into its possession.

## Issues Considered by the Committee

6. The substance of this Bill, with certain changes that do not materially affect the Committee's earlier examination, was carried forward from an earlier Bill entitled *Animals (Regulation of Sale) Bill 2007*. That Bill was the subject of a report by the Committee that can be found in Legislation Review Digest No 4 of 23 October 2007.

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| <ol style="list-style-type: none"><li>7. <b>The Committee has not identified any issues under section 8A(1)(b) of the Legislation Review Act.</b></li></ol> |
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***The Committee makes no further comment on this Bill.***

## 2. LIQUOR LEGISLATION AMENDMENT BILL 2008

Date Introduced:	13 November 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Kevin Greene MP
Portfolio:	Gaming and Racing

### Purpose and Description

1. This Bill amends the *Liquor Act 2007* to restrict the trading hours of licensed premises; to amend the *Local Government Act 1993* in relation to alcohol-free zones; and for other purposes.
2. It amends the *Liquor Act 2007*, the *Local Government Act 1993* and the *Road Transport (Driver Licensing) Act 1998* to:
  - require a six-hour closure each day for all new liquor licences, to freeze the issuing of new 24-hour liquor licences;
  - give police and local council enforcement officers new powers to confiscate and tip out alcohol in alcohol-free zones; and
  - introduce new penalties for minors who use fake identification to enter licensed premises or obtain alcohol.
3. The Bill will require a six-hour closure each day to be included as a condition in all new liquor licences granted after 30 October 2008—the day on which the Premier made the announcement on the freeze. The six-hour closure will also apply to all existing liquor licences that have extended trading granted after 30 October 2008.
4. The Casino, Liquor and Gaming Control Authority will approve the closure period. This period will be proposed to be generally between 4.00 a.m. and 10.00 a.m. The authority will determine closure periods on a case-by-case basis to ensure they take into account factors such as local circumstances, needs of the community and patrons and the operation of the venue. Transitional provisions will also be included to ensure that where the authority has not yet approved a closure period for licences granted after 30 October but before the Act commences, a 4.00 a.m. to 10.00 a.m. closure will automatically apply. The six-hour closure requirement will apply to licences granted by the authority under the *Liquor Act 2007*, which commenced on 1 July 2008, as well as to applications lodged before the commencement of the new Liquor Act, which are granted under the former court-based system.
5. The Bill allows exceptions to the six-hour closure period to be prescribed by regulation. It also allows hotels and motels to continue to sell liquor to residents for consumption in private rooms during the six-hour closure.

6. Under the Local Government Act, councils are able to deal with the problem through the declaration of alcohol-free zones. This Bill will amend the Local Government Act to give police and enforcement officers more powers to enforce these zones.
7. The amendments include the removal of mandatory warnings prior to any enforcement action being undertaken. Under the provisions, a police officer or an enforcement officer will have the power to confiscate liquor from a person who is either drinking in an alcohol-free zone or in immediate possession of liquor in an alcohol-free zone and there is reasonable cause to believe that the person is about to drink, or has recently been drinking, alcohol in the zone.
8. The Bill also allows greater scope for council employees to be authorised by the Commissioner of Police to be enforcement officers for the purposes of enforcing alcohol-free zones. Under current provisions in the Act, council enforcement officers may only be appointed in relation to specified alcohol-free zones during special events. This Bill amends the *Local Government Act 1993* to enable enforcement officers to be authorised by the Commissioner of Police on an ongoing basis. These enforcement officers will then be able to exercise the new confiscation and tip-out powers.
9. The Bill will extend the maximum period of an alcohol-free zone from three years to four years to align it with the council election cycle.
10. It also includes amendments with regard to minors using false identity documents to purchase alcohol and enter licensed premises. Section 129 of the Liquor Act already makes it an offence for a minor to use a false evidence-of-age document to gain entry to, remain in or obtain liquor from licensed premises. This Bill amends the *Road Transport (Driver Licensing) Act 1998* to allow regulations to be made to impose new licence sanctions against minors who commit an offence under section 129.

## Background

11. In 2007, 21,000 alcohol-related assaults occurred across New South Wales. Alcohol-related assaults increased by 4.7 per cent. Two weeks ago the Premier announced a package of initiatives proposed to address this problem, and the Bill aims to implement a number of these initiatives.
12. According to the Agreement in Principle speech:

Where a review indicates it is necessary, directions can be issued to licensees and conditions can be imposed on licences to improve venue management and operations. Lockouts can be imposed on venues to reduce patron migration. When necessary, trading hours can be reduced on a case-by-case basis. In addition, all existing 24-hour trading venues will be examined to improve venue operation and patron behaviour. This will involve liquor inspectors and police inspecting these venues during their peak and risk-trading periods. The Government will also work with the Casino, Liquor and Gaming Control Authority to develop guidelines to apply to applications for extended trading...The guidelines will assist industry and regulators in determining what trading hour approvals are reasonable. They will take into account local circumstances, the need to promote community safety and the need to ensure liquor trading does not have a detrimental impact on the local and broader community. These guidelines will be a key factor when considering



extended trading applications approving six-hour shutdowns and in the review of 24-hour licensed premises.

13. The Agreement in Principle speech referred to the removal of the mandatory warning when taking enforcement action in alcohol-free zones as still allowing police and enforcement officers to use discretion and warn persons who appear to be unaware of the alcohol-free zone. As done currently, it will be up to councils to apply to the Commissioner for Police for authorisation if they wish any of their employees to perform the role of enforcement officer.
14. The Bill includes amendments to deter young people from using false identity documents to purchase alcohol and enter licensed premises. It amends the Road Transport (Driver Licensing) Act to allow regulations to be made to impose new licence sanctions against minors who commit an offence under section 129. The Agreement in Principle speech stated that:

Following this amendment, the Government will bring forward regulations to require young people who use fake IDs to stay on their provisional driver licence for an additional six months. The regulations will provide that where the offender is not a current licence holder, the Roads and Traffic Authority [RTA] will impose the additional six month period when the licence application is made...Those regulations will provide that the RTA will not take any action if the licence application is made more than five years after the offence, and this sanction will apply to offenders who are 14 years and older when committing the offence.

15. It is proposed that breaches of the new licence condition will be an offence and will carry a maximum penalty of \$11,000. More significant breaches can lead to disciplinary action by the authority with higher penalties up to \$55,000 or suspension or cancellation of a licence.
16. Extended liquor trading of existing 24-hour licences and late trading venues will be reviewed. According to the Agreement in Principle speech:

The Government is also targeting specific, high-risk venues identified by the New South Wales Bureau of Crime Statistics and Research as being associated with alcohol-related assaults...The Premier has announced that new targeted conditions will be imposed on the most at-risk venues in New South Wales. These will include a mandatory 2.00 a.m. lock-out, controls on alcohol service, a requirement to utilise plastic or polycarbonate containers after midnight, no service of alcohol shots, limits on drink purchases after midnight, and ten minute alcohol service time-outs each hour after midnight. These conditions are based on recent experience in Newcastle and Wollongong as to what is effective in reducing risk and improving venue operations. They will be imposed by regulation on specific venues using existing powers contained in the Liquor Act, which allow licence conditions to be prescribed. There is therefore no need to amend the Liquor Act to achieve this outcome. A high-level implementation team will oversee these new arrangements and advise the Government when and where changes are needed...Over the coming months the Office of Liquor Gaming and Racing and the NSW Police Force will work with the liquor industry to replace these targeted conditions with a statewide sanctions scheme for high-risk licensed venues. The scheme could start with mandatory conditions such as lock-outs, with sanctions escalating if necessary.

## The Bill

### 17. The objects of this Bill are:

(a) to amend the *Liquor Act 2007* to provide that any new liquor licence granted on or after 30 October 2008 (and any licence in force before that date if the trading hours for the licensed premises are extended after that date) will be subject to a condition that the licensed premises must close for a period of 6 hours every day,

(b) to amend the *Local Government Act 1993*:

(i) to enable police officers and local council employees authorised by the Commissioner of Police to confiscate alcohol, without being required to give any warning, from persons who are drinking in alcohol-free zones and to tip the alcohol out immediately or otherwise dispose of it, and

(ii) to remove existing penalty notice provisions relating to drinking alcohol in alcohol-free zones, and

(iii) to extend the maximum period for which an alcohol-free zone may be established or re-established under that Act from 3 years to 4 years,

(c) to amend the *Road Transport (Driver Licensing) Act 1998* to enable the period for which a person is required to hold a provisional licence to be extended if the person is convicted or found guilty of an offence under section 129 of the *Liquor Act 2007* (which relates to persons under the age of 18 years using false evidence of age to gain entry to, or to remain in, or to obtain liquor from, licensed premises) or is issued with a penalty notice for an alleged offence under that section,

(d) to make other amendments of a minor or consequential nature (including an amendment to the *Fines Act 1996* that is consequential on the removal of the penalty notice provisions under the *Local Government Act 1993* relating to drinking in alcohol-free zones).

### 18. 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** is a formal provision that gives effect to the amendments to the *Liquor Act 2007* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Local Government Act 1993* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to the amendments to the Acts set out in Schedule 3.

**Clause 6** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

**Schedules 1–3** contain the amendments described in the Overview above.

## Issues Considered by the Committee

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

#### Issue: Retrospectivity – Schedule 1 [1] – proposed Section 11A (1) and (4) Special licence condition – 6-hour closure period for licensed premises:

19. Proposed section 11A (1) reads: This section applies in relation to: (a) any licence granted on or after 30 October 2008, and (b) any licence in force before that date, but only if an extended trading authorisation granted on or after that date is in force in relation to the licensed premises concerned.
20. Proposed section 11A (4) reads: In the case of a licence: (a) granted on or after 30 October 2008 but before the date on which this section (as inserted by the *Liquor Legislation Amendment Act 2008*) commenced, or (b) granted by the Local Court (as provided by clause 25 of Schedule 1) at any time after the date on which this section commenced, the 6-hour closure period for the licensed premises is, subject to subsection (5), the period from 4 am to 10 am.

**21. The Committee considers that any retrospective provision where it is taken to have commenced on the date of the announcement of reforms or before the date of assent, and which may adversely affect a person or impose liabilities on a person such as a licensee, could trespass on that person's right to be able to rely on the law at any given time. Accordingly, the Committee refers subsections (1) and (4) of proposed section 11A to Parliament.**

#### Issue: Oppressive Official Powers – Schedule 2 [1] Amendment of *Local Government Act 1993* – proposed Section 642 Confiscation of alcohol in alcohol-free zones; Schedule 2 [2] omit sections 647 and 649; and Schedule 2 [4] omit “642” from section 679 (1) Penalty notices for certain offences:

22. Currently, section 642 of the *Local Government Act 1993* provides a warning to the person that drinking of alcohol in the zone is prohibited and that alcohol in the person's possession may be confiscated if the person attempts to drink any of it in the zone. The current provision also provides for that if a person who has received a warning but who, in the same alcohol-free zone in which the warning was given and on the same day: commences to drink alcohol in the zone, or fails to stop drinking alcohol in the zone, or resumes drinking alcohol in the zone, will be guilty of an offence.
23. The new proposed section eliminates the requirement to warn the person that drinking of alcohol in the zone is prohibited and that alcohol in the person's possession may be confiscated if the person attempts to drink it in the zone. The proposed section 642 reads:
  - (1) A police officer or an enforcement officer may seize any alcohol (and the bottle, can, receptacle or package in which it is contained) that is in the immediate possession of a person in an alcohol-free zone if: (a) the person is drinking alcohol in the alcohol-free zone, or (b) the officer has reasonable cause to believe that the person is about to drink, or has recently been drinking, alcohol in the alcohol-free zone.

- (2) Any alcohol or thing seized under this section is, by virtue of the seizure, forfeited: (a) if seized by a police officer – to the State, or (b) if seized by an enforcement officer – to the council that employs the officer.
- (3) Any alcohol seized under this section may: (a) be disposed of immediately by tipping it out of the bottle, can, receptacle or package in which it is contained, or (b) be otherwise disposed of in accordance with directions given by the Commissioner of Police or the council (as the case requires).
- (4) In this section: enforcement officer means an employee of a council authorised in writing by the Commissioner of Police to be an enforcement officer for the purposes of this section.
24. The proposed section 642 aims to give police officers or enforcement officers (employees of a council authorised in writing by the Commissioner of Police) powers to confiscate alcohol in alcohol-free zones and to tip them out if the person is drinking alcohol in the alcohol-free zone or the officer has reasonable cause to believe that the person is about to drink, or has recently been drinking alcohol in the alcohol-free zone.
25. However, the proposed enforcement powers will be taken in the absence of any offence attracting a penalty or in the absence of any prohibition of drinking alcohol in the circumstances provided by the current section 642. This is because Schedule 2 [6] will amend the Local Government Act to omit the following words from the current definition of alcohol-free zone: “and in which the drinking of alcohol is accordingly prohibited in the circumstances and to the extent provided by section 642” in the dictionary at the end of the *Local Government Act 1993*. Schedule 2 [2] amends the Local Government Act to remove section 647 and section 649 on penalty notices for an offence under section 642. Schedule 2 [4] also omits section 642 from section 679 (1) on the serving of penalty notices for certain offences. This means the new proposed section will no longer make drinking of alcohol in the alcohol-free zone constitute as a penalty notice offence.
26. The Agreement in Principle speech referred to the removal of the mandatory warning when taking enforcement action in alcohol-free zones as still allowing police and enforcement officers to use discretion to warn persons who appear to be unaware of the alcohol-free zone. However, the warning is no longer mandatory in the proposed amendment.
- 27. The Committee resolves to write to the Minister to seek information on the reasons why warning is not to be provided in the proposed section 642 for the proposed powers to confiscate or dispose of alcohol in alcohol-free zones particularly, given that it will no longer be an offence attracting a penalty notice.**

28. The Committee further seeks information from the Minister to clarify on whether a police officer may exercise the powers of arrest in circumstances related to or escalating from the person's non-compliance with the amended section 642 rather than the option of a penalty notice that could have been otherwise available under the current legislation and which would have imposed less adverse impact on the affected person. This is particularly if members of marginalised groups could be more adversely and disproportionately affected in alcohol-free zones such as those who may tend to use public space or be more highly visible such as young people, Indigenous people, people who are homeless, and those with mental health, drug and/or alcohol related problems<sup>1</sup>.
29. The Committee notes that the current Local Government Act under section 656 (guidelines for alcohol-free zones), already provides for the inclusion of a list of names of the councils that are required to advise the Anti-Discrimination Board under section 644A (3), where the Board may make any representations or objections within 40 days. This reflects the recognition that the operation of alcohol-free zones may sometimes affect differentially, or impact disproportionately on certain members from marginalised groups. The Committee is concerned that the removal of an offence by a penalty notice under the Bill's proposed amendments may unintentionally lead to escalated incidents arising from the enforcement of the new section 642, which may lead to the unintended consequence of increasing arrests in the absence of an alternative option to serve a penalty notice, which may impact disproportionately on individuals from marginalised or disadvantaged groups<sup>2</sup>. Therefore, the Committee resolves to write to the Minister and seek his advice on these concerns.

***The Committee makes no further comment on this Bill.***

<sup>1</sup> See Boyd Hamilton Hunter, *Factors Underlying Indigenous Arrest Rates*, Australian National University, Canberra, published by the NSW Bureau of Crime Statistics and Research, 2001, NSW Attorney General's Department. Also, see Richard Garside, "Are Anti-social Behaviour Strategies Anti-Social?", Centre for Crime and Justice Studies, Kings College, London at <http://www.crimeandsociety.org.uk/articles/file2.html>.

<sup>2</sup> According to research by Hamilton Hunter, 2001, *Factors Underlying Indigenous Arrest Rates*, published by NSW Bureau of Crime Statistics and Research, NSW Attorney General's Department at p1: "The over-representation of Indigenous Australians in prison continues to be a serious problem, even a decade after the recommendations of the Royal Commission into Aboriginal Deaths in Custody were handed down. The greatest leverage for reducing Indigenous imprisonment rates appears to lie in reducing the rate at which Indigenous persons appear in court rather than in reducing the rate at which convicted offenders are sentenced to imprisonment. This would mean not only diverting Indigenous defendants away from court, but reducing the rate at which Indigenous persons are arrested, through alternatives to arrest, reducing the rate at which they offend or re-offend and addressing inappropriate differential treatment of Indigenous persons by the criminal justice system". It further found that (at p2): "Alcohol consumption is one of the largest single factors underlying overall Indigenous arrest rates (12.8 percentage points more likely to be arrested);...The probability of arrest peaks among 18 to 24 year-olds and then declines, being lowest among Indigenous people aged 45 years and over..."

## 3. PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT FURTHER AMENDMENT BILL 2008

Date Introduced:	14 November 2008
House Introduced:	Legislative assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Minister for Transport

### Purpose and Description

1. The central purpose of the Bill is to amend the *Public Sector Employment and Management Act 2002* to make further provision with respect to public sector employment and management. The Act commences on the date of assent to the proposed Act.
2. It will enable long-term departmental temporary employees to be appointed on merit to vacant Public Service officer positions that have not been advertised. This effectively treats long-term temporary staff in a similar way to permanent officers. At present, only officers permanently employed in the Department concerned can be appointed to a position that has not been advertised.
3. Under the amendment to section 23, a period of probation may be extended for such further period as the appropriate Department Head directs. Any such direction may be made at any time before the person's appointment is confirmed or annulled under this section. This amendment will assist officers who need more time to demonstrate suitability for a position.
4. Schedule 1[8] amends section 49 to make it clear that if a Public Service officer who is charged with a serious criminal offence is found guilty, the officer may be suspended from duty until any remedial or disciplinary action that the appropriate Department Head is considering taking in relation to the officer has been dealt with. Under the existing provisions before any disciplinary action is taken with respect to an officer the officer must be given an opportunity to make a submission in relation to the disciplinary action that the Department Head is considering taking. This provision continues to apply.
5. The Bill amends section 54 to enable the Director of Public Employment to waive the citizenship and permanent residency requirements for Public Service officers. This is intended to provide greater employment flexibility, particularly where there are shortages of qualified applicants. Currently, the Act prevents a person who does not have Australian citizenship or permanent residency from being appointed as a Public Service officer.
6. Under new section 100A an appointment may be made to a position pending the vacation of that position. This provision applies to any position in the Government service, including the position of a chief executive or senior executive. If the person

who holds such a position notifies the person's employer in writing that the person intends to resign or retire from the position on a specified date or does not intend to seek re-appointment to the position on the completion of current term, the employer may, before the position becomes vacant, take action to recruit and appoint another person to the position. This provision is intended to ensure a smooth transition between office holders.

7. The Bill also amends the *Public Sector Management and Goods and Services Regulation 2002* to enable the State Contracts Control Board (SCCB) to enter into arrangements with overseas public authorities that conduct activities in New South Wales so that the overseas bodies can have access to the contracts established by the SCCB for the NSW public sector.

## Background

8. The Parliamentary Secretary, in his Agreement in Principle speech, on behalf of the Hon David Campbell MP, advised that the Bill implements the first stage of changes recommended in the June 2008 report of the Government into the *Public Sector Employment and Management Act 2002*. The report was prepared in accordance with section 170 of the Public Sector Employment and Management Act 2002, which requires a review at the expiration of five years to determine whether the policy objectives remain valid, and whether the terms of the Act remain appropriate for securing those objectives.
9. The review was conducted by the Department of Premier and Cabinet on behalf of the Premier. An Issues Paper was developed in consultation with stakeholders and was released for discussion in 2008. The Issues Paper was distributed for consideration to all public sector agencies and the public sector unions. The report states that 41 formal submissions were received from stakeholders during the course of the review, with all but one submission from public sector agencies. The remaining submission was from the Public Service Association of NSW. The report concluded that the Act is fundamentally sound and that the identified policy objectives of it remain valid. The review further concluded that the legislation could be improved with refinements in several areas to help meet the Act's identified objectives.
10. The report makes a number of recommendations to improve the operation of the Act. The Parliamentary Secretary states that the changes contained in the Bill will ensure that the Act will continue to meet its policy objectives. The Bill is intended to assist agencies in continuing to provide quality services to people of New South Wales by reducing red tape and streamlining processes. The Parliamentary Secretary said that the Government had consulted with public sector agencies and unions on the draft Bill and that the Government had received wide support for the proposals.

## The Bill

### 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** is a formal provision that gives effect to the amendments to the *Public Sector Employment and Management Act 2002* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to *the Public Sector Management (Goods and Services) Regulation 2000* set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

### **Schedule 1 Amendment of Public Sector Employment and Management Act 2002**

**Schedule 1 [1] and [5]** modify the criteria for determining merit for the purposes of the principal Act by replacing references to a person's abilities and personal qualities with references to a person's capabilities.

**Schedule 1 [2]** will allow a Department Head to appoint a long-term temporary employee in the Department to a vacant officer position that has not been advertised. Any such appointment must be made on merit. At present, only officers employed in the Department concerned can be appointed to a position that has not been advertised.

**Schedule 1 [3]** is a consequential amendment.

**Schedule 1 [4]** makes it clear that the period for which a person is appointed on probation to a position in the Public Service may be extended by the appropriate Department Head at any time before the person's appointment is confirmed or annulled.

**Schedule 1 [6] and [7]** update references relating to the Department of Premier and Cabinet and correct a cross-reference to a provision of the principal Act.

**Schedule 1 [8]** makes it clear that if a Public Service officer who is charged with a serious criminal offence is found guilty, the officer may be suspended from duty until any remedial or disciplinary action that the appropriate Department Head is considering taking under section 48 of the principal Act in relation to the officer has been dealt with.

**Schedule 1 [9]** enables the Director of Public Employment to exempt a person from the requirement that the person be an Australian citizen or permanent resident in order to be a Public Service officer.

**Schedule 1 [10] and [11]** separate section 86 of the principal Act (which deals with temporary staff transfers or secondments) into 2 provisions. Section 86 (as amended) will continue to deal with transfers from one agency to another. The new section 86A replicates section 86 but will deal only with temporary transfers within the same agency. As with secondments to other agencies, an employee who is on a long-term (ie at least 2 years) "employee-initiated" internal secondment can be appointed, subject to certain requirements, to a new position in the same agency without the position having to be advertised or requiring the person to serve a period of probation.

**Schedule 1 [12]** provides that public sector staff may be temporarily assigned to other public sector agencies specifically to assist in disaster recovery activities.

**Schedule 1 [13]** makes it clear that when a person is employed in 2 or more Departments (or in the Public Service and in any other public sector service) a separate staff position is not required to be created in each of the 2 agencies in which the person is employed.

**Schedule 1 [14]** makes it clear that a person may be appointed to an executive position (or to any other position in the Government Service) pending the position becoming vacant.

**Schedule 1 [15]** removes a provision relating to the use of Teaching Service staff by Departments. The provision is obsolete largely as a consequence of the staff mobility provisions under Part 3.2 of the principal Act.

**Schedule 1 [16]–[18]** will enable the Director of Public Employment to delegate the Director's functions to all public sector agency heads (or to any other member of staff of a public sector agency) and not just to Department Heads and Departmental staff (as is the case at present).

**Schedule 1 [19]** provides for the SCCB to consist of at least 4 persons appointed by the Minister (one of whom is to be appointed as the Chairperson).



**Schedule 1 [20]** makes it clear that regulations may be made for or with respect to the acquisition or disposal of goods or services for each of the public sector services.

**Schedule 1 [21]** provides for the conduct of inquiries by the Director-General of the Department of Premier and Cabinet (or any person authorised by the Director-General) into any matter relating to the administration or management of any public sector agency (other than the NSW Police Force or the service of either House of Parliament).

**Schedule 1 [22]** enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.

**Schedule 1 [23]** includes savings and transitional provisions as a consequence of the proposed Act.

### **Schedule 2 Amendment of Public Sector Management (Goods and Services) Regulation 2000**

**Schedule 2** contains the amendments to the Regulation as described in the above Overview.

### Issues Considered by the Committee

<b>11. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987</b>
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***The Committee makes no further comment on this Bill.***

## 4. RURAL LANDS PROTECTION AMENDMENT BILL 2008

Date Introduced:	14 November 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Transport and Illawarra

### Purpose and Description

1. This Bill amends the *Rural Lands Protection Act 1998* to make further provision with respect to the protection of rural lands, to provide for the establishment of the State Policy Council of Livestock Health and Pest Authorities and the constitution of livestock health and pest authorities and the State Management Council of Livestock Health and Pest Authorities and to provide for the functions of those bodies; and for other purposes.
2. The Bill aims to reform the rural lands protection board system in three main ways. First, it makes changes to the structure of the board system. Second, the amendments seek to improve the corporate governance of the board system. Third, the amendments aim to improve the administration of the board system in New South Wales, including changing the way in which rates are calculated.
3. The proposed amendments relating to the structure of the rural lands protection board system will rename the rural lands protection boards to be called livestock health and pest authorities. The new peak body will be called the State Management Council of Livestock Health and Pest Authorities. The decision to rename the system was made following consultation by the current State Council with its constituents. The new name will more accurately reflect the roles and responsibilities of the board system.
4. The Bill facilitates the renaming of the board system by introducing amendments that provide for livestock health and pest districts to be constituted under the Act. Livestock health and pest authorities will be constituted for each district, in place of rural lands protection boards. It will replace the State Conference of Rural Lands Protection Boards with a new policy making forum to be called the State Policy Council of Livestock Health and Pest Authorities. The State Policy Council will be a forum for representatives of the proposed 14 local authorities to discuss local and regional issues.
5. The current peak body, the State Council will be replaced by a new governing body to be known as the State Management Council of Livestock Health and Pest Authorities. The new State Management Council will, like the current State Council, be accountable to the Minister for Primary Industries in the exercise of its functions. It will be required to provide its annual operating plan and budget to the Minister and to the State Policy Council. It will report to the Minister at the end of each financial year on its performance against its annual operating plan and its strategic plan. The New

South Wales Government proposes to reduce the number of new authorities from 47 to 14 through an amalgamation process. It is intended that the amended Act will commence at the same time as the amalgamation proclamation.

6. The second main area of change relates to corporate governance. In response to the recommendations of the structural review, the Bill makes changes to the election, selection, membership and appointment processes for the organisations established under the Act. The membership of the new State Policy Council will consist of two members from each of the 14 new authorities. The council will be responsible for statewide policy setting. Its other role will be selecting and appointing the members of the peak body, the State Management Council.
7. The State Policy Council will be accountable to the Minister. It will be required to report annually to the Minister and to the new authorities on its activities and performance. Unlike the current State Conference of Rural Lands Protection Boards, the State Policy Council will not be responsible for determining the budget of the State Management Council. However, it will determine how much each authority contributes to the State Management Council's budget.
8. With the new peak body, the State Management Council, the Bill provides for the membership of the new Council to consist of nine members. Eight of these will be chosen through a merit selection process run by the State Policy Council. This is a shift away from the current system by which the members of the State Council are elected. Six of the members will be drawn from the ranks of directors of the new authorities. Two members will be appointed on the basis of their expertise or experience in law, business, financial management or corporate governance. The State Policy Council will oversee this selection process. The ninth member of the new State Management Council will be a nominee of the Director-General of the Department of Primary Industries, who has responsibility for biosecurity. This member will be appointed by the Minister for Primary Industries.
9. The Bill also introduces maximum terms for members of the new State Management Council. Generally, members will be able to serve only two four-year terms. The Bill restates, and amends, the functions of the State Management Council. It will be responsible for supervising the corporate governance of the new authorities, including their implementation of statewide policies, strategic plan and policies for the new system, promoting the functions and activities of the new authorities, and providing administrative services to the State Policy Council.
10. The Rural Lands Protection Boards will be replaced with Livestock Health and Pest Authorities. The new authorities will consist of six elected directors. There will be two additional directors appointed by the six elected directors, following a merit selection process, on the basis of their expertise or experience in law, business, financial management or corporate governance. A definition of "selection on merit" is inserted. Selection on merit will be defined as the appointment of a member or director after some form of open competition involving the selection of the person who has the greatest merit among the candidates who applied for appointment. The elected directors will serve a maximum term of office, of two four-year terms in general. Elections will be held for half of the elected directors every two years.

11. A new section will be inserted into the Act to clarify the animal health functions of the new authorities. The Bill imposes a requirement on an authority to prepare a function management plan in respect of its animal health functions.
12. It also provides for the Minister to set remuneration levels for the directors of the new authorities. To ensure appropriate standards are maintained by members of the State Policy Council, the State Management Council and directors of the new authorities, the Bill also inserts a new proposed Part 6A on honesty and conduct into the Act, which gives the State Management Council the power to issue a mandatory code of conduct for all directors of new authorities. A process for suspending or dismissing a director for a breach of the code is proposed.
13. The Bill provides for ratepayers to be automatically enrolled to vote in elections for the directors of their local authorities. At present, ratepayers have to apply in writing, which reduces the number of people participating in elections.
14. It will provide for rates to be levied on a per hectare basis. The new authorities will be able to apply general animal health and special purpose rates differentially across different zones. The zones will be determined on land types - by reference to whether it is productive or unproductive land. This aims to ensure greater equity between ratepayers who have different types of land, but are located in the same district.
15. It also proposes to amend the regulations under the Act so that the minimum rateable area for a district will increase to 10 hectares.
16. To give the new authorities time to implement appropriate new administrative systems, it is proposed that these amendments will commence in 2010.
17. The Bill also makes consequential amendments to the *Meat Industry Act 1978* and the *Agricultural Livestock (Disease Control Funding) Act 1998* as a result of the abolition of the concept of notional carrying capacity of land in relation to levies raised under those Acts. A new section will be inserted into the Act to provide that during an emergency animal disease outbreak, the Director-General of the Department of Primary Industries may direct the animal health staff of the new authorities.
18. The Bill will introduce an objects clause into the Act and amend the long title to the Act. The objects clause will outline what the Act is intended to achieve.
19. Minor clarifications will be made to the issuing of stock permits, reserve use permits and the lease of stock watering places. For example, the Bill will make it clear that an authority may only issue reserve use permits for travelling stock reserves, or stock permits for public roads or travelling stock reserves, in the authority's district.

## Background

20. The amendments aim to improve the financial viability of the board system. The Bill implements recommendations from different independent reviews of the Act. The New South Wales Rural Lands Protection Board System Review 2008 was a review of the board system, and which was presented to the New South Wales Government in June 2008 by the peak body, the State Council of Rural Lands Protection Boards. The Bill also implements recommendations from the review of the Rural Lands

Protection Boards Rating System undertaken by the Hon. Richard Bull, which was released in July 2007 by the State Council. It also includes several amendments remaining from the statutory review of the Act that took place in 2004.

21. Rural lands protection boards have their origins in organisations established in the 1860s to deal with sheep diseases. Pastures protection boards were established in 1902 to protect pastures and livestock from the depredations of noxious animals. The *Pastures Protection Board Act 1934* further expanded the role of these boards to deal with travelling stock; public watering places; rabbit, marsupial and dog-proof fencing; and the identification of stock. In 1990, the *Rural Lands Protection Act 1989* modernised the administration of rural lands protection in New South Wales, replacing pastures protection boards with rural lands protection boards.
22. More changes were made by the *Rural Lands Protection Act 1998*, which established the State Council of Rural Lands Protection Boards as the peak body to oversee the operations of the local level boards. There are currently 47 boards established under the Act. Each board is governed by a board of directors who are elected by ratepayers for four-year terms. Boards are mostly funded from rates charged to landowners. In coastal areas, rateable properties are generally those properties which are larger than four hectares. Boards are also responsible for animal health surveillance in New South Wales. They investigate disease outbreaks and provide advice on herd or flock health problems such as enzootic bovine leucosis in dairy herds, Ovine Johne's disease in sheep and cattle, and footrot in sheep.
23. Over the past recent years, there have been a number of emergency disease outbreaks in New South Wales. The staff employed by boards, such as vets and rangers, have played a significant role in containing these outbreaks. The recent equine influenza control and eradication program was another example. The contribution of boards was demonstrated by their role in the response to the outbreak of avian influenza at Tamworth in 1996 and 1997, the outbreaks of Newcastle disease in poultry at Mangrove Mountain in 1999 and Horsley Park in 2002. Boards are also responsible for managing declared pest animals, such as rabbits, wild dogs and feral pigs. Board staff also made contribution to the campaign, in spring 2004, to manage the Australian plague locust outbreak. Boards also manage most of the State's travelling stock reserves and the movement of stock on public roads, and they play an important role in drought management.
24. Some boards are struggling to remain financially viable in a time of growing demands. According to the Agreement in Principle speech, although the total rates revenue for the board system for 2007 is expected to be about \$27 million, there will be significant differences in rate income between boards.
25. The Bill will propose amalgamations to reduce the number of authorities as a step in ensuring the financial viability of the system.
26. Amendments will also aim to ensure that biosecurity issues are given consideration.
27. The Bill makes changes to the way in which rural lands protection rates are calculated. Boards are currently able to levy general animal health and special purpose rates from ratepayers in their districts. At present, rates are calculated on the basis of the notional carrying capacity of the rateable land holding. The notional carrying capacity is expressed as stock units, or dry sheep equivalents. The rates

payable on a holding are determined by the notional carrying capacity multiplied by an amount per stock unit.

28. According to the Agreement in Principle speech:

This method has proved confusing for ratepayers. It has also been a complicated system for boards to administer. This is because it requires an assessment of the possible stock carrying capacity of the land, even if the land is used for cropping, or for an orchard, for example. The Bill provides for rates to be levied on a per hectare basis. The new authorities will also be able to apply general, animal health and special purpose rates differentially across different zones. The zones will be determined largely on land types; that is, by reference to whether it is productive or unproductive land. This will ensure greater equity between ratepayers who have different types of land, but are located in the same district. The bill also proposes to amend the regulations under the Act so that the minimum rateable area for a district will increase to 10 hectares. This approach will deliver greater equity and certainty for landholders. It will be very much welcomed by a number of Monaro electorate ratepayers on hobby farm blocks, for example, and others in the areas surrounding Canberra.

29. The period covered by an emergency animal disease outbreak will commence as set out in the *Animal Diseases (Emergency Outbreaks) Act 1991*. Currently, the financial year of the State Council and the boards commences on 1 January. The Bill will make amendments to the Act so that the financial year of the State Management Council and the new authorities will commence on 1 July.

30. The Bill includes provisions of a transitional nature to facilitate a smooth transition from the current system to the new system. Transitional provisions are included to provide for the calculation of rates for 2009 and to facilitate the changes made to the financial year of the State Management Council and the new authorities.

31. From the Agreement in Principle speech:

The fundamental review of the board system recommended that the new authorities look closely at how the travelling stock reserves are being used and whether they are being managed appropriately. This recommendation was made in the light of significant resources required to manage travelling stock reserves. The review report found that between 2005 and 2007 the board system spent approximately \$8.65 million on maintaining travelling stock reserves. This represents 18 per cent of all board expenditure. The report also found that only five out of 47 boards were operating their reserves at a profit.

32. The Agreement in Principle speech also mentioned that extensive consultation was undertaken as part of the two review processes, including consultation with ratepayers and current members of the board system. Public meetings and workshops were held and submissions were. Key stakeholders such as the New South Wales Farmers Association and Animal Health Australia were consulted.

## The Bill

33. The object of this Bill is to amend the *Rural Lands Protection Act 1998* (***the Principal Act***) in response to the following reviews:

(a) the *NSW Rural Lands Protection Board System Review* by Integrated Marketing Communications Pty Ltd,

- (b) the *Review of the Rural Lands Protection Boards Rating System* by Mr Richard Bull,
  - (c) the statutory five year review of the Principal Act completed in accordance with section 248 of that Act.
34. The object of this Bill is to amend the Principal Act as follows:
- (a) to make a number of changes to the structure of the rural lands protection system, including amendments with the following objects:
    - (i) to rename rural lands protection boards and districts as livestock health and pest authorities (**authorities**) and districts,
    - (ii) to provide that such authorities are, in general, to be governed by a board of directors (**directors**),
    - (iii) to abolish the annual State Conference of Rural Lands Protection Boards and establish instead a State Policy Council of Livestock Health and Pest Authorities (the **Policy Council**),
    - (iv) to replace the State Council of Rural Lands Protection Boards with a State Management Council of Livestock Health and Pest Authorities (the **State Council**),
    - (v) to insert provisions dealing with the honesty, care, diligence and conduct of Policy Council and State Council members, and directors of boards of authorities (including provisions relating to a code of conduct for such persons),
    - (vi) to make various changes to the method of election of directors of boards of authorities, including instituting a process of automatic enrolment for those who are to vote in such elections,
    - (vii) to provide that, in general, persons holding office as a director will be limited to two 4 year terms,
    - (viii) to provide, in general, that half of the positions of elected directors for a board of an authority will be open for election every two years (rather than all positions being open every four years as is presently the case),
  - (b) to remove the concept of notional carrying capacity of land holdings from the calculation of rates to enable such rates in the future to be levied on a per hectare basis,
  - (c) to make other miscellaneous amendments.

It is noted that the *NSW Rural Lands Protection Board System Review* recommended that the number of rural lands protection districts be reduced from 47 to 14 by a process of amalgamations. The amendments contained in this Bill are to commence simultaneously with (and in places complement) those amalgamations.

### 35. 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 1 January 2009 (except for Schedule 4 [1], [2] and [4]–[8] and Schedule 6.1 [1], [4], [5] and [7] and Schedule 6.19 [1] and [2] to the proposed Act which are to commence on 1 January 2010).

**Clause 3** is a formal provision that gives effect to the amendments to the *Rural Lands Protection Act 1998* set out in Schedules 1–5.

**Clause 4** is a formal provision that gives effect to the amendments to the Acts and instruments set out in Schedule 6.

**Clause 5** repeals the *Rural Lands Protection Amendment Act 2006*.

**Clause 6** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced that the repeal of an amending Act does not affect the amendments made by that Act.

### **Schedule 1 Amendments to *Rural Lands Protection Act 1998* relating to structure of rural lands protection system**

**Schedule 1** makes various changes to the rural lands protection system in New South Wales.

**Schedule 2** makes various amendments to *Rural Lands Protection Act 1998* relating to elections for and appointments of directors.

Schedule 3 makes various amendments to *Rural Lands Protection Act 1998* relating to periodic elections for directors.

**Schedule 4** makes amendments to *Rural Lands Protection Act 1998* relating to rating.

**Schedule 5** makes miscellaneous amendments to *Rural Lands Protection Act 1998*.

**Schedule 6** makes consequential amendments to other Acts or instruments, including: Schedule 6.1 and Schedule 6.19 making amendments to the *Agricultural Livestock (Disease Control Funding) Act 1998* and the *Meat Industry Act 1978*; and Schedule 6.28 making consequential amendments to the *Rural Lands Protection (General) Regulation 2001*.

## **Issues Considered by the Committee**

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

#### **Issue: Procedural Fairness – Schedule 5 [24] – amendments to *Rural Lands Protection Act 1998* - proposed removal of sections 159 – 162 and 168:**

36. Under the current section 159, before giving an individual eradication order, a board must give notice to the occupier or owner of its intention to give the order, the terms of the proposed order and the period proposed. The board's notice must indicate that the occupier or owner may make representations to the board as to why the order should not be given or as to the terms or period for compliance. Under the current section 161, the board is then required to hear and consider any representations made under the current section 160. Section 160 currently enables a person to make representations concerning the proposed individual eradication order, including representation by a barrister, solicitor or agent.
37. At present, section 168 reads: A board is taken to have observed the rules of procedural fairness if an individual eradication order is made in accordance with this Division.
38. Under the proposed amendments, the above provisions will be removed. Only reasons for the individual eradication order once made and served will be given under the current section 163; notice of the right to appeal against the order will still be available under section 164 and appeal against the individual eradication order will still be available under section 165.
39. Under the present section 157 (1): a board that has been empowered to give an eradication order in relation to a pest on controlled land within its district may give the order only if the board considers that it is necessary to give it to ensure the effective eradication of the pest on the land.



40. However, the Committee notes that an owner or occupier of land who is served with an individual eradication order must comply with the order under section 167. Otherwise, the maximum penalty is 50 penalty units.

**41. Considering that there are obligations to comply with the individual eradication order once served, and that there are penalties for non-compliance once the order has been served, the Committee is, therefore, concerned the proposed omission by Schedule 5 [24] of sections 159 to 162 and 168, may be an undue trespass on the right to procedural fairness by legislating away the need to give prior notice and to hear representations concerning the proposed intention of the board to make an individual eradication order before the order was made and served. Notwithstanding, it is noted that the right to appeal against the order will still be available under section 164 and appeal against the individual eradication order will still be available under section 165. Accordingly, the Committee refers this to Parliament.**

**Insufficiently defined administrative powers [s 8A(1)(b)(ii) LRA]**

**Issue: Ill And Wide Defined Powers – Schedule 1 [30] – proposed Schedule 1A Part 2, Clause 4 (2) Vacancy in office of member; and Clause 6 (3) Chairperson and Deputy Chairperson:**

42. Proposed clause 4 (2) reads: The Minister may remove a member from office at any time. Proposed clause 6 (3) reads: The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.

**43. The Committee is concerned that clause 4 (2) and clause 6 (3) of proposed Schedule 1A, Part 2, may create uncertainty and considers that they may make the office membership of the Policy Council, including that of the Chairperson and Deputy Chairperson, and the circumstances for their removal appear unduly dependent on insufficiently defined administrative powers. The Committee refers this to Parliament.**

***The Committee makes no further comment on this Bill.***

## 5. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2008

Date Introduced:	14 November 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Minister for Transport

### Purpose and Description

1. The central purpose of this Bill is to make minor amendments to the 27 Acts listed in Schedule 1. Mr John Aquilina MP, Parliamentary Secretary, on behalf of the Hon David Campbell MP in his Agreement in Principle speech said that Schedule 1 contains policy changes of a minor and non controversial nature that the Minister responsible for the legislation considers to be too inconsequential to warrant the introduction of a separate amending Bill. The amendments made to each of the Acts are explained in detail in the explanatory note relating to each of those acts contained in Schedule 1. Schedule 2 amends various other acts and instruments for the purpose of effecting statute law revision. Schedule 3 contains amendments to various acts and instruments as a consequence of the repeal of certain redundant Acts by Schedule 4.

### Background

2. Statute law revision Bills focus on non - controversial changes to legislation and represent an effective means of keeping legislation efficient and up-to-date. These Bills do not deal with substantive changes to the law. All Australian jurisdictions enact similar Bills. The present Bill continues the established statutory law revision program recognised as a cost effective and efficient method for dealing with amendments that would not justify a separate Bill. The form of the Bill is similar to previous Bills in the statute law revision program.

### The Bill

#### 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.

**Clauses 3 and 5** are machinery provisions that give effect to the Schedules to the proposed Act containing amendments and savings, transitional and other provisions. **Clause 4** gives effect to the Schedule of repeals.

**Clause 6** makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

**Clause 7** provides for the repeal of the amendments made by the proposed Act after the amendments have commenced. Once the amendments have commenced, those provisions will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending provision does not affect the amendments made by that provision.

**Schedule 1 Minor amendments**

*Schedule 1* makes amendments to the following Acts:

*Banks and Bank Holidays Act 1912* No 43

*Building Professionals Act 2005* No 115

*Business Names Act 2002* No 97

*Children and Young Persons (Care and Protection) Act 1998* No 157

*Clean Coal Administration Act 2008* No 50

*Commission for Children and Young People Act 1998* No 146

*Constitution Act 1902* No 32

*Co-operatives Act 1992* No 18

*Environmental Planning and Assessment Act 1979* No 203

Environmental Planning and Assessment Amendment Act 2008 No 36

*Food Act 2003* No 43

*Interpretation Act 1987* No 15

*Justices of the Peace Act 2002* No 27

*Local Government Act 1993* No 30

*Marine Parks Act 1997* No 64

*Motor Vehicle Repairs Act 1980* No 71

*National Parks and Wildlife Act 1974* No 80

*Noxious Weeds Act 1993* No 11

*Pesticides Act 1999* No 80

*Police Regulation (Superannuation) Act 1906* No 28

*Public Sector Employment and Management Act 2002* No 43

*Road Transport (Safety and Traffic Management) Act 1999* No 20

*State Authorities Non-contributory Superannuation Act 1987* No 212

*State Authorities Superannuation Act 1987* No 211

*Statutory and Other Offices Remuneration Act 1975* (1976 No 4)

*Superannuation Act 1916* No 28

*World Youth Day Act 2006* No 106

The amendments to each Act are explained in detail in the explanatory note relating to the Act concerned set out in Schedule 1.

**Schedule 2 Amendments by way of statute law revision**

**Schedule 2** amends various Acts and instruments for the purpose of effecting statute law revision.

The amendments to each Act and instrument are explained in detail in the explanatory note relating to the Act or instrument concerned set out in Schedule 2.

**Schedule 3 Amendments consequential on repeals**

**Schedule 3** amends various Acts and an instrument as a consequence of the repeal of certain other Acts by Schedule 4.

The nature of the amendments contained in Schedule 3 is explained in detail in the explanatory note relating to the Act or instrument concerned set out in the Schedule.

**Schedule 4 Repeals**

**Schedule 4** repeals a number of Acts and provisions of Acts.

Part 1 of the Schedule repeals Acts that are redundant.

Part 2 of the Schedule repeals redundant provisions of Acts.

Part 3 of the Schedule repeals Acts or provisions of Acts that contain only commenced amendments to other Acts or instruments.

Section 30 (2) of the *Interpretation Act 1987* ensures that the repeal of an Act does not affect the operation of any savings, transitional or validation provision contained in the Act, and that the repeal of an amending Act does not affect any amendment made by the Act. The Acts or instruments that were amended by the Acts being repealed are available electronically at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

### **Schedule 5 General savings, transitional and other provisions**

**Schedule 5** contains savings, transitional and other provisions of a more general effect than those set out in Schedule 1. The Schedule includes a provision allowing the Governor, by proclamation, to revoke the repeal of any Act or instrument or the provision of any Act or instrument repealed by the proposed Act or by the 2007 statute law revision Act.

The purpose of each provision is explained in detail in the explanatory note relating to the provision concerned set out in the Schedule.

## **Issues Considered by the Committee**

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

#### **Issue: Retrospective operation of various provisions in Schedules 1 and 2 of the proposed Act and of Regulations made under Schedule 5**

3. Under the transitional provisions of Schedule 5 an amendment made by Schedule 1 or 2 to an amending provision contained in an Act is, if the amending provision has commenced before the day of assent to the proposed Act, taken to have effect as from the commencement of the amending provision. The explanatory note states that this provision ensures that certain amendments, such as amendments correcting errors in technical provisions and minor drafting errors, will be taken to have commenced on the day the amendments to which they relate commence.
4. Several other amendments in Schedule 1 and 2, also of a minor nature, have a retrospective operation. These include proposed amendments to the *Building Professionals Act 2005*, the *Environmental Planning and Assessment Act 1979*, the *Local Government Act 1993* and the *Police Regulation Superannuation Act 1906*.
5. Under Clause 5 of Schedule 5 the Governor may make regulations of a savings or transitional nature. These provisions may take effect from a date earlier than the date of their publication in the gazette. The Committee notes that these provisions are expressed not to operate so as to affect in a manner prejudicial to any person, other than the State, the rights of a person existing before the date of its publication. They also do not operate so as to impose liabilities on any person, other than the State, in respect of anything done or omitted to be done before the date of their publication.

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|--|
| <p>6. <b>The Committee is satisfied that the retrospective provisions of Schedule 1 and 2 and of the regulation making powers do not trespass unduly on personal rights and liberties.</b></p> |
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**Delegation of legislative powers [s 8A(1)(b)(iv) LRA]****Issue: Revocation of repeal – Clause 4 of Schedule 5**

7. Under this clause the Governor may, by proclamation published in the Gazette, revoke the repeal of any Act or instrument effected by the proposed Act or by the *Statute Law (Miscellaneous Provisions) Act (No2) 2007*. Any Act or instrument the subject of such a proclamation is taken not to be, and never to have been, repealed by any such Acts. This clause is expressed so as not to operate to affect in a manner prejudicial to any person, other than the State, the rights of that person or to impose liabilities on any person, other than the State, in respect of anything done or omitted to be done before the date of publication of that proclamation.
8. The Committee notes that this provision relates to Acts that are redundant or which contain only instruments that have commenced. It appears to have been inserted in case a particular repeal gave rise to unseen problems. This appears to be a standard provision in Bills of this type. It is, nevertheless, a clear delegation of legislative power because it gives the Government, through the Governor, the right to amend the operation of an Act of Parliament in a way that is not reviewable by the Parliament. It appears to the Committee that, in the absence of an amending Bill, a preferred course for consideration may be to provide for the revocation to be done by regulation and not proclamation so as to give Parliament an opportunity to review any proposed changes.

***The Committee makes no further comment on this Bill.***

## SECTION A: NOTIFICATION OF POSTPONEMENT OF REGULATIONS UNDER S 11 OF THE *SUBORDINATE LEGISLATION ACT 1989*

### Notification of the Proposed Postponement of the Repeal of the Rookwood Necropolis Regulation 2002 (3)

...

File Ref: LRC 2963

Minister for Lands

### Issues

1. By correspondence received 11 November 2008, the Minister advised the Committee that he is seeking a proposed postponement of the repeal of the above Regulation subject to the Premier's approval.

### Recommendation

2. That the Committee writes to the Minister to advise that it has considered the reasons advanced for the postponement of the repeal of the Regulation and does not have any concerns with this proposal.

### Comment

#### ***Rookwood Necropolis Regulation 2002***

3. The Minister has proposed the postponement of the repeal of the above Regulation for the third time, until 1 September 2009.
4. ***Necropolis*** means the lands which have been dedicated as a cemetery for burying the dead at Haslem's Creek and Rookwood. The principal legislation (*Rookwood Necropolis Act 1901*) consolidates the Acts relating to the establishment and regulation of the Necropolis. This Regulation applies to the whole of the land comprising the Necropolis.
5. The proposed postponement of the repeal of the Regulation is required to conclude issues in relation to the management of the Necropolis. The Minister advised that it is intended that a repeal of the *Rookwood Necropolis Act 1901* will take place in the near future. If the Act is repealed, the Regulation will be automatically repealed. Following the repeal of the Act and its Regulation, the *Crown Lands Act 1989* will be the principal legislation governing the management of Rookwood Necropolis.
6. The Minister has provided a proposed timetable for the repeal of the *Rookwood Necropolis Act 1901* and its Regulation:

Task	Proposed date for completion
Formal appointment of Trustees	January 2009

Finalising leasing issues of crematorium	March 2009
Stakeholder consultation	March 2009
Review and provide drafting instructions for cemetery management issues into <i>Crown Lands Act 1989</i>	May 2009
Repeal <i>Rookwood Necropolis Act 1901</i>	September 2009

# Appendix 1: Index of Bills Reported on in 2008

	Digest Number
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Adoption Amendment Bill 2008	11
Appropriation Bill 2008	8
Appropriation (Budget Variations) Bill 2008	6
Appropriation (Parliament) Bill 2008	8
Appropriation (Special Offices) Bill 2008	8
Auditor-General (Supplementary Powers) Bill 2008	9
Australian Jockey Club Bill 2008	7
Bible Society NSW (Corporate Conversion) Bill 2008	12
Board of Adult and Community Education Repeal Bill 2008	5
Building Professionals Amendment Bill 2008	7
Callan Park Trust Bill 2008*	11
Child Protection (Offenders Registration) Amendment Bill 2008	10
Children and Young Persons (Care and Protection) Amendment (Body Piercing and Tattooing) Bill 2008	7
Children (Criminal Proceedings) Amendment Bill 2008	8
Children (Criminal Proceedings) Amendment (Youth Conduct Orders) Bill 2008	12
Children (Detention Centres) Amendment Bill 2008	8
Civil Liability Legislation Amendment Bill 2008	12
Classification (Publications, Films and Computer Games) Enforcement Amendment (Advertising) Bill 2008	11
Clean Coal Administration Bill 2008	5
Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill 2008	8
Consumer, Trader and Tenancy Tribunal Amendment Bill 2008	5



	Digest Number
Contaminated Land Management Amendment Bill 2008	10
Conveyancing Amendment (Mortgages) Bill 2007*	1
Courts and Crimes Legislation Amendment Bill 2008	8
Crimes Amendment (Cognitive Impairment – Sexual Offences) Bill 2008	10
Crimes Amendment (Drink and Food Spiking) Bill 2008	2
Crimes Amendment (Rock Throwing) Bill 2008	6
Crimes (Administration of Sentences) Legislation Amendment Bill 2008	5
Crimes (Forensic Procedures) Amendment Bill 2008	9
Crimes (Sentencing Procedure) Amendment (Life Sentences) Bill 2008	9
Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Bill 2008	10
Criminal Case Conferencing Trial Bill 2008	4
Dangerous Goods (Road and Rail Transport) Bill 2008	10
Dividing Fences and Other Legislation Amendment Bill 2008	5
Education Amendment Bill 2008	4
Election Funding Amendment (Political Donations and Expenditure) Bill 2008	9
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Electricity Industry Restructuring Bill 2008 (No 2)	10
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Energy Services Corporations Ownership (Parliamentary Powers) Bill 2008*	2
Environmental Planning and Assessment Amendment Bill 2008	7
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Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008	4
Exotic Diseases of Animals Amendment Bill 2008	8
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	Digest Number
Filming Related Legislation Amendment Bill 2008	8
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Firearms Amendment Bill 2008*	8
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Fisheries Management and Planning Legislation Amendment (Shark Meshing) Bill 2008	12
Food Amendment (Public Information on Offences) Bill 2008	2
Food Amendment (Trans Fatty Acids Eradication) Bill 2008*	12
Gaming Machines Amendment Bill 2008	13
Gaming Machines Amendment (Temporary Freeze) Bill 2008	2
Gas Supply Amendment Bill 2008	4
Graffiti Control Bill 2008	13
Growth Centres (Development Corporations) Amendment Bill 2008	4
Health Services Amendment (Mandatory Background Checks of Medical Practitioners) Bill 2008*	9
Hemp Industry Bill 2008	6
Higher Education Amendment Bill 2008	5
Home Building Amendment Bill 2008	10
Housing Amendment (Tenant Fraud) Bill 2008	4
Human Tissue Amendment (Children in Care of State) Bill 2008	7
Independent Commission Against Corruption Amendment (Reporting Corrupt Conduct) Bill 2008*	8
Jury Amendment Bill 2008	7
Justices of the Peace Amendment Bill 2008	5
Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property Bill) 2008	10
Liquor Legislation Amendment Bill 2008	14
Local Government Amendment (Election Date) Bill 2008	2

	Digest Number
Local Government Amendment (Elections) Bill 2008	4
Local Government Amendment (Legal Status) Bill 2008	12
Local Government and Planning Legislation Amendment (Political Donations) Bill 2008	9
Marine Parks Amendment Bill 2007	1
Marine Safety Amendment Bill 2008	8
Medical Practice Amendment Bill 2008	6
Mental Health Legislation Amendment (Forensic Provisions) Bill 2008	10
Mining Amendment Bill 2008	3
Mining Amendment (Improvements on Land) Bill 2008	11
Miscellaneous Acts Amendment Bill 2008	6
National Gas (New South Wales) Bill 2008	5
National Parks and Wildlife (Leacock Regional Park) Bill 2008	3
Occupational Health and Safety Amendment (Liability of Volunteers) Bill 2008*	3
Peak Oil Response Plan Bill 2008*	6
Police Integrity Commission Amendment (Crime Commission) Bill 2008	9
Port Macquarie-Hastings Council Election Bill 2008*	5
Ports and Maritime Administration Amendment (Port Competition and Co-ordination) Bill 2008	11
Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008*	8
Public Health (Tobacco) Bill 2008	11
Public Sector Employment and Management Amendment Bill 2008	4
Public Sector Employment and Management Further Amendment Bill 2008	14
Racing Administration Amendment Bill 2008	13
Rail Safety Bill 2008	11
Retirement Villages Amendment Bill 2008	10

	Digest Number
Road Transport (Driver Licensing) Amendment (Demerit Points System) Bill 2008	11
Road Transport Legislation Amendment Bill 2008	9
Road Transport Legislation Amendment (Car Hoons) Bill 2008	2
Rural Lands Protection Amendment Bill 2008	14
Security Industry Amendment Bill 2008	13
Shop Trading Bill 2008	8
Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2008*	3
Snowy Mountains Cloud Seeding Trial Amendment (Extension) Bill 2008	6
Sporting Venues Authorities Bill 2008	6
State Arms, Symbols and Emblems Amendment (Black Opal) Bill 2008	5
State Emergency and Rescue Management Amendment (Botany Emergency Works) Bill 2008	5
State Revenue Legislation Amendment Bill 2008	4
State Revenue and Other Legislation Amendment (Budget) Bill 2008	8
Statute Law (Miscellaneous Provisions) Bill 2008	8
Statute Law (Miscellaneous Provisions) Bill (No 2) 2008	14
Strata Management Legislation Amendment Bill 2008	7
Succession Amendment (Family Provision) Bill 2008	10
Summary Offences and Law Enforcement Legislation Amendment (Laser Pointers) Bill 2008	6
Superannuation Administration Amendment Bill 2008	4
TAFE (Freezing of Fees) Bill 2007*	1
Thoroughbred Racing Amendment Bill 2008	9
Thoroughbred Racing Further Amendment Bill 2008	13
Threatened Species Conservation Amendment (Special Provisions) Bill 2008	9
Totalizator Amendment Bill 2008	2
Tow Truck Industry Amendment Bill 2008	10

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	Digest Number
Transport Administration Amendment (Rail and Ferry Transport Authorities) Bill 2008	12
Vexatious Proceedings Bill 2008	10
Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008*	5
Water (Commonwealth Powers) Bill 2008	11
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Workers Compensation Amendment Bill 2008	5
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## Appendix 2: Index of Ministerial Correspondence on Bills

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APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1	
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			10
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08			9
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07		1	
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			14
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07		1	
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1, 2	
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			12

## Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2008

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Administrative Decisions Tribunal Amendment Bill 2008				N, R	
Adoption Amendment Bill 2008	N, R	N, R		N	
Bible Society NSW (Corporate Conversion) Bill 2008	N				
Board of Adult and Community Education Repeal Bill 2008	N, R				
Building Professionals Amendment Bill 2008	N, R			N, R	
Callan Park Trust Bill 2008	N				
Child Protection (Offenders Registration) Amendment Bill 2008	N				
Children (Criminal Proceedings) Amendment Bill 2008	N			N, R	
Children (Criminal Proceedings) Amendment (Youth Conduct Orders) Bill 2008	N, R			N, R	
Civil Liability Legislation Amendment Bill 2008	N, R, C			N, R	
Classification (Publications, Films and Computer Games) Enforcement Amendment (Advertising) Bill 2008				N	
Coal and Oil Shale Workers (Superannuation) Amendment Bill 2008	N				
Consumer, Trader and Tenancy Tribunal Amendment Bill 2008	N, R			N	
Contaminated Land Management Amendment Bill 2008	N, R			N, R	
Courts and Crimes Legislation Amendment Bill 2008	N				
Crimes Amendment (Cognitive Impairment – Sexual Offences) Bill 2008				R	
Crimes Amendment (Drink and Food Spiking) Bill 2008				R	
Crimes Amendment (Rock Throwing) Bill 2008	N, R			N, R	
Crimes (Administration of Sentences) Legislation Amendment Bill 2008			N		
Crimes (Forensic Procedures) Amendment Bill 2008	N, C				
Crimes (Sentencing Procedure) Amendment (Life Sentences) Bill 2008	N, R		N, R		

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Bill 2008				R	
Criminal Case Conferencing Trial Bill 2008	N, R				
Dangerous Goods (Road and Rail Transport) Bill 2008	N			R	
Dividing Fences and Other Legislation Amendment Bill 2008				N, R	
Education Amendment Bill 2008	N, R				
Election Funding Amendment (Political Donations and Expenditure) Bill 2008				N, R	
Electricity Industry Restructuring Bill 2008	N, R	N, R		N, R	
Electricity Industry Restructuring Bill 2008 (No 2)	N, R	N, R		R	
Environmental Planning and Assessment Amendment Bill 2008	N, R	N, R	N, R	N, R	N, R
Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008	N, R	N, R			
Filming Related Legislation Amendment Bill 2008				N, R	
Fisheries Management and Planning Legislation Amendment (Shark Meshing) Bill 2008				N, R	
Food Amendment (Public Information on Offences) Bill 2008				R	
Food Amendment (Trans Fatty Acids Eradication) Bill 2008*	N				
Gaming Machines Amendment Bill 2008	N			N, R	N, R
Gaming Machines Amendment (Temporary Freeze) Bill 2008	N				
Graffiti Control Bill 2008	N			N, R	
Hemp Industry Bill 2008	N, R		N, R	N, R	
Home Building Amendment Bill 2008	N		N, R		
Housing Amendment (Tenant Fraud) Bill 2008	N, R	R			
Independent Commission Against Corruption Amendment (Reporting Corrupt Conduct) Bill 2008	N				
Jury Amendment Bill 2008	N				



	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Bill 2008				R	
Liquor Legislation Amendment Bill 2008	N, R, C				
Local Government Amendment (Legal Status) Bill 2008				N	
Local Government and Planning Legislation Amendment (Political Donations) Bill 2008				N, R	
Marine Safety Amendment Bill 2008				N, R	
Mental Health Legislation Amendment (Forensic Provisions) Bill 2008	N			R	
Medical Practice Amendment Bill 2008	N, R			N, R	
Mining Amendment Bill 2008	N				
Mining Amendment (Improvements on Land) Bill 2008	N, R				
Miscellaneous Act Amendment (Same Sex Relationships) Bill 2008	N			N, R	
National Gas (New South Wales) Bill 2008					N
Police Integrity Commission Amendment (Crime Commission) Bill 2008	N		N		
Ports and Maritime Administration Amendment (Port Competition and Co-ordination) Bill 2008				N, R	
Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008		N, R		N, R	
Public Health (Tobacco) Bill 2008	N			N, R	
Public Sector Employment and Management Amendment Bill 2008	R				
Racing Administration Amendment Bill 2008	R			R	
Rail Safety Bill 2008	N			N, R	
Retirement Villages Amendment Bill 2008	N			R	
Road Transport Legislation Amendment Bill 2008	N			N, R	
Road Transport (Driver Licensing) Amendment (Demerit Points System) Bill 2008				N, R	
Road Transport Legislation Amendment (Car Hoons) Bill 2008	R		R	R	
Rural Lands Protection Amendment Bill 2008	N, R	N, R			

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Security Industry Amendment Bill 2008	N			N	
Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2008*	N, R				
Sporting Venues Authorities Bill 2008	N				
State Emergency and Rescue Management Amendment (Botany Emergency Works Bill 2008	N				
State Revenue Legislation Amendment Bill 2008	N, R				
Statute Law (Miscellaneous Provisions) Bill 2008	N			N, R	
Statute Law (Miscellaneous Provisions) Bill (No 2) 2008	N				
Strata Management Legislation Amendment Bill 2008				N, R	
Succession Amendment (Family Provision) Bill 2008				R	
Summary Offences and Law Enforcement Legislation Amendment (Laser Pointers) Bill 2008	N, R			N, R	
Thoroughbred Racing Amendment Bill 2008			N, R	N, R	
Thoroughbred Racing Further Amendment Bill 2008				N, R	
Threatened Species Conservation Amendment (Special Provisions) Bill 2008	N				
Tow Truck Industry Amendment Bill 2008	N			R	
Transport Administration Amendment (Rail and Ferry Transport Authorities) Bill 2008			N, R	N, R	
Vexatious Proceedings Bill 2008	N			R	
Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008*	N, R				
Water (Commonwealth Powers) Bill 2008	N				
Water Management Amendment Bill 2008	N, R, C			N, R	
Western Crown Lands Amendment (Special Purpose Leases) Bill 2008		N, R			
Workers Compensation Amendment Bill 2008	N, R				

Key

- R Issue referred to Parliament
- C Correspondence with Minister/Member
- N Issue Note

## Appendix 4: Index of correspondence on regulations reported on in 2008

<b>Regulation</b>	<b>Minister/Correspondent</b>	<b>Letter sent</b>	<b>Reply</b>	<b>Digest 2008</b>
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08		10
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10