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Legislation Review Committee

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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.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CIVIL LIABILITY AMENDMENT (OFFENDER DAMAGES) BILL 2005

Date Introduced: 23 February 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon John Hatzistergos MLC
Portfolio: Justice

Purpose and Description

1. The Bill amends the *Civil Liability Act 2002* (the Act) to make further provision with respect to claims for damages for negligence for death or injury suffered by offenders in custody; and for other purposes.
2. The Bill clarifies the operation of Part 2A of the Act - special provisions for offenders in custody - which was inserted into the Act by the *Civil Liability Amendment (Offender Damages) Act 2004* (the 2004 Act).

Background

3. The 2004 Act established a fault-based negligence scheme for inmates, periodic detainees, home detainees and offenders performing work under a community service order. It imposed special restrictions on the damages that can be recovered by a person for injury resulting from the negligence of a *protected defendant* suffered while the person was an offender in custody.¹
4. Protected defendants are:
 - the Crown (within the meaning of the *Crown Proceedings Act 1988*) and its servants;
 - a Government department and members of staff of a Government department;
 - a public health organisation (within the meaning of the *Health Services Act 1997*) and members of staff of a public health organisation;
 - any person having public official functions or acting in a public official capacity (whether or not employed as a public official), but only in relation to the exercise of the person's public official functions; and
 - a management company or submanagement company (within the meaning of the *Crime (Administration of Sentences) Act 1999*) and members of staff of such a company [s 26A of the Act].

¹ See Legislation Review Digest No.5 of 2004.

Civil Liability Amendment (Offender Damages) Bill 2005

5. It was stated in the second reading speech that in the wake of the 2004 Act:

a senior officers interagency working party was formed to establish the administrative arrangements for the operation of the Act - principally, the procedures for obtaining a medical assessment of permanent impairment using the WorkCover Guidelines, and for disputing and appealing against a medical assessment...This bill will not affect the operation and principal functions of the scheme. It will simply make minor consequential amendments to part 2A to clarify its operation and simplify certain processes, as identified by the working party.²

The Bill

6. The Bill makes the following amendments

- the definition of *offender in custody* or *offender* in s 26A of the Act is amended to clarify that the definition includes persons who are attending a place in compliance with the requirements of a community service order, as well as persons while they are performing community service work;
- s 26D of the Act is amended to clarify that Part 7 of Ch 7 of the *Workplace Injury Management and Workers Compensation Act 1998*, as applied by that section to the assessment of the degree of permanent impairment resulting from injuries to offenders, applies with the following additional modifications:
 - s 330 (Costs of medical assessment) of that Act does not apply to any such assessment³;
 - references to the WorkCover Guidelines are to be read as references to guidelines issued by the Minister administering the *Crimes (Administration of Sentences) Act 1999* by order published in the Gazette;⁴ and

² Mr G J West, Parliamentary Secretary, Legislative Assembly *Hansard*, 23 February 2005.

³ Section 330 of the *Workplace Injury Management and Workers Compensation Act 1998* provides that the costs of medical assessments under Part 7 of that Act (including the remuneration of approved medical specialists) are payable by the employer or insurer, except as otherwise provided by the regulations. The Authority may, for the purposes of meeting those costs, impose fees for the carrying out of medical assessments or make other arrangements for meeting those costs.

If a worker is required to submit himself or herself for examination pursuant to Part 7, the worker is entitled to recover from the worker's employer, in addition to any compensation otherwise provided:

- (a) the amount of any wages lost by the worker by reason of so submitting himself or herself for examination, and
- (b) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred in so submitting himself or herself.

If it is necessary for a worker to travel in order to submit himself or herself for examination but the worker is not reasonably able to travel unescorted, the fares, travelling expenses and maintenance referred to in this section include fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort for the worker provided to enable the worker to submit himself or herself for examination.

If the cost of fares, travelling expenses and maintenance referred to in this section includes the cost of travel by private motor vehicle, that cost is to be calculated at such rate as is fixed for the purposes of s 64 of the *Workers Compensation Act 1987*.

A reference in s 330 to a medical assessment includes a reference to a further medical assessment and an appeal against a medical assessment.

⁴ Any such order must be tabled before Parliament and will be disallowable. The Minister may apply, adopt or incorporate, wholly or in part or with or without modifications, the provisions of the WorkCover Guidelines: Mr G J West, Parliamentary Secretary, Legislative Assembly *Hansard*, 23 February 2005.

- the provisions of Part 7 of Ch 7 of that Act are to be applied with such other modifications as may be prescribed by the regulations.⁵
- s 26I of the Act is amended to clarify that s 67 of the *Workers Compensation Act 1987*, in its application to determining an offender's entitlement to compensation, is to be read as if the reference in that section to the Workers Compensation Commission were a reference to the court determining the amount of compensation; and
- s 26J of the Act is amended to clarify the application of the *Victims Support and Rehabilitation Act 1996*.⁶

Issues Considered by the Committee

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

Proposed Sch 1 [6]: Retrospectivity

7. The Bill adds a new Part 6 to Sch 5 to the Act.
8. This provides that Part 2A (as amended by the 2004 Act) applies to any civil liability whether arising before, on or after the commencement of the Bill, and to proceedings instituted before such commencement.
9. However, these changes do not operate to apply Part 2A:
 - in respect of any *decision* of a court made before the commencement day; or
 - in relation to any civil liability or proceedings to which the Part did not apply immediately before the commencement day.
10. Currently, pursuant to the existing Part 5 to Sch 5, Part 2A of the Act does not apply to or in respect of:
 - an award of damages in proceedings commenced in a court before 15 January 2004⁷;

⁵ Matters for which guidelines might be issued include security arrangements for an inmate undergoing a medical assessment, including provisions for correctional officers, who may accompany an offender undergoing a medical assessment: Mr G J West, Parliamentary Secretary, Legislative Assembly *Hansard*, 23 February 2005.

⁶ Any amount of damages withheld by a protected defendant from an offender under that section because of the making of a provisional order for restitution against the offender under the *Victims Support and Rehabilitation Act 1996* is subject to the following additional provisions:

- (i) the protected defendant may require the Public Trustee to hold the amount on its behalf, although the protected defendant must require the Public Trustee to hold the amount if the offender requests it;
- (ii) interest is payable on an amount withheld; and
- (iii) a proportion of the interest must be paid to the offender if the amount of the provisional order is reduced on its confirmation, otherwise the whole amount of the interest is payable to the person or persons for whom the order was made; but
- (iv) the reasonable costs of the Public Trustee in connection with holding such amount for a protected defendant may be deducted before interest is paid to the offender or the persons entitled to restitution: proposed s 26J(3C) of the *Civil Liability Act 2002*.

⁷ 15 January 2004 was the date of the Minister's announcement of the proposal to enact Part 2A.

Civil Liability Amendment (Offender Damages) Bill 2005

- an award of damages in proceedings commenced in a court before the date of introduction into Parliament of the 2004 Act, if the relevant person was a child;
 - an award of damages, or settlement or consent order in respect of damages, made before the date of assent to the 2004 Act (ie, 19 November 2004).
11. Although the second reading speech of the 2004 Act noted that the its retrospective application was “necessary to prevent a flood of speculative claims”,⁸ this concern may not be applicable to the amendments proposed by the current Bill.

12. **The Committee will always be concerned to identify the retrospective effects of legislation which may impact adversely on any person.**
13. **The Committee notes that, although the proposed amendments are of the nature of administrative changes to the operation of Part 2A of the *Civil Liability Act 2002*, these changes may nonetheless directly and adversely affect the compensation rights of individuals under that Act.**
14. **The Committee has written to the Minister seeking his advice as to the need for the retrospective application of the proposed amendments to Part 2A of the *Civil Liability Act 2002*.**

The Committee makes no further comment on this Bill.

⁸ The Hon D Beamer MP, Legislative Assembly *Hansard*, 18 March 2004.

2. COURT SECURITY BILL 2005

Date Introduced: 23 February 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus MP
Portfolio: Attorney General

Purpose and Description

1. This Bill provides for the appointment of security officers for court premises and confers certain functions on them. It also confirms that members of the public have a right, subject to certain qualifications, to enter and remain in areas of court premises that are open to the public.

Background

2. In the second reading speech, Mr West stated:

Presently, sheriff's officers rely upon the inherent jurisdiction of the court and limited legislative powers in exercising court security functions. By contrast, the [Bill] provides a sound statutory basis for the exercise of court security powers in New South Wales courts.⁹
3. Mr West also stated in the second reading speech that there has been extensive consultation with members of the judiciary and the legal profession on the Bill.

The Bill

4. Among other things, the Bill:
 - authorises the Sheriff to appoint sheriff's officers or people who are licensed under the *Security Industry Act 1997* to be security officers [cl 21]; and
 - confers certain powers on security officers, including the power to:
 - search persons and vehicles [cl 10];
 - confiscate restricted items (eg, weapons) and other things (eg, offensive implements) [cl 12];
 - ask for identification particulars in certain circumstances (eg, on suspicion the person is carrying a restricted item or has committed an offence on court premises) [cl13];
 - give reasonable directions [cl 10 & 14];
 - issue penalty notices for offences prescribed by the regulations as penalty notice offences [cl 29];

⁹ Mr Graham West MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 23 February 2005.

Court Security Bill 2005

- arrest, without a warrant, a person on court premises, or outside court premises if the person absconded from court premises to avoid arrest and the officer pursued the person from the court premises and immediately apprehended the person [cl 16]; and
 - use force reasonably necessary to exercise a power, including power of arrest [cl 17];
5. The second reading speech states that any personnel appointed by the Sheriff will receive appropriate training before being able to undertake court security duties.¹⁰
6. The Bill also:
- provides that a person, including a journalist, has the right to enter and remain in an area of court premises that are open to the public if they comply with any relevant directions or orders made [cl 6];
 - provides that a judicial officer may close court premises for security reasons and order members of the public present there to leave [cl 7]; and
 - creates a number of offences, including failing to comply with an order of a security officer or judicial officer, being in possession in court premises of a restricted item (such as a weapon); recording sound or images in court premises unless allowed under the Bill [cl 9(2)], impersonating a security officer in court premises and wilfully delaying or obstructing a security officer in the exercise of their functions under the Bill [cl 24].
7. The Bill sets out some requirements on the exercise of powers by security officers, including:
- providing evidence that they are a security officer (eg show identification/badge) to a person who is subject to the exercise of a power;
 - giving reasons for the exercise of the power;
 - warning that failure or refusal to comply with a direction or requirement of the security officer may be an offence; and
 - in relation to the power of arrest without warrant, requiring a security officer who has arrested a person to take that person to a police officer or an authorised person as soon as practicable [cl 16(4)].
8. In addition, the *Sheriff Bill 2005* amends the *Ombudsman Act* to enable complaints to be made to the Ombudsman regarding the conduct of sheriff's officers and court security officers in certain circumstances.

¹⁰ Second Reading Speech, Legislative Assembly Hansard, 23 February 2005.

Issues Considered by the Committee

Delegation of legislative powers [s 8A(1)(b)(iv) *LRA*]

Commencement by proclamation: Clause 2

9. Clause 2 of the Bill provides that this Bill will commence on proclamation.
10. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
11. The second reading speech stated that the Bill will commence once training for court security staff and regulations have been completed. The Attorney General's Department has advised that the Bill will be likely to be commenced within four to six months.

The Committee makes no further comment on this Bill.

3. ELECTRICITY SUPPLY AMENDMENT BILL 2005

Date Introduced: 23 February 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Frank Sartor MP
Portfolio: Energy & Utilities

Purpose and Description

1. This Bill amends the *Electricity Supply Act 1995* to:
 - (a) clarify the operation of provisions relating to the imposition of endorsements on the licences of retail suppliers of electricity;
 - (b) clarify the power of the IPART to audit and enforce compliance with endorsements attached to licences;
 - (c) require electricity distributors and suppliers to comply with any notice from IPART requiring them to keep specified records or to furnish specified information;
 - (d) extend to related entities of large customers (including joint venture partners) the capacity to elect to be a benchmark participant and to be subject to greenhouse gas benchmark obligations;
 - (e) enable abatement certificates created for the purposes of the greenhouse gas benchmark scheme to be surrendered at any time by their owners;
 - (f) enable the Minister to require information to be provided by the National Electricity Market Management Company Limited (NEMMCO) in connection with possible retailer of last resort arrangement and for other purposes;
 - (g) establish a regulation-making power for electricity prepayment meters for small retail customers; and
 - (h) clarify the boundary of the electricity distribution system.

Background

2. In his second reading speech, the Minister said that the amendments to the Electricity Supply Act 1995:

will allow for the more effective operation of the Greenhouse Benchmarks Scheme, enhance customer protection mechanisms, improve the effectiveness of the licensing regime, and clarify electricity network safety and maintenance responsibilities.¹¹

¹¹ The Hon Frank Sartor MP, Minister for Energy & Utilities, Second reading speech, Legislative Assembly Hansard, 23 February 2005.

The Bill

Endorsements on retail supplier licences

3. Section 33A of the Principal Act provides for endorsements to be attached to the licence of a retail supplier of electricity. The section specifies the endorsement category of standard retail supplier and enables other categories of endorsement to be determined by the Minister. The Bill amends section 33A to make it clear that endorsements attached to retail suppliers' licences are to be attached by the Minister.
4. The Bill also amends section 33A to make it clear that endorsements may be attached to a licence when the licence is granted or at any later time and may be removed at any time. Conditions of an endorsement imposed by the Minister may be varied or revoked by the Minister at any time.

Audit and enforcement of endorsements attached to licences

5. Section 77 of the Principal Act sets out the regulatory functions of IPART under the Principal Act and the matters that IPART is required to make recommendations to the Minister about. Section 87 of the Principal Act requires IPART to monitor, and report to the Minister on, the extent to which distribution network service providers and retail suppliers comply, or fail to comply, with the conditions imposed on the licences held by them.
6. The Bill amends section 77 to make it clear that IPART has the function of making recommendations to the Minister with respect to the imposition, variation or cancellation of endorsements attached to a licence, the action to be taken, and the sanctions to be applied, in respect of a contravention of an endorsement attached to a licence and any remedial action that may be warranted as a result of a contravention of an endorsement attached to a licence.
7. The Bill also provides that IPART's licence auditing functions under that section extend to the endorsements attached to licences and that IPART can direct a licence holder to keep specified records, including any documents specified by IPART, and to furnish specified information for the purposes of section 87 of the Principal Act.

Benchmark participants

8. The Principal Act provides for certain customers of electricity to be able to elect to participate in the greenhouse gas benchmark scheme established under the Act. The benchmarks scheme requires that electricity retailers reduce the greenhouse gas emissions associated with the electricity they supply.
9. One category of customers who may do so is "**large customers**" who use the specified amount of electricity at one or more sites and who are within the circumstances specified in the regulations. The Bill extends the definition of "**large customer**" under section 97AB of the Principal Act for these purposes to groups of customers who are related entities who together use the required amount of electricity and to related entities of such customers (whether or not themselves customers).

10. ***“Related entity”*** of a customer is defined under the Bill as a person (whether or not a customer) that is a related body corporate, is a beneficiary of a trust for which the customer is or was a trustee, is a trustee of a trust under which a related entity of the customer is a beneficiary or is a joint venture partner of the customer.
11. Regulations can be made under the Principal Act (s. 97BB) to provide for the circumstances when a related entity of a customer is entitled to make an election to be a large customer benchmark participant subject to a greenhouse gas benchmark and when a person is taken to be engaging in a joint venture with a customer or a related entity of a customer. Regulations may also be made for the purpose of applying part of the principles for determining greenhouse gas benchmarks to related entities of large customers and large customers who do not purchase electricity, or the requisite quantity of electricity, in their own right.

Surrender of abatement certificates

12. The Principal Act provides for the creation and use of abatement certificates for the purpose of enabling greenhouse gas benchmark participants to meet their obligations to abate greenhouse gas emissions in each year. Currently, the Act only provides for those certificates to be surrendered by participants seeking to comply with those obligations. The Bill amends the Principal Act (s 97EE) to enable a person registered as the owner of an abatement certificate to surrender that certificate at any time by notice in writing to the Scheme Administrator and provides for cancellation of that certificate on acceptance of the surrender by the Scheme Administrator.
13. In his second reading speech, the Minister said:

The benchmarks scheme requires that electricity retailers reduce the greenhouse gas emissions associated with the electricity they supply. A supplier whose attributed emissions exceed its emissions benchmark can purchase and surrender abatement certificates rather than paying a financial penalty.

There are currently only two circumstances in which abatement certificates can be surrendered. The first relates to benchmark compliance by electricity suppliers who must surrender certificates to the IPART in order to comply with their benchmarks. The second circumstance relates to accredited abatement certificate providers who have been ordered by the IPART to surrender abatement certificates where they have been convicted of improperly creating abatement certificates or of having breached conditions of their accreditation.

In order to enhance the scheme's operation and provide a desired level of flexibility, a mechanism will now be included to allow for the voluntary surrender of abatement certificates in these circumstances. This mechanism allows accredited abatement certificate providers to voluntarily surrender any inadvertent over-creation of certificates without being convicted of an offence.

A further benefit of allowing the voluntary surrender of certificates is that the scheme is broadened beyond the existing mandatory requirements on electricity suppliers. This has the advantage of allowing, for example, environmental groups, or other parties seeking to achieve an environmental goal, the opportunity to purchase and voluntarily surrender abatement certificates. This extension of the scheme will build on the experience and expertise of the scheme administrator—the IPART—which has developed world-class accreditation, verification and registry services. The use of

certificates for non-liaible parties under the scheme will also extend the abatement of greenhouse gas emissions.¹²

Provision of information to Minister

14. Currently, NEMMCO may not provide information obtained in its role under the National Electricity Code without express authority to do so. The Code permits information to be provided if it is authorised under another law.
15. Proposed section 105A enables the Minister, by notice in writing, to require NEMMCO to provide the information specified in the notice. The Minister will be able to require information about action being taken, or proposed, against retail suppliers or other entities and other information required in connection with possible retailer of last resort arrangements.
16. The Minister stated in the second reading speech that:

... the retailer of last resort scheme is a customer protection mechanism established to support the retail market. In the event of a retailer's suspension from the National Electricity Market or licence cancellation in New South Wales, the affected electricity retailer's customers would be transferred to retailers of last resort appointed under my powers as the Minister for Energy and Utilities. At present, the retailers of last resort in New South Wales are EnergyAustralia, Integral Energy and Country Energy.

In order to more effectively manage the circumstances in which customers must be transferred to a retailer of last resort, the Minister for Energy and Utilities needs to be directly informed by the responsible agencies if such an event occurs, or appears likely to occur. Under the proposed amendment, a head of power will be created enabling commercial-in-confidence information to be obtained from the National Electricity Market Management Company with respect to retailer of last resort events in New South Wales. The use of such information will be limited to the management of potential retailer of last resort events. This power is consistent with the power of other jurisdictions for these circumstances.¹³

Regulation-making power for prepayment meters

17. The Bill enables regulations to be made permitting electricity prepayment meters for small retail customers and making requirements in relation to any such prepayment meters.
18. The second reading speech stated:

Prepayment meters allow customers to pre-purchase credit for electricity supply. Customers would also be able to use the meter to monitor their electricity consumption, thereby assisting in household budgeting. The Government has consulted broadly with the electricity industry, consumer groups and the Energy and Water Ombudsman New South Wales on the use of prepayment meters. In general, consumer groups and retailers were supportive of the introduction of prepayment meters in New South Wales.

Prepayment meters will only be offered to customers on a purely voluntary basis under a negotiated contract. On the basis of this consultation, regulations are being

¹² Second reading speech, Legislative Assembly Hansard, 23 February 2005.

¹³ Ibid.

prepared to establish an appropriate and fair regulatory framework for prepayment meters which includes consumer protection mechanisms and technical market rules.¹⁴

Boundaries of distribution systems

19. The distribution system is that part of the electricity supply system for which a distribution network service provider has responsibility. Currently it is defined as the power lines, equipment and structures that convey and control the conveyance of electricity to the premises of wholesale and retail customers. Some doubt has arisen as to whether the distribution system must end at the land or building to which the electricity is supplied. The Bill inserts a new definition of “***distribution system***” for the purposes of the Principal Act. The definition provides for the distribution system to end at the point of supply for the premises concerned and makes it clear that the point of supply may or may not be situated on the building or land comprising the premises being supplied.

Issues Considered by the Committee

Delegation of legislative powers [s 8A(1)(b)(iv) *LRA*]

Commencement by proclamation: Clause 2

20. Clause 2 of the Bill provides that the ensuing Act will commence on proclamation.
21. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.

- | |
|--|
| <p>22. The Committee has written to the Minister seeking his advice as to why the Bill is to commence on proclamation and a likely commencement date for the Act.</p> |
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The Committee makes no further comment on this Bill.

¹⁴ Ibid.

4. INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT BILL 2005

Date Introduced: 24 February 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Carr MP
Portfolio: Premier

Purpose and Description

1. The object of this Bill is to amend the *Independent Commission Against Corruption Act 1988* (the Act) to give effect to certain recommendations contained in the Final Report of the independent review of the Act presented by Bruce McClintock SC to the Governor on 31 January 2005, and to make certain other changes.

Background

2. In the wake of the appointment of the Hon Jerrold Cripps QC as ICAC Commissioner, on 11 November 2004 Bruce McClintock SC was commissioned by the Governor to take over the independent review of the Act commenced by Mr Cripps.
3. Mr McClintock was required to:
 - review the Act to determine whether the terms of the Act remain appropriate for securing its objectives, without departing from the Government's intention to retain ICAC as an independent, stand-alone corruption investigation body to ensure accountability in the public sector;
 - specifically consider as part of that review of the Act:
 - whether the functions of ICAC remain appropriate;
 - the definition of corrupt conduct, and the capacity of ICAC to make findings of corrupt conduct;
 - the jurisdiction of ICAC, including the application of the Act to public agencies, public officials, local government, government businesses, outsourced government functions and Members of Parliament;
 - whether ICAC's powers are appropriate to meet its objectives;
 - the adequacy of accountability mechanisms for ICAC;
 - any other matters relating to the operation of the Act; and
 - have regard to any relevant material received by the Hon Jerrold Cripps QC prior to the revocation of the letters patent issued to him on 23 June 2004.

4. It was stated in the second reading speech that the Bill:
- implements the vast majority of the recommendations of the independent review of the *Independent Commission Against Corruption Act* conducted by Mr Bruce McClintock, SC.¹⁵

The Bill

5. The Bill:
- sets out the principal objects of the Act [proposed s 2A];
 - provides for the establishment of an independent Inspector of ICAC (the Inspector) to deal with complaints about ICAC and its officers and to oversee the exercise of ICAC's powers – the exercise of the Inspector's functions is to be monitored by the Parliamentary Joint Committee on the Independent Commission Against Corruption, which may also veto the appointment of a person as the Inspector [proposed Part 5A];
 - alters the nomenclature of the Act relating to hearings so as to better reflect the fact that ICAC exercises *administrative investigative*, not *judicial*, functions and to distinguish investigations in private from public inquiries [proposed amended s 30 – s 31A];¹⁶
 - requires ICAC to be satisfied before holding a public inquiry that, after taking specified factors into account, it is in the public interest to hold the inquiry [proposed new s 31];¹⁷
 - requires ICAC to direct its attention, so far as practicable, to corrupt conduct that is serious or systemic, and to have regard to the role of other public authorities and public officials in preventing corrupt conduct [proposed s 12A];
 - requires ICAC to include additional information about its investigations and the time taken to complete them in its annual report [proposed new s 76(2)(ba)];
 - expressly requires ICAC to provide reasons to complainants and reporting officials for not investigating allegations of corruption [proposed new s 20(5)];
 - restricts the power of ICAC to refer to the Supreme Court contempts of ICAC to contempts in the face or hearing of ICAC, and clarifies the procedures for punishing such contempts [proposed amended s 98 and s 99];
 - creates offences of threatening counsel assisting ICAC or legal practitioners or witnesses appearing before ICAC [proposed amended s 80];

¹⁵ Hon F E Sartor MP, Legislative Assembly *Hansard*, 24 February 2005.

¹⁶ The distinction is drawn between compulsory examinations, which must be conducted in private, and public inquiries, part of which may be conducted in private but which are generally conducted in public.

¹⁷ The factors to be taken into account are:

- (a) the benefit of exposing to the public, and making it aware, of corrupt conduct;
- (b) the seriousness of the allegation or complaint being investigated;
- (c) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry); and
- (d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned: proposed s 31 of the *Independent Commission Against Corruption Act 1988*.

- clarifies the powers of ICAC to make findings of corrupt conduct [proposed amended s 9(5) and s 13];
 - clarifies the power of ICAC to make recommendations concerning the suspension of councillors under the *Local Government Act 1993* [proposed new s 74C(2A)];
 - prevents ICAC from commencing criminal prosecutions arising from its investigations unless the Director of Public Prosecutions has advised it that it is appropriate to do so [proposed new s 116A];
 - requires ICAC to consult with the Ombudsman in exercising its corruption prevention and education functions [proposed amended s 16(2)];
 - enables ICAC to apply to courts for orders relating to the disposal of seized property [proposed new s 48A – s 48D];
 - extends the offence under s 87 of the Act of giving false and misleading evidence to ICAC so that it applies where a person gives evidence *not believing it to be true* [proposed s 87(1)];
 - applies the provisions of s 331 and s 332 of the *Crimes Act 1900* to prosecutions for giving false or misleading evidence, so that it is not necessary to show which of two contradictory statements is true to convict the person who made the statements, and to deny a person a right of acquittal merely because a false or misleading statement is contained in a document that contains a technical defect [proposed s 87(2)]; and
 - extends from 6 months to 2 years the limitation period within which a prosecution may be brought under s 112 (Restriction on publication of evidence) of the Act [proposed s 116(4)].
6. The Bill also amends the *Police Integrity Commission Act 1996* to extend the provisions of that Act relating to police officers to other members of NSW Police, and to omit a provision making a person ineligible for appointment as the inspector of the Police Integrity Commission unless the person has special legal qualifications within the meaning of that Act.¹⁸

Issues Considered by the Committee

Delegation of legislative powers [s 8A(1)(b)(iv) *LRA*]

Clause 2: Commencement

7. Clause 2 of the Bill provides that the ensuing Act will commence on proclamation.
8. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.

¹⁸ It was stated in the second reading speech that this amendment is made at the request of the ICAC Commissioner and that the Commissioner of the Police Integrity Commission has previously expressed support for the proposal: Hon F E Sartor MP, Legislative Assembly *Hansard*, 24 February 2005.

- | |
|--|
| <p>9. The Committee has written to the Premier seeking his advice as to why the Bill is to commence on proclamation and a likely commencement date for the Act.</p> |
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The Committee makes no further comment on this Bill.

5. POLICE INTEGRITY COMMISSION AMENDMENT (SHAW INVESTIGATION) BILL 2005*

Date Introduced: 24 February 2005
House Introduced: Legislative Assembly
Member Responsible: Mr Andrew Tink MP
Portfolio: Private Member's Bill

Purpose and Description

1. The object of this Bill is to permit the Police Integrity Commission (the PIC) to continue and complete its investigation concerning a missing blood sample taken from the Hon Jeffrey Shaw following a car accident in October 2004 (the *Shaw investigation*).

Background

2. The PIC has been conducting an investigation concerning a missing blood sample taken from Mr Shaw following a car accident in October 2004.
3. Mr Shaw has challenged the jurisdiction of the PIC. It has been argued that, by reason of a concession by counsel assisting the PIC that no police were either suspected of being involved in the sample going missing or under further investigation by PIC, the jurisdiction of PIC is exhausted and therefore the investigation must be terminated. A decision on this issue is currently reserved before the Supreme Court. The jurisdiction of PIC, it is stated,¹⁹ may be contrasted with the coercive powers of the Independent Commission Against Corruption (ICAC) which would, had the investigation been commenced in that forum, clearly have had jurisdiction to pursue the Shaw investigation notwithstanding the concession.

The Bill

4. The Bill provides that the PIC may continue and complete the Shaw investigation and, for that purpose, the PIC has, in addition to its own functions, the functions of the ICAC.
5. This provision is to have effect despite any other provision of the PIC Act or the *Independent Commission Against Corruption Act 1988* and despite any decision of a court made before the commencement of the Bill that relates to the PIC and the Shaw investigation or any associated matter.

¹⁹ Mr Andrew Tink MP, second reading speech, *Legislative Assembly Hansard*, 24 February 2005.

Issues Considered by the Committee

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

Retrospectivity: Proposed s 131A

6. The Bill is retrospective in application in that it ensures that the PIC can report on the Shaw investigation which it has substantially completed even if at the time of conducting that investigation it was not within the PIC's jurisdiction.
7. This retrospective operation may adversely affect a person who has an interest in the investigation not being reported. However, on its face, it does not appear to affect the fairness or integrity of the inquiry process.
8. **Given that the explicit intent of the Bill is to allow the investigation already conducted to be reported, and that this does not appear to affect the fairness or integrity of the inquiry process, the Committee does not consider that the retrospective effect of the Bill trespasses unduly on personal rights and liberties.**

The Committee makes no further comment on this Bill.

6. SHERIFF BILL 2005

Date Introduced:	23 February 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

Purpose and Description

1. This Bill deals with the appointment and functions of the office of Sheriff, prohibits conduct that may interfere with the exercise of the Sheriff's functions, and provides for certain conduct of the **Sheriff, sheriff's officers** and security officers to be the subject of complaint to the Ombudsman.²⁰

Background

2. Currently, the appointment and functions of the Sheriff are governed by the *Sheriff Act 1900* ('1900 Act'), a number of other Acts²¹, the *Charter of Justice*²² and the common law.
3. This Bill repeals the 1900 Act and replaces it with provisions that consolidate and update some of the law governing the office of the Sheriff.²³
4. The Bill is complementary to the Court Security Bill 2005, which provides a statutory basis for the exercise of security powers in NSW courts.²⁴ Under the Court Security Bill 2005, the Sheriff may appoint as a **security officer** a sheriff's officer or any other person who holds a licence under the *Security Industry Act 1997*.²⁵ The functions and powers of a security officer are distinct from the functions and powers of a Sheriff or a sheriff's officer.

²⁰ A **Sheriff** and a **sheriff's officer** respectively mean the persons holding those offices under Chapter 2 of the *Public Sector Employment and Management Act 2002* [Bill, proposed s 3(1)]. A **security officer** is defined to mean the Sheriff or a person appointed by the Sheriff under proposed s 21 of the Court Security Bill [Court Security Bill 2004, proposed s 4(1)].

²¹ For instance, the Sheriff's responsibilities concerning juries are specified in the *Jury Act 1977*.

²² The **Charter of Justice** means the letter patent issued on 13 October 1823 pursuant to the Imperial Act 4 Geo IV c 96 [Bill, proposed s 3(1)]. The *Charter of Justice* carries over certain common law powers of the Sheriff under English law.

²³ For instance, the Bill abrogates provisions in the *Charter of Justice* relating to the appointment of persons to the office of Sheriff [proposed s 18(1)].

²⁴ Mr Graham West, Second Reading Speech, *Legislative Assembly Hansard*, 24 February 2005 ('Second reading speech'). As stated in the Second Reading Speech to the Court Security Bill 2005, presently sheriff's officers rely upon the inherent jurisdiction of the court and limited legislative powers in exercising court security functions: Mr Graham West, *Legislative Assembly Hansard*, 24 February 2005.

²⁵ Court Security Bill 2005, proposed s 21.

The Bill

5. Part 2 of the Bill outlines the Sheriff's functions as conferred by law [proposed s 4] and how these functions are to be exercised. Under this Part:
 - (a) the Sheriff may delegate his or her powers to any sheriff's officer, to any member of staff of the Attorney General's Department, to any other person, or class of persons, prescribed by regulation [proposed s 5];
 - (b) a Sheriff's alternate may exercise a Sheriff's function in legal proceedings to which the Sheriff is a party or in proceedings in which a court or coroner is satisfied that a Sheriff's interests may be affected [proposed s 6]²⁶; and
 - (c) The Sheriff and each sheriff's officer are to take an oath or make an affirmation before exercising the Sheriff's function.
6. Part 3 of the Bill prohibits conduct that may interfere with the effective functioning of the office of Sheriff. The 1900 Act made the impersonation of the Sheriff or a sheriff's officer an offence and this Bill also makes this conduct an offence with an increased penalty.²⁷ New offences introduced by the Bill include:
 - hindering or obstructing persons exercising a Sheriff's functions, attracting a maximum penalty of 100 penalty units (\$11,000) or imprisonment for 6 months or both [proposed s 8];
 - possessing or wearing a *sheriff's officer uniform*²⁸ other than as a sheriff's officer, or the use of a *sheriff's insignia*²⁹ other than in the course of, and for the purpose, of exercising a Sheriff's functions, attracting a maximum penalty of 100 penalty units (\$11,000) or imprisonment for 6 months or both [proposed s 10(1) and (2)]³⁰;
 - carrying on any activity under an operating name that includes the word "sheriff" unless exempted from this requirement by regulation³¹ or carrying on the activity in accordance with the terms of a consent given by the Sheriff, attracting a maximum penalty of 100 penalty units (\$11,000) [proposed s 11(1)].³²

²⁶ A *Sheriff's alternate* means a person declared by as such by the regulation or, if no person is declared, by the Director-General of the Attorney General's Department [Bill, proposed s 3(1)]. This provision substantially re-enacts s 24 of the *Jury Act 1977*, which the Bill repeals [Schedule 1.2].

²⁷ The offence under s 13 of the *Sheriff Act 1900* attracts a maximum penalty of 5 penalty units. The proposed offence under s 9 of the Bill attracts a maximum penalty of 100 penalty units or imprisonment for 6 months, or both.

²⁸ This term is defined in proposed s 10(6) of the Bill.

²⁹ This term is also defined in proposed s 10(6) of the Bill. The "use" of a sheriff's insignia includes the use of a reproduction or representation of a sheriff's insignia [Bill, proposed s 10(6)].

³⁰ There are a number of exceptions listed in proposed s 10(3) and (4) of the Bill, including circumstances where the Sheriff has given authorisation or for the purposes of public entertainment.

³¹ The prohibition on using an operating name including the word "sheriff" does not apply to any body or class of bodies exempted by regulations [Bill, proposed s 11(4)].

³² Proposed s 12 of the Bill provides for the Sheriff to grant consent to carry on any activity under an operating name including the word "sheriff" to any persons or body (either unconditionally or conditionally) and to revoke such consents.

7. Part 4 of the Bill contains miscellaneous provisions, including an exclusion of liability for any good faith act or omission by the Sheriff and certain other specified persons [proposed s 15]. Schedule 1 to the Bill contains consequential amendments to other Acts. Schedule 2 provisions preserve existing appointments to the office of Sheriff and the validity of certain acts undertaken under the 1900 Act.
8. In particular, Schedule 1.3 of the Bill amends the *Ombudsman Act 1974* to allow conduct of the Sheriff, sheriff's officers and security officers (as defined in the Court Security Bill 2005), apart from certain conduct at the direction of a Court or a presiding judicial officer, to be the subject of complaint to the Ombudsman. Currently, no conduct of the Sheriff or a sheriff's officer may be the subject of complaint to the Ombudsman.

Issues Considered by the Committee

Commencement by proclamation: proposed s 2

9. The Bill provides that the ensuing Act will commence on proclamation, other than consequential amendments specified in Schedule 1.3[2] and [4] and Schedule 1.4 which may commence on a latter date.³³
10. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
11. The second reading speech states that the Bill will commence as soon as the regulations and new guidelines provided for under it are finalised.³⁴ The Attorney General's Department has advised that the Bill will be likely to be commenced within four to six months.

The Committee makes no further comment on this Bill.

³³ Schedule 1.3[2] and [4] may commence on the commencement of Part 6 of the *Court Security Act 2005*, if that occurs later. Schedule 1.4 may commence on the commencement of Part 2 of the *Commercial Agents and Private Inquiry Agents Act 2004*, if that occurs later.

³⁴ Second reading speech.

7. STANDARD TIME AMENDMENT (CO-ORDINATED UNIVERSAL TIME) BILL 2005

Date Introduced:	23 February 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon R J Debus MP
Portfolio:	Attorney General

Purpose and Description

1. The object of this Bill is to amend the *Standard Time Act 1987* to change standard time from Greenwich Mean Time to Co-ordinated Universal Time.

Background

2. The second reading speech stated that:

Co-ordinated Universal Time has replaced Greenwich Mean Time as the international time standard. There is a fundamental difference between the ways in which time is measured under these two time scales ... Greenwich Mean Time is a solar time scale, based upon the rotation of the earth. Each new day is defined as beginning "at the moment of mean midnight on the prime meridian of longitude", which runs through the Royal Observatory in Greenwich, England.

... Co-ordinated Universal Time is maintained by highly accurate atomic clocks and is accurate to approximately a nanosecond—or one billionth of a second—per day ... To determine the international standard Co-ordinated Universal Time, the Bureau of Weights and Measures co-ordinates data from atomic clocks located in timing laboratories around the globe, including the Australian National Measurement Institute and United States Naval Observatory.

...The Commonwealth National Measurement Act was amended in 1997 to require the Chief Metrologist to maintain Co-ordinated Universal Time, as determined by the International Bureau of Weights and Measures.

... The proposed legislation updates the New South Wales Standard Time Act to reflect the internationally accepted time standard.³⁵

The Bill

3. The Bill amends the *Standard Time Act 1987* to replace references to the references to "Greenwich Mean Time" (GMT) with "Co-ordinated Universal Time" (UTC). The Bill's explanatory note states that as a result of irregularities in the Earth's rotation, UTC is the more accurate time scale.
4. The Bill sets standard time in NSW at 10 hours in advance of UTC (except for Broken Hill, which is set at 9 hours and 30 minutes in advance of UTC, and Lord Howe

³⁵ Mr Graham West MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 23 February 2005.

Standard Time Amendment (Co-ordinated Universal Time) Bill 2005

Island, which is set at 10 hours and 30 minutes in advance of UTC). This is in accordance with existing arrangements.

5. The Act will commence on 1 September 2005.

Issues Considered by the Committee

6. The Committee did not identify any issues under s 8A (1)(b) of the *Legislation Review Act 1987*

The Committee makes no further comment on this Bill.

8. TRANSPORT ADMINISTRATION AMENDMENT (TRANSPORT LEVY FOR MAJOR EVENTS) BILL 2005

Date Introduced: 23 February 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon John Watkins MP
Portfolio: Minister for Transport

Purpose and Description

1. This Bill provides for transport levies to be imposed on patrons to major events held at Sydney Olympic Park and other venues. The levy is intended to assist in meeting the costs of providing transport services to such events.

Background

2. In his second reading speech, the Minister said:

The Government has provided special public transport services to Sydney Olympic Park since 1998 for events such as the Royal Easter Show, rugby league State of origin and grand final matches, rugby union tests and Sydney Swans games... Whilst these services have been generally well patronised... there has been a downward trend in public transport use since the Sydney Olympics. A corresponding increase in car use has placed additional pressure on the road network surrounding Sydney Olympic Park...

[T]his Bill provides for an integrated ticket whereby the cost of public transport, or a transport levy, is included in the ticket price of major events... The transport levy allows the cost of transport to be spread across all patrons attending the event. This concept was applied to the 2003 NRL Grand Final and a number of events during 2004 including the Royal Easter Show, rugby union tests, and rugby league State of origin and grand final matches.

Under the integrated ticket model ticket holders can travel to and from the event by train, bus or ferry. Train travellers can use any CityRail service from as far as Newcastle, Dungog, Scone, Richmond, Lithgow, Goulburn, and Bomaderry. Patrons can also use any of the services on the major event bus route network and regular Sydney Buses and Sydney Ferries services. The integrated ticket has been well accepted by event patrons, event organisers, venue managers and transport operators.

Until now the event and transport integrated ticket has been applied under an administrative arrangement. This has meant that the transport levy has been subject to [GST]. Establishing the transport levy via legislative amendment will provide an exemption from GST on the levy...

The Bill

3. The Bill defines “*major event*” as an event declared by the Minister, by order under the Bill to be a major event for which a transport levy is to be levied. A “*patron*” of a major event means a person who purchases or who is issued a ticket to the event and includes a person whose entitlement to attend the event derives from the purchase of

a membership or other benefit entitling the person to attend events at the venue for the major event.

4. Under the amendments, the transport levy is payable by patrons of the event whether or not they use the public transport services provided for the event. The amount or amounts of levy payable and the public transport services to be provided are to be determined by the Director-General after consultation with the organiser of the event and the manager of the venue concerned. Money from a transport levy is to be applied for the provision of public transport services for major events and for associated or other public transport purposes.
5. A patron of a major event who purchases or is issued a ticket to that event is entitled to use public transport services covered by the levy for transport to and from the event as if the patron had purchased a ticket for the use of those services.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

9. TRANSPORT LEGISLATION AMENDMENT (IMPLEMENTATION OF WATERFALL RAIL INQUIRY RECOMMENDATIONS) BILL 2005*

Date Introduced: 24 February 2005
House Introduced: Legislative Assembly
Member: Mr J G Brogden MP

Purpose and Description

1. This Bill amends the *Transport Administration Act 1988*, the *Rail Safety Act 2002*, the *Passenger Transport Act 1990*, the *Marine Safety Act 1998* and the *Rail Safety (Drug and Alcohol Testing) Regulation 2003* to require the Minister for Transport (the Minister), the Independent Transport Safety and Reliability Regulator (the ITSRR) and RailCorp to implement the recommendations of the Special Commission of Inquiry into the Waterfall Rail Accident.

Background

2. The Special Commission of Inquiry into the Waterfall Rail Accident was conducted by Justice McInerney. He reported on 17 January 2005 and made 127 recommendations. Mr Brogden MP said in his second reading speech that this Bill “requires the Transport Legislation Act... to be amended in order to implement within a 12-month period each of the 127 recommendations of Justice McInerney’s inquiry into the Waterfall rail disaster”.³⁶

The Bill

3. The Bill requires that all of the 127 recommendations contained in the Final Report of the Special Commission of Inquiry into the Waterfall Rail Accident be implemented.
4. It establishes a parliamentary joint committee (the Independent Transport Safety Regulator Oversight Committee) to monitor and review the exercise by ITSRR of its functions, including its performance in respect of implementing the recommendations contained in the Final Report.
5. The Bill makes a number of amendments in relation to the ITSRR, including:
 - (a) requiring it to monitor and report quarterly on the progress of the implementation of the recommendations contained in the Final Report;
 - (b) making it independent of the Minister;
 - (c) giving it the power to make special reports to Parliament;

³⁶ Mr JG Brogden MP, second reading speech, Legislative Assembly Hansard, 24 February 2005.

Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005*

- (d) abolishing the Independent Transport Safety and Reliability Advisory Board;
 - (e) allowing the Chief Investigator of the Office of Transport Safety Investigations (being a Division of ITSRR) to initiate and conduct a rail safety inquiry or transport safety inquiry or to be appointed as an investigator for the purposes of an investigation under the *Marine Safety Act 1998*; and
 - (f) requiring the Chief Investigator to provide a report of any such inquiry to the Minister and ITSRR.
6. The Bill also makes the following amendments to provisions relating to accreditation as a railway operator. The Bill:
- (a) requires an applicant for accreditation as a railway operator to comply with any regulations or guidelines issued by ITSRR in respect of communications protocols and procedures;
 - (b) limits the grant of an accreditation as a railway operator to a period of 3 years and to require an accredited person to re-apply for accreditation after the expiry of the accreditation period;
 - (c) requires an accredited person, as a condition of that accreditation, to implement a safety management system and comply with any regulations that prescribe the requirements for safety management systems; and
 - (d) requires an accredited person, as a condition of that accreditation, to implement certain communications protocols and procedures and comply with any regulations that prescribe the requirements for communications protocols and procedures.
7. The Bill also amends the *Rail Safety (Drug and Alcohol Testing Regulation) 2003* to make alcohol and drug testing mandatory for any train driver or guard involved in an accident or irregular incident. Currently clause 9 of the regulation provides that any railway employee (including drivers and guards) “may” be required to undergo such a test.
8. Other amendments in the Bill:
- (a) apply the offence of tampering with railway equipment, contained in section 93 of the *Rail Safety Act 2002*, to the tampering with emergency doors; and
 - (b) extend the general regulation-making power in the *Rail Safety Act 2002* to allow regulations for standards relating to medical examinations required for the employment of railway employees and the issue of certificates of competency.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

Part Two – Regulations

SECTION A: REGULATIONS ABOUT WHICH THE COMMITTEE IS SEEKING FURTHER INFORMATION

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Centennial Park and Moore Park Trust Regulation	27/08/04	6699	05/11/04	
Environmental Planning and Assessment Amendment (ARTC Rail Infrastructure) Regulation 2004	03/09/04	7343	26/10/04 17/02/05	01/02/05
Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003	07/11/03	10369	05/03/04 30/04/04	01/04/04
Forestry Regulation 2004	27/08/04	6778	26/10/04 17/02/05	18/01/05
Inclosed Lands Protection Regulation 2002	06/12/02	10370	29/05/03 12/09/03	29/08/03 11/03/04
Passenger Transport (Drug and Alcohol Testing) Regulation 2004	05/03/04	957	30/04/04 01/03/05	17/02/05
Road Transport (General) Amendment (Impounding Fee) Regulation 2003	17/10/03	10045	13/02/04	15/06/04
Wild Dog Destruction Regulation 2004	27/08/04	7133	26/10/04	

SECTION B: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
Passenger Transport (Drug and Alcohol Testing) Regulation 2004 <ul style="list-style-type: none">• Letter dated 30 April 2004 to the Minister for Transport Services• Letter dated 17 February 2005 from the Minister for Transport Services• Letter dated 1 March 2005 to the Minister for Transport Services	05/03/2004 page 957

1. Passenger Transport (Drug and Alcohol Testing) Regulation 2004



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

30 April 2004

Our Ref: 641

The Hon Michael Costa MLC
Minister for Transport Services
Level 31 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Passenger Transport (Drug And Alcohol Testing) Regulation 2004

The Committee recently considered this Regulation and resolved to raise with you a number of its concerns and seek your advice on the reasons for the approach taken in the Regulation to drug testing.

The Committee considers that it is vitally important that transport safety workers are not impaired as a result of alcohol or other drug use when on the job. It is therefore concerned to see that the regulation be effective in achieving its objectives.

The Committee also considers that it is important that the regulation protects the rights of workers to privacy, due process and the presumption of innocence. It is therefore concerned to ensure that the regulation erodes the personal rights of workers as little as possible and only when clearly necessary to achieve the objective of public safety.

The submission on the RIS from the Rail, Tram, and Bus Union raised a number of questions as to the effectiveness of drug testing as a means, on its own, to determine impairment. As you know, the submission referred to the approach taken in Victoria, which does not rely solely on a urine or blood test for the presence of drugs to determine whether a transport worker is impaired by a drug (other than alcohol) but uses three additional factors to determine "impairment".

The Committee therefore seeks your advice on the reasoning behind the approach to drug testing taken in this Regulation and on the following matters.

1. The basis on which the result of a drug test was chosen as the sole determinant in assessing whether a transport safety employee is "under the influence" of a drug for the purposes of the Regulation.

Why, for example, a test, like the "sobriety test" for alcohol consumption under the Regulation, was not also adopted?

2. Why the test adopted in the Regulation aims to determine if a person is "under the influence" of a drug rather than whether the person's ability to carry out safety work is impaired because of their consumption of alcohol or other drug?
3. Whether you considered any alternative or additional means of achieving the objects of the Regulation? In particular, was consideration given to the approach taken in Victoria whereby four factors are assessed in determining if a transport safety employee is "impaired" by the presence of a drug?
4. What safeguards (if any) are in place to balance the privacy, employment and other rights of transport safety workers against the reasonable safety needs of the public?

Yours sincerely



BARRY COLLIER MP
CHAIRPERSON



Minister for Transport

Mr Peter Primrose
Chairman, Legislative Assembly
Legislation Review Committee
Parliament of NSW
Macquarie St
SYDNEY NSW 2000



Dear Mr Primrose

Passenger Transport (Drug and Alcohol Testing) Regulation 2004

I understand your predecessor wrote to the former Minister for Transport Services on April 30 2004 on behalf of the Legislation Review Committee regarding the Passenger Transport (Drug and Alcohol Testing) Regulation 2004.

I apologise for the delay in responding to the Committee's concerns.

While the delay is regrettable, the Regulation has now been in place for some 12 months and a retrospective response to your concerns may not serve any useful purpose.

In addition, I am advised that the disallowable period for the regulation expired in the Legislative Council on 6 May 2004 and in the Legislative Assembly on 1 June 2004.

Thank you for bringing these outstanding matters to my attention. Should you have any further questions, please contact my office on 9228 4866.

Yours sincerely


John Watkins MP
Minister for Transport



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

17 February 2005

Our Ref: LRC641

The Hon J A Watkins MP
Minister for Transport
Level 34 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Passenger Transport (Drug and Alcohol Testing) Regulation 2004

Thank you for your letter received 17 February 2005 regarding the Passenger Transport (Drug and Alcohol Testing) Regulation 2004.

The Committee notes that, under s 9(1)(c) of the *Legislation Review Act 1987*, it is not restricted to recommending disallowance of a regulation but is "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". Such reports could include recommendations for review or amendment of the regulation.

Yours sincerely

A handwritten signature in black ink that reads "Peter Primrose".

Peter Primrose MLC
Chairman

Appendix 1: Index of Bills Reported on in 2005

	Digest Number
Civil Liability Amendment (Food Donations) Bill 2004	1
Civil Liability Amendment (Offender Damages) Bill 2005	2
Court Security Bill 2005	2
Electricity Supply Amendment Bill 2005	2
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004	1
Independent Commission Against Corruption Amendment Bill 2005	2
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	1
Legal Profession Bill 2004	1
Marine Safety Amendment (Random Breath Testing) Bill 2004	1
Photo Card Bill 2004	1
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	2
Road Transport (General) Bill 2004	1
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	1
Sheriff Bill 2005	2
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	1
Standard Time Amendment (Co-ordinated Universal Time) Bill 2005	2
Transport Administration Amendment (Transport Levy For Major Events) Bill 2005	2
Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005*	2

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply	Digest 2004	Digest 2005
Child Protection (Offender Prohibition Orders) Bill 2004	Minister for Police	18/06/04		6	
Civil Liability Amendment (Offender Damages) Bill 2005	Minister for Justice	01/03/05			2
Electricity Supply Amendment Bill 2005	Minister for Energy and Utilities	01/03/05			2
Independent Commission Against Corruption Amendment Bill 2005	Premier	01/03/05			2
Legal Profession Bill 2004	Attorney General	17/02/05			1
Lord Howe Island Amendment Bill 2003	Attorney General/ Premier	13/02/04	Premier 13/07/04	1,10 ³⁷	
Licensing And Registration (Uniform Procedures) Amendment (Photo ID) Bill 2004	Minister for Commerce	03/12/04	09/12/04	17	1
Marine Safety Amendment (Random Breath Testing) Bill 2004	Minister for Ports	17/02/05			1
Passenger Transport Amendment (Bus Reform) Bill 2004	Minister for Transport Services	28/05/04 18/06/04	17/06/04	8,9	
Photo Card Bill 2004	Minister for Roads	17/02/05			1
Road Transport (General) Bill 2004	Minister for Roads	17/02/05			1
Road Transport (General) Amendment (Licence Suspension) Bill 2004	Minister for Roads	18/06/04	01/12/04	9	1
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	Minister for Roads	17/02/05			1
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/04		15	
State Records Amendment Bill 2004	Premier	19/10/04	28/10/04	13,15	
State Revenue Legislation Further Amendment Bill 2003	Treasurer	28/11/03	15/12/03	1	
Water Management Amendment Bill 2004	Minister for Natural Resources	28/05/04 26/10/04	24/09/04	8,14	

³⁷ Published under the title "Commencement of Acts."

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2005

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Civil Liability Amendment (Food Donations) Bill 2004	N			N	
Civil Liability Amendment (Offender Damages) Bill 2005	N,C				
Court Security Bill 2005				N	
Electricity Supply Amendment Bill 2005				C	
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004			N	N	N
Independent Commission Against Corruption Amendment Bill 2005				C	
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	R			N	
Legal Profession Bill 2004	N,C			N	
Marine Safety Amendment (Random Breath Testing) Bill 2004				C	
Photo Card Bill 2004				C	
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	N				
Road Transport (General) Bill 2004	N	C		C	
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	N			C	
Sheriff Bill 2005				N	
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	N,R				

Key

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

Appendix 4: Index of correspondence on regulations reported on in 2005

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2004	Digest 2005
Architects Regulation 2004	Minister for Commerce	21/09/04	30/11/04		1
Environmental Planning and Assessment Amendment (ARTC Rail Infrastructure) Regulation 2004	Minister for Infrastructure and Planning	26/10/04 17/02/05	01/02/05		1
Forestry Regulation 2004	Minister for Primary Industries	26/10/04 17/02/05	18/01/05		1
Passenger Transport (Drug and Alcohol Testing) Regulation 2004	Minister for Transport Services	30/04/04 01/03/05	17/02/05		2
Stock Diseases (General) Regulation 2004	Minister for Primary Industries	05/11/04	16/12/04		1
Sydney Olympic Park Amendment Regulation 2004	Minister for Sport and Recreation	05/11/04	03/12/04		1