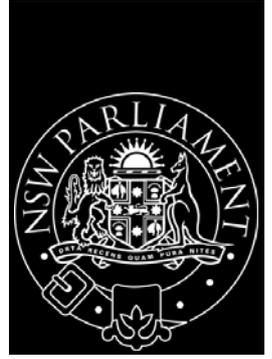


PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

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No 14 of 2009

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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 3).

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 3).

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

Appendix 1: Index of Bills Reported on in 2009

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 2009

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 2009

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 2009

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

1. Children (Criminal Proceedings) Amendment (Naming of Children) Bill 2009

Issue: Clause 2 - Commencement by proclamation - Provides the executive with unfettered control over the commencement of an Act.

23. The Committee notes the advice received above and has not identified any further issues under s 8(1)(b)(iv) LRA

2. Courts and Crimes Legislation Amendment Bill 2009

Self Incrimination and Right to Silence

Issue: Section 16 (6), Section 16 (7) and Section 26 (7A)

22. While the Committee has significant concerns about the trespass upon rights of association implemented by the *Crimes (Criminal Organisations Control) Act 2009*, the Committee does not consider that the requirement for a person to disclose their identity to a police officer in circumstances where the officer has reasonable cause to suspect the person is either subject to service of an interim control order or is a controlled member of a declared organisation associating with another controlled member of a declared organisation is unreasonable in the context of the legislation.

23. Further, the requirement for a person to remain in one place for two hours in order to be served a notice does not seem particularly unreasonable considering the administrative time and cost associated with service.

Excessive Punishment; Rights of the Child

Issue: Section 26 (7A) and Section 35A

27. The Committee has concerns about the effects of Section 26 (7A) on persons under the age of 18 and other vulnerable and disadvantaged people. The Committee has previously observed that the *Crimes (Criminal Organisations Control) Act 2009* is silent as to how persons or members of declared organisations under the age of 18 will be dealt with. It is considered that the penalty of 20 penalty units for non-compliance may disproportionately impact on children and young people and may constitute excessive punishment. Accordingly, the Committee refers these sections to Parliament for its consideration.

Rights of Association

Issue: Section 19 (1)(a)(ii), Section 19(8) and Section 26 (1A)

32. The Committee is concerned that Section 19 (1)(a)(ii), Section 19(8) and Section 26(1A) extend the restrictions to rights of association with others which were introduced by the *Crimes (Criminal Organisations Control) Act 2009*.

Issue: Clause 2 - Commencement by proclamation - Provides the executive with unfettered control over the commencement of an Act.

34. The Committee accepts the advice received above and has not identified any further issues under s 8(1)(b)(iv) *LRA*

3. Judicial Officers Amendment Bill 2009

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

4. Road Transport (Vehicle Registration) Amendment (Heavy Vehicle Registration Charges) Bill 2009

Issue: Clause 2 - Commencement by proclamation - Provides the executive with unfettered control over the commencement of an Act.

11. The Committee accepts the advice receive above and has not identified any further issues under s 8(1)(b)(iv) *LRA*

5. State Revenue Legislation Amendment (Defence Force Concessions) Bill 2009

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

6. Surveying Amendment Bill 2009

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

Part One – Bills

SECTION A: Comment on Bills

1. CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT (NAMING OF CHILDREN) BILL 2009

Date Introduced:	22 October 2009
House Introduced:	Legislative Council
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General

Purpose and Description

1. The purpose of the Bill is to amend the *Children (Criminal Proceedings) Act 1987* (the Act) by rewriting the existing offence provision in section 11 of the Act, namely publishing or broadcasting a person's name in a way that connects the person with criminal proceedings involving children.
2. As stated in the Second Reading Speech, the Bill responds to the recommendations of the Legislative Council's Standing Committee on Law and Justice's Report on the prohibition on the publication of names of children involved in criminal proceedings (April 2008). Subsequent to the release of the report, the Government provided a response to its eight recommendations and indicated that it would introduce legislation to give effect to the recommendations.
3. According to the Second Reading Speech, whilst substantively the same as the previous offence, the Bill provides greater clarity on the prohibition on publishing or broadcasting a person's name in a way that connects that person with criminal proceedings involving children, and sets out the exceptions to the prohibition.
4. In response to one of the Law and Justice Committee's recommendations, the Bill makes it clear that the offence does not extend to legitimate law enforcement and investigative activities, including police radio broadcasts.
5. Further, proposed section 15G of the Bill provides a specific exemption to the offence for anything done by a court staff member or court official in connection with a criminal proceeding, as long as it is done in the proper exercise of their official functions.
6. Under the proposed Bill, a child over the age of 16 will only be able to consent to the publication or broadcast of the child's name if consent is given in the presence of a legal practitioner of the child's choosing. As stated in the Second Reading Speech, this amendment responds to concerns by the Law and Justice Committee that under the current law, 16 to 18 year olds may give permission to publish their name in situations where it is not in their best interests and where they do not have the benefit of advice from a parent, other adult or legal representative.

7. Proposed section 15C provides that the Court will be required to have regard to certain specified matters when deciding whether to authorize the publication or broadcasting of a name of a person being sentenced for a serious children's indictable offence. These matters include the level of seriousness of the offence; the effect of the offence on any victim, including the family of the victim in homicide cases; the weight to be given to general deterrence; the subjective features of the offender; and the offender's prospects of rehabilitation. The Court must also have regard to such other matters as it considers relevant having regard to the interests of justice.
8. As stated in the Second Reading Speech, the Law and Justice Committee recommended these amendments to alter the existing requirement under section 11(4C) that the court be satisfied that the making of such an order is in the interests of justice and that the prejudice to the offender does not outweigh those interests. Accordingly, proposed section 15C provides clearer legislative guidance to the Courts regarding how to exercise its discretion.
9. Finally, under proposed section 15E, if there is no senior available next of kin who can consent to the publication or broadcast of the name of a deceased child, the Court will be able to give that consent if the public interest so requires.

Background

10. The Bill effectively rewrites section 11 of the Act in response to the recommendations of the Legislative Council's Standing Committee on Law and Justice. As stated in the Second Reading Speech:

This is a particularly sensitive area of the law, which must balance the interests of open justice with the need to protect young people, including those who are victims. That is why in 2008 the Legislative Council's Standing Committee on Law and Justice was asked to review the laws surrounding the naming of juveniles.
11. In its 2008 Report, the Committee on Law and Justice gave consideration to the difficult balance between the need to protect young people and the need for transparency in the administration of justice. The Report of the Committee on Law and Justice found that the aims of the current prohibition in section 11 of the Act remain valid, namely to protect children from the stigma of being associated with a crime and to assist in their rehabilitation and recovery. However, it made a number of recommendations to clarify the application of the offence provisions in section 11.
12. The Committee on Law and Justice's Report also recommended that the cooperation of other States and Territories be sought with a view to implementing a consistent prohibition relating to the publication of names of children involved in criminal proceedings. The Committee considered this to be important, particularly given technological advances in publishing and broadcasting, for example Internet broadcasting sites.
13. As stated in the Second Reading Speech, the Attorney General took the recommendation from Legislative Council's Standing Committee on Law and Justice Committee's Report to the Standing Committee of Attorneys General in November 2008, where agreement was reached for a nationally consistent and effective prohibition relating to the publication of names of children.

Children (Criminal Proceedings) Amendment (Naming of Children) Bill 2009

14. Finally, as stated in the Second Reading Speech, in drafting the Bill the Government consulted the Victims Advisory Board; legal practitioners, including the Law Society of NSW; the NSW Bar Association; Legal Aid NSW; the Senior Public Defender, and the Director of Public Prosecutions; the Courts, including the Supreme, District and Local courts; the Ministry for Police; Juvenile Justice; Aboriginal Affairs; and the Commission for Children and Young People and representative media organisations.

The Bill

15. 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 a day to be appointed by proclamation.

Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987 No 55

Schedule 1 [3] inserts a new Division consisting of proposed sections 15A–15G which are a rewrite of the existing section that makes it an offence in certain circumstances to publish or broadcast a person's name in a way that connects the person with criminal proceedings involving children.

Section 15A (2) provides for the limitation of the offence to publication and broadcast to the public or a section of the public.

Section 15G provides for court staff exercising official functions to be exempt from the offence.

Section 15D (3) provides for the new restrictions on when a 16 or 17 year old can consent to the publication or broadcast of their name.

Section 15C (3) provides for the matters to which a court is to have regard in deciding whether to authorise the publication or broadcast of the name of a person being sentenced for a serious children's indictable offence.

Section 15E (5) provides for the court to consent to the publication or broadcast of the name of a deceased child if there is no senior available next of kin who can consent and the public interest so.

Schedule 1 [1] repeals the existing section that the new Division replaces.

Schedule 1 [2] and [4] make consequential amendments.

Issues Considered by the Committee

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

Issue: Children's Rights; Privacy

16. The Committee notes that the Bill introduces amendments in response to the Legislative Council's Standing Committee on Law and Justice's Report on the

prohibition on the publication of names of children involved in criminal proceedings.
As stated in the Second Reading Speech:

The bill will improve the operation of this difficult and complex area of the law, and in doing so reflects the hard work undertaken by the Legislative Council's Standing Committee on Law and Justice in balancing the interests of open justice with the need to protect young people, including those who are victims.

17. The Committee also notes that there are a number of international instruments with principles relevant to the privacy of children in the criminal justice system that were considered by the Legislative Council in its Report. For example, Article 3(1) *United Nations Convention on the Rights of the Child 1989* provides that in all actions concerning children, whether undertaken by courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
18. Further, Article 16 of the *Convention on the Rights of the Child 1989* protects children from arbitrary or unlawful interference with their privacy. Under Article 40 of the *Convention on the Rights of the Child 1989*, the privacy of a juvenile offender must be respected at all stages of criminal proceedings. The *United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the Beijing Rules) also provide that in the administration of justice a juvenile's right to privacy should be respected at all stages.
19. The Committee is of the view that the Bill clarifies the existing offence provisions in section 11 of the Act. For example, the Committee notes that the amendments in proposed section 15C(3) alter the existing requirements for the Court under section 11(4C). The current provision provides that the Court must be satisfied that the making of an order (under section 11(4B)) to publish or broadcast the names of juveniles who have been convicted of a serious children's indictable offence, is in the interests of justice and that the prejudice to the offender does not outweigh those interests.
20. Proposed section 15C(3) provides legislative guidance to the Courts regarding how to exercise its discretion by providing matters for the Courts to consider. The matters include the level of seriousness of the offence; the effect of the offence on any victim, including the family of the victim in homicide cases; the weight to be given to general deterrence; the subjective features of the offender; and the offender's prospects of rehabilitation and other matters the court considers relevant in the interests of justice.
21. Accordingly, the Committee does not consider provisions in the Bill such as proposed section 15C(3) to unduly trespass on the personal rights and liberties of children and young people, including their rights to privacy. The Committee is of the view that the Bill strikes an appropriate balance between the public interest and the individual rights of children and young people.

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

Issue: Clause 2 - Commencement by proclamation - Provides the executive with unfettered control over the commencement of an Act.

22. The Committee notes that the proposed Act is to commence on a day to be appointed by proclamation. This may delegate to the Government the power to commence the Act on whatever day it chooses or not at all. The Committee notes

Children (Criminal Proceedings) Amendment (Naming of Children) Bill 2009

the advice provided by the Attorney General that “as a general policy, substantive changes to criminal procedure laws should occur with some public notice of commencement by way of proclamation published in the Gazette nominating a particular day”. The Committee also notes the advice that the Government intends to proclaim the Bill at the earliest opportunity.

23. The Committee notes the advice received above and has not identified any further issues under s 8(1)(b)(iv) LRA

The Committee makes no further comment on this Bill.

2. COURTS AND CRIMES LEGISLATION AMENDMENT BILL 2009

Date Introduced: 23 October 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon John Hatzistergos MLC
Portfolio: Attorney General

Purpose and Description

1. The objects of the Court and Crimes Legislation Amendment Bill 2009 (the Bill) are as follows:
 - (a) to amend various Acts to remove the power of the Attorney General to revoke the appointment of Supreme Court Judges as eligible Judges for the purposes of issuing search and other warrants and exercising other similar administrative functions (and to make it clear that the selection of the eligible Judge to exercise a function is not made by the Attorney General or other Minister and that the exercise of the function is not subject to the control and direction of the Attorney General or other Minister);
 - (b) to amend the *Bail Act 1978* to revise the test to be applied by a court in determining whether to refuse to hear a further application for bail by an accused person;
 - (c) to amend the *Children's Court Act 1987* to enable a Magistrate appointed under the *Local Court Act 2007* to exercise the jurisdiction of the Children's Court without being appointed as a Children's Magistrate and to make consequential amendments to certain other Acts;
 - (d) to amend the *Civil Procedure Act 2005* to provide for the President of the Industrial Relations Commission or a judicial member of the Commission (within the meaning of the *Industrial Relations Act 1996*) nominated for the time being by the President to be a member of the Uniform Rules Committee;
 - (e) to amend the *Civil Procedure Act 2005* and the *Industrial Relations Act 1996* to provide for the application of the *Civil Procedure Act 2005* and the *Uniform Civil Procedure Rules 2005* in civil proceedings in the Industrial Relations Commission and the Industrial Court;
 - (f) to amend the *Confiscation of Proceeds of Crime Act 1989* to make it clear that the power to issue search warrants under Division 1 of Part 3 of that Act is exercisable by an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*;
 - (g) to amend the *Crimes (Criminal Organisations Control) Act 2009* as follows:
 - (i) to enable a police officer to request a person suspected of being a person on whom notice of an interim control order is required to be served or of being subject to a control order and of associating with another person who is the subject of a control order to disclose his or her identity and to make it an offence for the person to fail or refuse without reasonable excuse to disclose his or her identity or to give false or misleading information about it;

- (ii) to enable a police officer to detain a person suspected of being a person on whom notice of an interim control order is required to be served in order to serve the notice;
 - (iii) to make it clear that substituted service of an interim control order may be ordered at any time during the period in which notice of the making of the order must be served under section 16 (1) of that Act;
 - (iv) To enable control orders to be made against certain former members of declared organizations;
 - (v) to make it an offence for a controlled member of a declared organisation to associate with another controlled member on 3 or more occasions within a 3-month period;
- (h) to amend the *Criminal Procedure Act 1986* to enable the Industrial Registrar to make orders commencing summary proceedings under section 246 of that Act with respect to offences that may be dealt with by the President or a judicial member of the Industrial Relations Commission under Part 5 of Chapter 4 of that Act;
- (i) to amend the *Evidence (Audio and Audio Visual Links) Act 1998* to require all members of the NSW Police Force to give corroborative evidence in chief of evidence given by other members of the NSW Police Force by audio link or audio visual link;
- (j) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* as follows:
- (i) to omit a superfluous definition;
 - (ii) to make it clear that the eligible applicant for a covert search warrant need not personally be intending to carry out the entry and search of the premises authorised by the warrant;
- (k) to amend the *Legal Profession Act 2004* to put beyond doubt the power of the District Court to hear an appeal against a decision of a costs assessor as to a matter of law under section 384 of that Act that was made under the *Legal Profession Act 1987* so long as no hearing date has been allocated;
- (l) to amend the *Local Court Act 2007* as follows:
- (i) to enable the Chief Magistrate to appoint any officer of the Local Court to the Local Court Rule Committee,
 - (ii) so that the Minister need appoint a person as a member of the Local Court Rule Committee only if the Minister thinks it appropriate to do so.

Background

2. The purpose of the Bill is to make miscellaneous amendments to courts and crimes related legislation. The Bill is part of the Government's regular legislative review and monitoring program. The Bill will amend a number of Acts to improve the efficiency and operation of courts and tribunals and will also make minor amendments to a number of Acts relating to statutory bodies within the Attorney General's portfolio.
3. According to the Agreement in Principle Speech, there has been some speculation that the existing provisions under the *Surveillance Devices Act 2007*, the *Law Enforcement and National Security (Assumed Identities) Act 1998*, *Law Enforcement (Powers and Responsibilities) Act 2002*, the *Crimes (Criminal Organisations Control) Act 2009*, and *Terrorism (Police Powers) Act 2002* could give rise to at least the appearance of an infringement upon judicial independence due to the ability of the Attorney General to revoke declarations of his own accord.
4. As such, it is appropriate to amend the provisions in the various Acts to reflect the practice that the Attorney General has no role in vetting these appointments. The Bill

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accordingly revokes the power of the Attorney General to revoke the declaration of an eligible judge and provides instead for the automatic revocation of the declaration if the Supreme Court judge revokes his or her consent, resigns or the Chief Justice of the Supreme Court advises the Attorney General that the declaration should not continue.

5. Schedule 2.1 contains amendments to section 22A of the *Bail Act 1978*, which sets out the test to be applied by a court in determining whether to refuse to hear a further application for bail by an accused person. The amendments aim to end any ambiguity that might have developed around the requirement that facts and circumstances be "new" in the current section 22A has been removed. Any relevant facts and circumstances that have previously not been brought to the attention of the court are grounds for a further application for bail. The court need not consider whether those facts or circumstances justify the grant of bail before deciding whether to hear the application for bail.
6. Schedule 2.5 of the Bill amends the *Children's Court Act 1987* to enable a Local Court Magistrate to exercise the jurisdiction of the Children's Court without being appointed as a Children' Magistrate. A Local Court Magistrate will be able to exercise the jurisdiction of the Children's Court when authorised to do so by the President of the Children's Court and the Chief Magistrate. The amendment is necessary because an old 1992 proclamation dealing with Local Court Magistrates exercising Children's Court jurisdiction is now out of date. According to the Agreement in Principle Speech, the amendment to the Children's Court Act is strongly supported by both the President of the Children's Court and the Chief Magistrate. As a result of the amendments to the Children's Court Act, the Bill also makes consequential amendments to the *Children and Young Persons (Care and Protection) Act 1998*, the *Children (Detention Centres) Act 1987*, and the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*.
7. Schedules 2.6 and 2.11 of the Bill amend the *Civil Procedure Act 2005* and the *Industrial Relations Act 1996* respectively, to enable the Civil Procedure Act and Uniform Civil Procedure Rules to be applied in civil proceedings in the Industrial Relations Commission. According to the Agreement in Principle Speech, the application of the *Civil Procedure Act 2005* and Uniform Civil Procedure Rules is consistent with Government efforts to increase the efficiency of the court system and to promote consistency in procedures across jurisdictions where appropriate. The amendments have the strong support of the President of the Industrial Relations Commission. The President will be a member of the Uniform Rules Committee, or he may nominate a judicial member of the commission to represent him on the committee.
8. Schedule 2.8 amends the *Crimes (Criminal Organisations Control) Act 2009*. According to the Agreement in Principle Speech, the Bill clarifies that control orders can be issued against persons who, although they may say they are no longer members, continue to be involved with these criminal groups.
9. The Bill contains new powers for police to request identification particulars from a person who needs to be served with an interim control order and furthermore to detain such a person for a reasonable period, and no longer than two hours, in order to effect service where that person refuses to remain in one place long enough for service to be effected. There will be an offence of refusing to provide identification or providing a false identification in such circumstances. The Bill also contains a similar

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power allowing police to request identification particulars from anyone suspected of committing an association offence under the Act.

10. The Bill clarifies the ability of police to apply for alternative methods of service of an interim control order, provided all reasonable steps have been taken to personally serve the order. Interim control orders do not take effect until they have been served upon the controlled member, and must be served within 28 days. This amendment will clarify that police need not wait until the end of the 28 days before applying for substituted service.
11. The Bill creates an additional offence applicable to persons who are the subject of a control order of associating on three or more occasions within a three-month period with other controlled members, carrying a maximum penalty of three years imprisonment.
12. The *Crimes (Criminal Organisations Control) Act 2009* already contains an offence of association applicable to controlled members, which carries a penalty of up to two years imprisonment for a first offence, and an offence for subsequent associations carrying a maximum penalty of five years imprisonment. However, the latter is only applicable where the person already has a conviction for the first time association offence. According to the Agreement in Principle Speech, "this amendment will better equip police to bring charges against individuals who do not have a prior conviction for an association offence but flout the laws by continuing their association with other controlled members".
13. Schedule 2.9 of the Bill amends the *Criminal Procedure Act 1986* to enable the Industrial Registrar to make orders commencing summary proceedings with respect to offences that may be dealt with by the President or a judicial member of the Industrial Relations Commission. The Industrial Relations Commission will take over the criminal jurisdiction of the Industrial Magistrates Court upon the commencement of the *Industrial Relations Amendment (Jurisdiction of the Industrial Relations Commission) Act 2009*. The amendment contained in the present Bill will ensure that when the Industrial Relations Commission assumes responsibility for this additional jurisdiction, the criminal proceedings before the Commission will be as simple and efficient as possible.
14. Schedule 2.10 of the Bill amends the *Evidence (Audio and Audio Visual Links) Act 1998* to enable all employees of the New South Wales Police Force, not just sworn officers, to give corroborative evidence by audio and audio visual link. According to the Agreement in Principle Speech, the amendment is consistent with Government efforts to increase the efficiency of the criminal justice system through the use of technology where appropriate.
15. Schedule 2.12 of the Bill amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to: firstly, remove a superfluous definition of authorised officer in section 46(1) of the Act; and secondly, to make it clear that the eligible applicant for a covert search warrant need not intend to personally execute the warrant.
16. Schedule 2.13 of the Bill amends the *Legal Profession Act 2004* to put beyond doubt the power of the District Court to hear appeals against decisions of cost assessors arising under the *Legal Profession Act 1987*. The District Court has already been given jurisdiction to hear appeals against decisions of cost assessors arising under

the Legal Profession Act 2004. The amendment will ensure that the same court hears all such appeals.

17. Schedule 2.14 of the Bill makes two amendments to section 25 of the *Local Court Act 2007*, which sets out the composition of the Local Court Rules Committee. First, section 25 will be amended to enable the Chief Magistrate to appoint any officer of the Local Court to the Local Court Rule Committee. Currently, the Chief Magistrate may only appoint a Local Court Registrar to the Rule Committee. There may be other officers of the Local Court who could bring relevant experience and expertise to the Committee. Second, section 25 will be amended to provide that the Minister need only appoint a person as a member to the Local Court Rule Committee if the Minister thinks it appropriate to do so. This will align the position of the Local Court Rule Committee with that of the District Court Rule Committee.

The Bill

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 (with some exceptions).

Schedule 1 Amendment of Acts relating to eligible Judges and Magistrates

A number of Acts provide for the conferral of functions of an administrative nature (such as the issue of search and other warrants) on Judges as *personae designatae*. The relevant sections of the Acts concerned provide for the Attorney General to declare a Supreme Court Judge to be an eligible Judge if the Judge has consented to being nominated as an eligible Judge and enable the Attorney General to revoke such a declaration.

Schedule 1 amends the relevant sections to remove the power of the Attorney General to revoke the declaration of an eligible Judge and provide instead for the automatic revocation of such a declaration if a Supreme Court Judge revokes his or her consent, ceases to be a Judge or if the Chief Justice notifies the Attorney General that the declaration should not continue. The Schedule also makes it clear that the selection of the eligible Judge to exercise a function is not made by the Attorney General or other Minister and that the exercise of the function is not subject to the control and direction of the Attorney General or other Minister. The eligible Judges concerned are conferred with powers under the following provisions (in the *Surveillance Devices Act 2007* the eligible Judge power extends to eligible Magistrates):

- (a) section 9 of the *Crimes (Criminal Organisations Control) Act 2009* (which confers a power to make a declaration that a particular organisation is a declared organisation for the purposes of the Act);
- (b) section 7 of the *Law Enforcement and National Security (Assumed Identities) Act 1998* (which confers a power to authorise an entry in the Registry of Births, Deaths and Marriages),
- (c) section 46C of the *Law Enforcement (Powers and Responsibilities) Act 2002* (which confers a power to grant covert search warrants),
- (d) Part 3 of the *Surveillance Devices Act 2007* (which confers a power to grant surveillance device warrants),

(e) Part 3 of the *Terrorism (Police Powers) Act 2002* (which confers a power to issue covert search warrants).

Schedule 2 Other amendments of Acts

Schedule 2.1 Bail Act 1978 No 161

Currently, section 22A of the *Bail Act 1978* requires a court to refuse to entertain a further application for bail by a person accused of an offence if an application by the person in relation to that bail has already been made and dealt with by the court, unless:

- (a) the person was not legally represented when the previous application was dealt with, and the person now has legal representation, or
- (b) the court is satisfied that new facts or circumstances have arisen since the previous application that justify the making of another application. Further applications to a court cannot be made by a lawyer for an accused person, except where the application would be permitted under paragraph (a) or (b) above.

Schedule 2.1 [1] requires a court to refuse to entertain an application for bail by a person accused of an offence if an application has already been made and dealt with by the court, unless there are grounds for a further application for bail. The grounds for a further application are:

- (a) the person was not legally represented when the previous application was dealt with and the person now has legal representation, or
- (b) information relevant to the grant of bail is to be presented in the application that was not presented to the court in the previous application, or
- (c) circumstances relevant to the grant of bail have changed since the previous application was made.

Schedule 2.1 [2] provides that a lawyer for an accused person may refuse to make a further application for bail if there are no grounds for a further application for bail.

Schedule 2.2 Children and Young Persons (Care and Protection) Act 1998 No 157

Schedule 2.2 amends the *Children and Young Persons (Care and Protection) Act 1998* as described below in relation to the amendments made by Schedule 2.5.

Schedule 2.3 Children (Detention Centres) Act 1987 No 57

Schedule 2.3 amends the *Children (Detention Centres) Act 1987* as described below in relation to the amendments made by Schedule 2.5.

Schedule 2.4 Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13

Schedule 2.4 amends the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009* as described below in relation to the amendments made by Schedule 2.5.

Schedule 2.5 Children's Court Act 1987 No 53

Currently, a proclamation made under section 10 of the *Children's Court Act 1987* that was continued in force on the repeal of that section in 2000 provides that the jurisdiction of the

Courts and Crimes Legislation Amendment Bill 2009

Children's Court may be exercised by any Magistrate sitting at any place where a Local Court is established under the *Local Courts Act 1982* or any Children's Court listed in the Schedule to the proclamation. The proclamation is out of date as it does not reflect that, as a consequence of the commencement of the *Local Court Act 2007*, there is now a single Local Court (sittings of which are held in various places in New South Wales or cover all places where Children's Courts sit).

Schedule 2.5 [1] and [2] provide instead for any Magistrate to exercise the jurisdiction of the Children's Court if authorised to do so by the President of the Children's Court and the Chief Magistrate of the Local Court.

Schedule 2.5 [3] makes a consequential amendment to put beyond doubt that actions taken by Magistrates in purported exercise of the jurisdiction conferred by the proclamation under section 10 of the *Children's Court Act 1987* were valid.

Schedule 2.2 and 2.3 make consequential amendments to section 107 (4) of the *Children and Young Persons (Care and Protection) Act 1998* and section 39 of the *Children (Detention Centres) Act 1987*, respectively.

Schedule 2.4 omits an amendment to section 107 (4) of the *Children and Young Persons (Care and Protection) Act 1998* (the 1998 Act) made by the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009* (the 1998 amendment) that will be superseded by the amendment proposed to be made by **Schedule 2.2**. The effect of the amendments (read together with section 16 (2) of the *Children's Court Act 1987*) is that the President of the Children's Court and Magistrates authorised to carry out functions conferred or imposed on Children's Magistrates by the President of the Children's Court and the Chief Magistrate of the Local Court may carry out the functions of Children's Magistrates under section 107 of the 1998 Act.

Schedule 2.6 Civil Procedure Act 2005 No 28

Schedule 2.6 [2] amends section 8 of the *Civil Procedure Act 2005* as described in paragraph (d) of the Background and Description section of the Digest above. **Schedule 2.6 [1], [4] and [5]** make consequential amendments.

Schedule 2.6 [3] amends Schedule 1 to the *Civil Procedure Act 2005* to apply Parts 3–9 of that Act to civil proceedings before the Industrial Court (subject to the Uniform Rules under that Act) as described in paragraph (e) of the Background and Description section of the Digest above.

Schedule 2.11 makes consequential amendments to the *Industrial Relations Act 1996* to ensure consistency in the application of the *Civil Procedure Act 2005* and *Uniform Civil Procedure Rules 2005*.

Schedule 2.6 [6] amends Schedule 6 to the *Civil Procedure Act 2005* to insert a savings and transitional regulation-making power.

Schedule 2.7 Confiscation of Proceeds of Crime Act 1989 No 90

Schedule 2.7 amends the *Confiscation of Proceeds of Crime Act 1989* as described in paragraph (f) of the Background and Description section of the Digest above.

Schedule 2.8 Crimes (Criminal Organisations Control) Act 2009 No 6 An interim control order under the *Crimes (Criminal Organisations Control) Act 2009* takes effect on the day on which notice of the order is personally served in accordance with section 16 of that Act. Service must be made within 28 days of the making of the interim control order. If notice cannot practicably be served in accordance with section 16, the Supreme Court may make a direction under section 16A of the Act for substituted service.

Schedule 2.8 [1] amends section 16 of the *Crimes (Criminal Organisations Control) Act 2009* to enable a police officer to request a person to disclose his or her identity and remain at a particular place for up to 2 hours to enable service of the notice if the police officer has reasonable cause to believe the person is a person on whom notice of the making of an interim control order is required to be served. If the person fails to comply with the request to remain at the place he or she may be detained for up to 2 hours to serve the notice.

Section 26 of the *Crimes (Criminal Organisations Control) Act 2009* makes it an offence for a controlled member of a particular declared organisation to associate with another controlled member of the same organisation.

Schedule 2.8 [7] amends section 26 to enable a police officer who has reasonable cause to suspect that a person is a controlled member of a declared organisation who is associating with another controlled member of the declared organisation to request the person to disclose his or her identity.

Schedule 2.8 [5] amends section 26 to make it an offence (punishable by a maximum of 3 years' imprisonment) for a controlled member of a declared organisation to period.

Schedule 2.8 [6] and [9] make consequential amendments to sections 26 and 36, respectively. Under clause 18A of Part 4 of Table 1 of Schedule 1 to the *Criminal Procedure Act 1986* the new offence will be able to be prosecuted summarily.

Schedule 2.8 [8] inserts section 35A into the *Crimes (Criminal Organisations Control) Act 2009* to make it an offence for a person to fail or refuse without reasonable excuse to disclose his or her identity or to give false or misleading information about it when requested to do so by a police officer under the provisions proposed to be inserted by **Schedule 2.8 [1] and [7]**.

Schedule 2.8 [2] amends section 16A of the *Crimes (Criminal Organisations Control) Act 2009* to make it clear that substituted service of an interim control order may be ordered at any time during the period in which notice of the making of the order must be served under section 16 of the Act.

Section 19 of the *Crimes (Criminal Organisations Control) Act 2009* provides for the making of a control order against a member of a particular declared organisation on whom notice of an interim control order has been served. An interim control order can only be made under section 16 of the Act if the requirements for making a control order under section 19 (1) are satisfied.

Schedule 2.8 [3] and [4] amend section 19 to enable a control order to be made against a person who is or purports to be a former member of a particular declared organisation but has an on-going involvement with the organisation.

Schedule 2.9 Criminal Procedure Act 1986 No 209

Schedule 2.9 amends the *Criminal Procedure Act 1986* as described in paragraph (h) of the Background and Description section of the Digest above.

Schedule 2.10 Evidence (Audio and Audio Visual Links) Act 1998 No 105

Schedule 2.10 amends the *Evidence (Audio and Audio Visual Links) Act 1998* as described in paragraph (i) of the Background and Description section of the Digest above and makes an associated savings.

Schedule 2.11 Industrial Relations Act 1996 No 17

Schedule 2.11 amends the *Industrial Relations Act 1996* as described above in relation to the amendments made by Schedule 2.6.

Schedule 2.12 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2.12 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* as described in paragraph (j) of the Background and Description section of the Digest above.

Schedule 2.13 Legal Profession Act 2004 No 112

Schedule 2.13 amends the *Legal Profession Act 2004* as described in paragraph (k) of the Background and Description section of the Digest above.

Schedule 2.14 Local Court Act 2007 No 93

Schedule 2.14 amends the *Local Court Act 2007* as described in paragraph (l) of the Background and Description section of the Digest above and makes an associated savings.

Issues Considered by the Committee

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

Self Incrimination and Right to Silence

Issue: Section 16 (6), Section 16 (7) and Section 26 (7A)

19. Proposed Sections 16 (6) and 16 (7) requires a person to disclose his or her identity to a police officer who has reasonable cause to suspect that a person is subject to an interim control order being served upon them. The officer can also request that a person remain in a place for a period not exceeding two hours in order for the notice to be served.
20. Proposed Section 26 (7A) provides that a police officer can also require a person to disclose his or her identity if there is reasonable cause to suspect that that the person is a controlled member of a declared organisation who is associating with another controlled member of a declared organisation.
21. The Committee acknowledges that the requirement to disclose identity to an authority figure is generally not an onerous request and is reasonably common in a variety of situations such as entering nightclubs and buying some medications. Further, the

requirement for a person to remain in one place for two hours in order to be served a notice does not seem particularly unreasonable considering the administrative time and cost associated with service.

- 22. While the Committee has significant concerns about the trespass upon rights of association implemented by the *Crimes (Criminal Organisations Control) Act 2009*, the Committee does not consider that the requirement for a person to disclose their identity to a police officer in circumstances where the officer has reasonable cause to suspect the person is either subject to service of an interim control order or is a controlled member of a declared organisation associating with another controlled member of a declared organisation is unreasonable in the context of the legislation.**
- 23. Further, the requirement for a person to remain in one place for two hours in order to be served a notice does not seem particularly unreasonable considering the administrative time and cost associated with service.**

Excessive Punishment; Rights of the Child

Issue: Section 26 (7A) and Section 35A

24. Proposed Section 26 (7A) provides that a police officer can also require a person to disclose his or her identity if there is reasonable cause to suspect that that the person is a controlled member of a declared organisation who is associating with another controlled member of a declared organisation. The penalty for non-disclosure or providing false and misleading information is 20 penalty units.
25. Section 35A does provide for a defence of reasonable excuse.
26. However, the Committee does have some concerns in regards to persons under the age of 18 and other vulnerable and disadvantaged people. The Committee has previously observed that to the *Crimes (Criminal Organisations Control) Act 2009* is silent as to how persons or members of declared organisations under the age of 18 will be dealt with. The Committee considers that the penalty of 20 penalty units for non-compliance may disproportionately impact on children and young people and may constitute excessive punishment. Accordingly, the Committee refers these sections to Parliament for its consideration.

- 27. The Committee has concerns about the effects of Section 26 (7A) on persons under the age of 18 and other vulnerable and disadvantaged people. The Committee has previously observed that the *Crimes (Criminal Organisations Control) Act 2009* is silent as to how persons or members of declared organisations under the age of 18 will be dealt with. It is considered that the penalty of 20 penalty units for non-compliance may disproportionately impact on children and young people and may constitute excessive punishment. Accordingly, the Committee refers these sections to Parliament for its consideration.**

Rights of Association

Issue: Section 19 (1)(a)(ii), Section 19(8) and Section 26 (1A)

28. Section 19(1)(a) extends the definition of who can be the subject to a control order to include former members of declared organisations who have on-going involvement with the organisation and its activities. Section 19(8) defines this as someone who “regularly associates without reasonable cause”.
29. Section 26(1A) adds a new provision that a controlled member of a declared organisation who associates with another controlled member of a declared organisation on three or more occasions within a period of three months, is guilty of an offence attracting imprisonment of up to three years.
30. The Committee has already commented extensively on the Crimes (Criminal Organisations Control) legislation in *Legislation Digest no. 5 of 2009* with regard to, amongst other issues, its effect on rights of association with others. The Committee consider that this is a fundamental right established by Article 17 of the *International Covenant on Civil and Political Rights*.
31. In its report the Committee also raised issues concerning: presumption of innocence; right to work; and strict liability.

32. The Committee is concerned that Section 19 (1)(a)(ii), Section 19(8) and Section 26(1A) extend the restrictions to rights of association with others which were introduced by the *Crimes (Criminal Organisations Control) Act 2009*.

Issue: Clause 2 - Commencement by proclamation - Provides the executive with unfettered control over the commencement of an Act.

33. Schedule 2.6 [3] of the proposed Act is to commence on a day to be appointed by proclamation. This may delegate to the Government the power to commence this part of the Act on whatever day it chooses or not at all. However, the Committee notes and accepts the reasons provided by the Attorney General that this is necessary to allow for administrative arrangements within the Industrial Relations Commission to be finalised.

34. The Committee accepts the advice received above and has not identified any further issues under s 8(1)(b)(iv) LRA

The Committee makes no further comment on this Bill.

3. JUDICIAL OFFICERS AMENDMENT BILL 2009

Date Introduced: 23 October 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon John Hatzistergos MLC
Portfolio: Attorney General

Purpose and Description

1. The object of this Bill is to amend the *Judicial Officers Act 1986*:
 - (a) to enact in NSW model national provisions approved by the Standing Committee of Attorneys-General (SCAG) relating to the temporary exchange of judicial officers between various courts and tribunals in Australia and other countries, and
 - (b) to extend to all judicial or quasi-judicial offices (including offices subject to any such temporary exchanges and offices to which permanent appointments are made) the existing provisions of that Act that make it clear that judicial officers may be appointed to act in other judicial offices without having to surrender or vacate their original judicial office.

Background

2. The main purpose of the Bill is to amend the *Judicial Officers Act 1986* to provide for the temporary exchange of judicial officers between the State and Territory courts and administrative decisions tribunals.
3. According to the Agreement in Principle Speech, the NSW Government has been the driving force behind the development of this judicial exchange program through the SCAG. It represents a further step towards building a national judiciary, which will bring benefits to the New South Wales justice system.
4. Further, according to the Agreement in Principle Speech the Attorney General gained the support of his SCAG colleagues for streamlining and formalising the exchange of judicial officers between jurisdictions following a proposal put forward by the Chief Judge of the New South Wales District Court.
5. The Bill is based upon the model provisions approved by the SCAG. It is underpinned by agreed principles for exchange, which will be the subject of a formal agreement between participating jurisdictions. Other Australian jurisdictions have expressed their support for judicial exchange as facilitated by this Bill.

The Bill

6. Outline of provisions

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

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

Schedule 1 Amendment of Judicial Officers Act 1986 No 100

Judicial exchange arrangements

Schedule 1 [3] inserts a new Part 7A into the *Judicial Officers Act 1986*. Division 1 of Part 7A contains the model national provisions approved by the Standing Committee of Attorneys-General relating to the temporary exchange of judicial officers between various courts and tribunals in Australia and other countries.

Proposed section 43B contains definitions. A corresponding court is defined as a court of another jurisdiction outside NSW that is listed in the proposed Schedule 4A in relation to a NSW court. A participating jurisdiction is defined as the Commonwealth, another State or Territory or another country if, under the law of that other jurisdiction, a judicial exchange arrangement may be entered into with the NSW Attorney General.

Proposed section 43C enables the NSW Attorney General to enter into arrangements with the Attorney General of a participating jurisdiction for the temporary transfer of judicial officers between NSW courts and corresponding courts (a judicial exchange arrangement). However, such an arrangement cannot provide for the transfer of a judicial officer to a federal court of the Commonwealth.

Proposed section 43D enables the senior judicial officer of a NSW court to appoint a judicial officer from a corresponding court as a judicial officer of a NSW court. Such an appointment must be in accordance with a judicial exchange arrangement and with the concurrence of the senior judicial officer of the corresponding court. An appointment cannot be for a term longer than 6 months at any one time and cannot extend beyond the retirement age for a judicial officer of the NSW court. The appointment may be terminated at any time in accordance with the arrangement.

Proposed section 43E provides that a judicial officer from a corresponding court who is appointed to act as a judicial officer of the NSW court is taken for all purposes to be a judicial officer of the NSW court, and has all the applicable powers, authorities, privileges and immunities. However, NSW laws in relation to remuneration, superannuation and removal or suspension from office do not apply to such an officer.

Proposed section 43F provides that, for the purposes of laws relating to remuneration, superannuation and removal or suspension from office, the service of a NSW judicial officer in a corresponding court is taken to be service as a judicial officer of the NSW court.

Schedule 1 [4] inserts proposed Schedule 4A into the *Judicial Officers Act 1986* that contains the NSW courts and corresponding courts for the purposes of judicial exchange arrangements. Proposed section 43H provides that the regulations may amend or replace this Schedule.

Schedule 1 [1] makes a consequential amendment to a definition.

Appointments to additional offices

Schedule 1 [3] also inserts proposed Division 2 of Part 7A into the *Judicial Officers Act 1986* (which replaces section 43A repealed by **Schedule 1 [2]**). The proposed Division confirms that the doctrine of incompatibility of office does not prevent a judicial officer appointed to a court or tribunal from being appointed to any other court or tribunal and that such an appointment does not result in the surrender or vacation of the first judicial office. The new provision extends to all tribunals having judicial or quasi-judicial functions. It also applies to all permanent, acting or temporary appointments and to appointments in other jurisdictions outside New South Wales (which is not currently the case under existing section 43A).

Savings and transitional provisions

Schedule 1 [5] enables savings and transitional regulations to be made consequent on the enactment of the proposed Act.

Schedule 1 [6] ensures that proposed Division 2 of Part 7A applies to appointments made before the commencement of the Division.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

4. ROAD TRANSPORT (VEHICLE REGISTRATION) AMENDMENT (HEAVY VEHICLE REGISTRATION CHARGES) BILL 2009

Date Introduced:	21 October 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Transport

Purpose and Description

1. The Bill amends the *Road Transport (Vehicle Registration) Act 1997* (the Act) to enable registration charges to be imposed on heavy vehicles in accordance with nationally agreed reforms; repeals the *Road Transport (Heavy Vehicles Registration Charges) Act 1995* and the *Road Transport (Heavy Vehicles Registration Charges) Regulation 2006*; and makes consequential amendments to other Acts and Regulations.
2. According to the Agreement in Principle Speech, the purpose of the Bill is:

to provide a more administratively efficient mechanism by which the New South Wales Government can give practical effect to ongoing national commitments for heavy vehicle registration charges. The bill will align the heavy vehicle legislation in New South Wales with parallel legislative drafting in other jurisdictions, and will reduce the risk of New South Wales potentially facing a comparative financial disadvantage.

Background

3. The Bill is a result of consultation by the National Transport Commission between the States, Territories and relevant industry groups. According to the Agreement in Principle Speech, the New South Wales Government has also undertaken consultation with the road transport sector in NSW.
4. Under the current legislation, a Cabinet decision and legislative amendment is required each time a National Transport Commission's Heavy Vehicle Charges Determination is implemented or new and more productive heavy vehicles are introduced. The National Transport Commission's Heavy Vehicle Charges Determinations aim to ensure that expenditure on road maintenance and improvement is proportionate to their use by heavy vehicles.
5. Accordingly, the Bill provides that the annual registration charge for a chargeable heavy vehicle that is registered during a particular financial year is the amount for the type (or kind) of vehicle specified (or calculated) in accordance with the regulations. The Bill applies to vehicles with a "mass rating for charging" of more than 4.5 tonnes.

Road Transport (Vehicle Registration) Amendment (Heavy Vehicle Registration Charges) Bill 2009

6. According to the Agreement in Principle Speech, placing the descriptions of heavy vehicles and the annually adjusted charges in the regulation is intended to improve the “agility” of NSW in responding to technological and intergovernmental change.
7. As suggested in the Agreement in Principle Speech, the Bill makes provision for transparency in the charging regime by “strengthening the prohibition on any regulatory amendment attempted without reference to an Australian Transport Council or intergovernmental agreement”.
8. Finally, the Bill consolidates various Acts relating to road transport into a single Act, which is consistent with the Better Regulation Principles and will simplify the application and interpretation of road transport legislation for legal practitioners, administrators and NSW road users.

The Bill

9. 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 a day to be appointed by proclamation.

Clause 3 repeals the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

Clause 4 repeals the *Road Transport (Heavy Vehicles Registration Charges) Regulation 2006*.

Schedule 1 Amendment of Road Transport (Vehicle Registration) Act 1997 No 119

Registration charges for heavy vehicles

Schedule 1 [5] inserts a new Part in the *Road Transport (Vehicle Registration) Act 1997* dealing with registration charges for chargeable heavy vehicles. A chargeable heavy vehicle is a motor vehicle or trailer that has a mass of more than 4.5 tonnes.

The new Part contains the following provisions:

(a) **Proposed section 17** contains definitions for terms and expressions used in the new Part.

(b) **Proposed section 17A** provides that the annual registration charge for a chargeable heavy vehicle that is registered, or the registration of which is renewed, during a particular financial year is the amount for the type or kind of vehicle specified by, or calculated in accordance with, the regulations.

(c) **Proposed section 17B** prevents the registration charge for a chargeable heavy vehicle that is a primary producer’s vehicle from exceeding the motor vehicle tax that would be payable for the vehicle were it to be taxed under the *Motor Vehicles Taxation Act 1988*. The proposed section substantially re-enacts the provisions of section 10 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(d) **Proposed section 17C** provides for the determination of registration charges for periods of registration that are shorter than 12 months. An additional administration fee is payable for registrations of less than 12 months. The proposed section substantially re-enacts the provisions of section 7 (2)–(4) of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(e) **Proposed section 17D** defines registration charges to include administration fees for the purposes of Division 4 (When registration charges payable) of the new Part. The proposed section substantially re-enacts the provisions of section 11 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(f) **Proposed section 17E** requires registration charges to be paid when an application is made for registration or a renewal of registration of a chargeable heavy vehicle. It is an offence not to pay the charges (maximum penalty of \$2,200 for an individual or \$11,000 for a corporation). The proposed section substantially re-enacts the provisions of section 12 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(g) **Proposed section 17F** makes it an offence for an owner of a chargeable heavy vehicle to use or drive the vehicle, or cause or permit the vehicle to be driven, on a road or road related area if the vehicle is not registered or the registration charges for the vehicle have not been paid. The maximum penalty is \$2,200 for an individual or \$11,000 for a corporation. The proposed section substantially re-enacts the provisions of section 13 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(h) **Proposed section 17G** requires the Roads and Traffic Authority (the Authority) to determine registration charges and administration fees under the new Part. The proposed section substantially re-enacts the provisions of section 17 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(i) **Proposed section 17H** enables the Authority or an appropriate officer to require vehicle owners and other persons in charge of vehicles to produce vehicles and provide information so that the Authority may determine whether and what charges are payable under the new Part. It is an offence not to comply with the requirement and also an offence to provide information knowing it to be false or misleading (maximum penalty of \$2,200 for an individual or \$11,000 for a corporation for both offences). The proposed section substantially re-enacts the provisions of section 18 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(j) **Proposed section 17I** enables the Authority at any time to adjust the charges or administration fees payable for the purpose of complying with the new Part and to require payment of charges or fees or additional charges or fees payable after such an adjustment. It is an offence not to comply with the requirement (maximum penalty of \$2,200 for an individual or \$11,000 for a corporation for both offences). The proposed section substantially re-enacts the provisions of section 19 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(k) **Proposed section 17J** requires changes, during the currency of registration of a chargeable heavy vehicle, in the construction, equipment, configuration, use or ownership of the vehicle to be notified to the Authority. The appropriate amount of charges or additional charges must be paid forthwith to the Authority. It is an offence not to pay the charges (maximum penalty of \$2,200 for an individual or \$11,000 for a corporation). The proposed

Road Transport (Vehicle Registration) Amendment (Heavy Vehicle Registration Charges) Bill 2009 section substantially re-enacts the provisions of section 20 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(l) **Proposed section 17K** sets out the way charges or additional charges payable under proposed section 17J are to be calculated. The proposed section substantially re-enacts the provisions of section 21 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(m) **Proposed section 17L** gives the Authority the discretion to refund charges when the registration of a chargeable heavy vehicle is cancelled before it expires on the application of the person in whose name the vehicle is registered. The proposed section substantially re-enacts the provisions of section 22 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(n) **Proposed section 17M** restricts the time within which a refund may be granted to 3 years or less from the date of payment of the registration charges. The proposed section substantially re-enacts the provisions of section 23 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(o) **Proposed section 17N** makes it an offence to use or drive, or to cause or permit to be driven, a chargeable heavy vehicle registered by the Commonwealth or another State or Territory on a road or road related area in a configuration that is different from the configuration under which it is registered or exempt from registration (maximum penalty \$11,000). It is not an offence if the changed configuration would result in the same or lower registration charges in the jurisdiction in which it is registered or so exempt. The proposed section substantially re-enacts the provisions of section 31 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(p) **Proposed section 17O** makes it clear that the new Part does not affect powers under the road transport legislation or other Acts to charge fees or charges or take actions relating to vehicle registration. The proposed section substantially re-enacts the provisions of section 32 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(q) **Proposed section 17P** requires the relevant registrar of the Local Court to send particulars of convictions or orders for the payment of money under the new Part to the Authority. It also enables orders for the payment of money to be treated as orders for the payment of money under the *Civil Procedure Act 2005*. The proposed section substantially re-enacts the provisions of section 34 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(r) **Proposed section 17Q** provides for the Authority or an appropriate officer to issue certificates to be used in proceedings as evidence of matters under the new Part, including amounts owing for registration charges. The proposed section substantially re-enacts the provisions of section 35 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(s) **Proposed section 17R** enables the Minister, the Authority or an appropriate officer to revoke or vary or impose conditions on certain actions that may be taken by the Minister or the Authority under the new Part or the regulations. It is an offence to fail to comply with a condition in force under the proposed section (maximum penalty of \$2,200 for an individual or \$11,000 for a corporation). The proposed section substantially re-enacts the provisions of section 36 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

(t) **Proposed section 17S** appropriates from the Consolidated Fund into the Roads and Traffic Authority Fund amounts received for charges and administration fees under the proposed Act. The proposed section substantially re-enacts the provisions of section 37 of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*.

Schedule 1 [1]–[4], [6] and [7] make various amendments to the Act that are consequential on the repeal of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995* and the enactment of the new registration charges provisions.

Savings and transitional provisions

Schedule 1 [8] amends clause 1 of Schedule 3 to the Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [9] inserts a new Part in Schedule 3 to the Act containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Consequential amendment of other Acts and Regulations

Schedule 2 makes amendments to certain Acts and Regulations that are consequential on the repeal of the *Road Transport (Heavy Vehicles Registration Charges) Act 1995* and the enactment of the new registration charges provisions.

Issues Considered by the Committee

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

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

Issue: Clause 2 - Commencement by proclamation - Provides the executive with unfettered control over the commencement of an Act.

10. The Committee notes that the proposed Act is to commence on a day to be appointed by proclamation. This may delegate to the Government the power to commence the Act on whatever day it chooses or not at all. However, the Committee notes the reasons provided by the Minister that the Bill transfers the calculation of heavy vehicle registration charges into the regulations. According to the Minister, it is preferable that the Act and the regulations be proclaimed at the same time in order to ensure the effective implementation of heavy vehicle registration charges. Further, according to the Minister, once the regulations are finalised, the Act will be proclaimed at the same time as the regulations.

<p>11. The Committee accepts the advice receive above and has not identified any further issues under s 8(1)(b)(iv) LRA</p>
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The Committee makes no further comment on this Bill.

5. STATE REVENUE LEGISLATION AMENDMENT (DEFENCE FORCE CONCESSIONS) BILL 2009

Date Introduced: 21 October 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon Joseph Tripodi MP
Portfolio: Finance

Purpose and Description

1. The objects of the Bill are:

(a) to amend the *First Home Owner Grant Act 2000* to allow a grant, similar to the first home owner grant, to be paid to members of the Defence Force who are first home owners but do not comply with the residence requirement for the first home owner grant; and

(b) to amend the *Duties Act 1997* to provide that members of the Defence Force do not have to comply with the residence requirement to be eligible for duty concessions under the First Home Plus scheme.

Background

2. The NSW Government administers a number of State and Commonwealth first home benefit schemes through the Office of State Revenue. The First Home Owners Grant is a grant of \$7,000 to assist in the purchase of a first home.
3. The First Home Owners Boost is a temporary additional grant funded by the Commonwealth Government. The New Home Buyers Supplement is an additional temporary assistance program funded by the NSW Government and the First Home Plus provides stamp duty exemptions or concessions.
4. As stated in the Agreement in Principle Speech, under the first home benefit schemes, first home buyers in NSW are able to receive up to \$34,990 in grants and stamp duty concessions.
5. A key requirement of the first home benefit schemes is that the new homeowner must live in the dwelling as their principal place of residence. This means that at least one of the applicants must occupy the home as their principal place of residence for at least six months, commencing within 12 months of purchase.
6. As stated in the Agreement in Principle Speech, the residence requirement is intended to ensure that first home buyers benefits are received on the purchase of a first home for owner occupation, not a first investment property.
7. The Office of State Revenue conducts checks to ensure that applicants comply with the residence requirement. Applicants who do not comply with the requirement are required to repay the grant and duty, and in some cases they may be subject to penalties.

8. The Chief Commissioner of State Revenue has discretion to reduce the period of occupation; extend the period when occupation commences; or exempt an applicant from the residence requirement.
9. However, as stated in the Agreement in Principle Speech many Australian Defence Force personnel, due to the nature of their employment, are unable to comply with the residence requirement and are unable to benefit from the discretion to fully or partly waive the requirement.
10. Australian Defence Force personnel are required provide unrestricted service, which means that they must be free to be posted or deployed across Australia and overseas if necessary. Operational requirements and a rotation policy means that Australian Defence Force personnel are likely to be moved to various localities a number of times, sometimes at short notice and often on an unpredictable basis in response to events such as peacekeeping missions, natural disasters or war.
11. As stated in the Agreement in Principle Speech, as a result of the unrestricted service requirement, many Australian Defence Force personnel may be excluded from eligibility for first home benefits.
12. Accordingly, the Bill makes amendments to provide equivalent financial assistance to members of the permanent Australian Defence Force who are unable to meet the residence requirement for the First Home Owner Grant and other first homeowner assistance schemes provided by the NSW Government.
13. Under the Bill, members of the Australian Defence Force who are otherwise eligible for first home assistance will be able to obtain the first home buyers benefits without being disadvantaged by the requirement for unrestricted service with the Australian Defence Force.
14. However, members of the Army Reserve, Naval Reserve and Air Force Reserve are not subject to the same unrestricted service requirement as those of the permanent defence forces. Accordingly, the proposed assistance will only apply to members of the regular Army, the permanent Navy and Air Force.

The Bill

15. Outline of provisions

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

Clause 2 provides that the proposed Act is taken to have commenced on the day on which the Bill for the proposed Act was introduced into the Legislative Assembly.

Schedule 1 Amendment of First Home Owner Grant Act 2000 No 21

Schedule 1 [3] provides that a grant (an ADF home buyer's grant) is payable to members of the Defence Force if the applicant or, if there are 2 or more of them, each of the applicants complies with the eligibility criteria for a first home owner grant (except for the residence requirement) and is enrolled to vote in NSW elections.

Under the residence requirement, a first homeowner must live in the home for at least 6 months, within 12 months after the purchase of the home. The amount of the ADF home

State Revenue Legislation Amendment (Defence Force Concessions) Bill 2009

buyer's grant will be the same as the first home owner grant, and the first home owner boost and NSW new home buyers supplement will apply to applicants for the ADF home buyer's grant in the same way as they apply to applicants for the first home owner grant. If there are 2 or more applicants for the grant, at least one of the applicants must be a member of the Defence Force. The amendment applies only to members of the Permanent Forces of the Defence Force and not to members of the Reserves.

Schedule 1 [1] is a consequential amendment.

Schedule 1 [2] removes unnecessary and incorrect cross-references in existing provisions.

Schedule 1 [4] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Duties Act 1997 No 123

Schedule 2 [1] provides for a similar concession in relation to the First Home Plus scheme, which entitles first homeowners to an exemption from or reduction in duty payable on the purchase of a first home or block of land for a first home. The amendment provides that members of the Defence Force (who are enrolled to vote in NSW elections) do not have to comply with the residence requirement to be eligible for the scheme.

Schedule 2 [2] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Issues Considered by the Committee

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

6. SURVEYING AMENDMENT BILL 2009

Date Introduced:	21 October 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Kristina Keneally MP
Portfolio:	Planning

Purpose and Description

1. The object of this Bill is to amend the *Surveying Act 2002* to change the name of that Act to the *Surveying and Spatial Information Act 2002* and to set out the objects of that Act and clarify the matters to be covered by the definition of land survey in that Act.
2. The Bill also provides a specific exclusion from the provisions of that Act that require land surveys and mining surveys to be carried out by registered land surveyors and mining surveyors for firms that engage such surveyors to do work on their behalf.
3. The Bill further enables the Board of Surveying and Spatial Information to provide information to the public on a range of matters in connection with the discipline of surveying and related disciplines

Background

4. Section 40 of the principal Act required that a review be undertaken five years after the introduction of the principal Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
5. The report on the Review of the *Surveying Act 2002* was tabled before Parliament in October 2008. The Report indicated that, while there were some areas for reform, the policy objectives of the Act did remain valid and the terms of the Act were, in the main, appropriate to secure those policy objectives.
6. This Bill reflects the report recommendations, the outcomes of further consultation with key professional groups and government agencies, as well as collateral amendments, which clarify aspects of the principal Act.

The Bill

7. 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.

Schedule 1 Amendment of Surveying Act 2002 No 83

Schedule 1 [1] amends section 1 of the Principal Act to change the name of that Act to the *Surveying and Spatial Information Act 2002*.

Schedule 1 [2] inserts proposed section 2A into the Principal Act which sets out the objects of the Act. Those objects include providing for the co-ordination of surveys carried out by public authorities, the registration of land surveyors and mining surveyors and the investigation of and provision of advice relating to the collection, collation and dissemination of spatial information and other surveys and maintaining and ensuring the integrity of the State cadastre.

Schedule 1 [3] amends section 3 of the Principal Act to insert a definition of State cadastre.

Schedule 1 [11] amends section 28 of the Principal Act to include in the list of specified functions of the Board the function of providing advice to the Minister on the maintenance of the integrity of the State cadastre.

Schedule 1 [6] makes a consequential amendment.

Schedule 1 [3] amends section 3 of the Principal Act to include a definition of firm, which means a corporation or a partnership or other unincorporated association of persons. Existing section 21 of the Principal Act makes it an offence for a person to carry out a land survey for fee or reward, or to advertise that the person is willing to carry out a land survey for fee or reward, unless the person is a registered land surveyor or is acting under the supervision of a registered land surveyor. Existing section 22 of the Principal Act contains a similar offence in relation to mining surveys carried out by a person who is not a registered mining surveyor or acting under the supervision of a registered mining surveyor.

Schedule 1 [7] and [8] amend sections 21 and 22 of the Principal Act to provide that a firm, or a member or partner of a firm, does not commit an offence against those sections in the circumstances referred to in section 22A of the Principal Act.

Schedule 1 [9] inserts proposed section 22A into the Principal Act to specifically provide that a firm, or a member or partner of a firm, does not commit an offence against section 21 of the Principal Act so long as any land survey carried out in the name of or on behalf of the firm is carried out by a registered land surveyor or by another person who is acting under the supervision of a registered land surveyor. The proposed section also provides that a firm, or a member or partner of a firm, does not commit an offence against section 22 of the Principal Act so long as any mining survey carried out in the name of or on behalf of the firm is carried out by a registered mining surveyor or by another person under the supervision of a registered mining surveyor.

Schedule 1 [13] amends section 36 of the Principal Act to enable regulations to prescribe what constitutes relevant supervision for the purposes of the provisions of that Act.

Schedule 1 [12] inserts proposed section 29 into the Principal Act to enable the Board, as it considers appropriate, to provide information to the public in respect of the discipline of surveying and other disciplines related to the discipline of surveying. Such information might include information in respect of firms undertaking surveying services, retired or non practicing surveyors and practitioners in other related disciplines.

Schedule 1 [5] amends the definition of land survey in section 3 of the Principal Act to make it clear that the definition includes the carrying out of a survey in connection with the preparation of documents required to be prepared under the *Strata Schemes (Freehold*

Development) Act 1973 or the Strata Schemes (Leasehold Development) Act 1986 by a registered land surveyor.

Schedule 1 [4] makes a statute law revision amendment.

Schedule 1 [10] amends section 27 of the Principal Act to make it clear that the persons to be nominated for membership of the Board by the spatial information industry are to be nominated by professional associations of persons or associations of bodies of persons involved in that industry.

Schedule 1 [14] amends Schedule 3 to the Principal Act to enable regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 2 makes amendments to other Acts and instruments consequential on the change of name of the Principal Act by Schedule 1 [1].

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

Appendix 1: Index of Bills Reported on in 2009

	Digest Number
Aboriginal Land Rights Amendment Bill 2009	10
Animal Welfare Legislation Amendment Bill 2009	12
Appropriation Bill 2009	9
Appropriation (Budget Variations) Bill 2009	4
Appropriation (Parliament) Bill 2009	9
Appropriation (Special Offences) Bill 2009	9
Associations Incorporation Bill 2009	2
Barangaroo Delivery Authority Bill 2009	2
Biofuel (Ethanol Content) Amendment Bill 2009	3
Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2009	11
Casino Control Amendment Bill 2009	9
Child Protection (Nicole's Law) Bill 2009*	13
Children and Young Persons (Care and Protection) Amendment Bill 2009	6
Children and Young Persons (Care and Protection) Amendment (Children's Employment) Bill 2009	2
Children (Criminal Proceedings) Amendment (Naming of Children) Bill 2009	14
Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009	2
Civil Procedure Amendment (Transfer of Proceedings) Bill 2009	6
Coroners Bill 2009	8
Courts and Crimes Legislation Amendment Bill 2009	14
Courts and Other Legislation Amendment Bill 2009	8
Crimes (Administration of Sentences) Amendment Bill 2009	10
Crimes (Administration of Sentences) Amendment (Private Contractors) Bill 2009	2

	Digest Number
Crimes (Appeal and Review) Amendment Bill 2009	2
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2009	11
Crimes (Criminal Organisations Control) Bill 2009	5
Crimes (Forensic Procedures) Amendment Bill 2009	7
Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009	11
Crimes Legislation Amendment (Possession of Knives in Public) Bill 2009*	13
Crimes (Sentencing Procedure) Amendment (Council Law Enforcement Officers) Bill 2009	5
Criminal Legislation Amendment Bill 2009	6
Criminal Organisations Legislation Amendment Bill 2009	6
Crown Lands Amendment (Special Purpose Leases) Bill 2009	13
Education Amendment Bill 2009	3
Education Amendment (Educational Support For Children With Significant Learning Difficulties) Bill 2008*	1
Education Amendment (Publication of School Results) Bill 2009	9
Education Amendment (School Attendance) Bill 2009	13
Education Further Amendment (Publication of School Results) Bill 2009	11
Electricity Supply Amendment (Energy Savings) Bill 2009	7
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	8
Energy Legislation Amendment (Infrastructure Protection) Bill 2009	7
Fisheries Management Amendment Bill 2009	10
Food Amendment (Meat Grading) Bill 2008*	1
Game and Feral Animal Control Amendment Bill 2009	8
Garling Inquiry (Clinician and Community Council) Bill 2009*	5
Gas Supply Amendment (Ombudsman Scheme) Bill 2009	5
Government Information (Information Commissioner) Bill 2009	9

	Digest Number
Government Information (Public Access) Bill 2009	9
Government Information (Public Access) (Consequential Amendments and Repeal) Bill 2009	9
Greyhound Racing Bill 2009	5
Harness Racing Bill 2009	5
Hawkesbury-Nepean River Bill 2009	4
Health Legislation Amendment Bill 2009	4
Heritage Amendment Bill 2009	7
Home Building Amendment (Insurance) Bill 2009	6
Housing Amendment (Registrable Persons) Bill 2009	13
Hurlstone Agricultural High School Site Bill 2009	3, 6
Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009	4
Industrial Relations Further Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009	13
Judicial Officer's Amendment Bill 2009	14
Land Acquisition (Just Terms Compensation) Amendment Bill 2009	7
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	2
Liquor Amendment (Special License) Conditions Bill 2008	1
Liquor Amendment (Temporary License Freeze) Bill 2009	11
Liquor and Registered Clubs Legislation Amendment Bill 2009	13
Local Government Amendment (Planning and Reporting) Bill 2009	10
Major Events Bill 2009	12
Mining Amendment (Safeguarding Land And Water) Bill 2009*	7
Motor Accidents Compensation Amendment Bill 2009	6
Motor Accidents (Lifetime Care And Support) Amendment Bill 2009	7
Motor Sports (World Rally Championship) Bill 2009	9

	Digest Number
NSW Lotteries (Authorised Transaction) Bill 2009	8
NSW Trustee and Guardian Bill 2009	8
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	2
National Parks and Wildlife (Broken Head Nature Reserve) Bill 2009	9
Occupational Health and Safety Amendment (Authorised Representatives) Bill 2009	11
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	8
Parliamentary Remuneration Amendment (Salary Packaging) Bill 2009	10
Parking Space Levy Bill 2009	3
Personal Property Securities (Commonwealth Powers) Bill 2009	9
Prevention of Cruelty to Animals Amendment Bill 2009	13
Protection of Public Ownership Bill 2009	12
Racing Legislation Amendment Bill 2009	5
Real Property Amendment (Land Transactions) Bill 2009	12
Real Property and Conveyancing Legislation Amendment Bill 2009	4
Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009	8
Road Transport (Driver Licensing) Amendment (Demerit Points) Bill 2009*	13
Road Transport (General) Amendment (Consecutive Disqualification Periods) Bill 2009	10
Road Transport Legislation Amendment (Traffic Offence Detection) Bill 2009	9
Road Transport (Vehicle Registration) Amendment (Heavy Vehicle Registration Charges) Bill 2009	14
Rookwood Necropolis Repeal Bill 2009	8
Rural Fires Amendment Bill 2009	13
Rural Lands Protection Amendment Bill 2009	8
Shop Trading Amendment Bill 2009	12
State Emergency and Rescue Management Amendment Bill 2009	8

	Digest Number
State Emergency Service Amendment Bill 2009	9
State Revenue Legislation Amendment Bill 2009	9
State Revenue Legislation Amendment (Defence Force Concessions) Bill 2009	14
State Revenue Legislation Further Amendment Bill 2009	9
Statute Law (Miscellaneous Provisions) Bill 2009	9
Surveillance Devices Amendment (Validation) Bill 2009	4
Surveying Amendment Bill 2009	14
Succession Amendment (Intestacy) Bill 2009	5
Telecommunications (Interception and Access) (New South Wales) Amendment Bill 2008	1
Transport Administration Amendment (CountryLink Pensioner Booking Fee Abolition) Bill 2009	3
Transport Administration Amendment (Rail Trails) Bill 2009	13
Western Lands Amendment Bill 2008	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009
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	03/12/08		10	1
Crimes (Administration of Sentences) Amendment Bill 2008	Attorney General and Minister for Justice	2/12/07			15	
Crimes (Administration of Sentences) Amendment Bill 2009	Minister for Corrective Services	8/08/09				10
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	6/02/09		9	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07	13/2/09	1		2
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1	
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning		12/06/08		8	
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7		
Home Building Amendment	Minister for Fair Trading		30/10/08		10, 13	
Liquor Legislation Amendment Bill 2008	Minister for Gaming and Racing	24/11/08	5/01/09		14	2
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07	22/01/09	1		2
Parking Space Levy Bill 2009	Minister for Transport	23/03/09	26/05/09			3, 8
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1, 2		
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1		
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2009

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Aboriginal Land Rights Amendment Bill 2009	N, R		N, R	N	
Animal Welfare Legislation Amendment Bill 2009		N			
Associations Incorporation Bill 2009		N, R			N, R
Barangaroo Delivery Authority Bill 2009	N				
Biofuel (Ethanol Content) Amendment Bill 2009	N			N	N, R
Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2009	R, N				
Child Protection (Nicole's Law) Bill 2009*	R, N				
Children (Criminal Proceedings) Amendment (Naming of Children) Bill 2009	N			N	
Courts and Crimes Legislation Amendment Bill 2009	R, N			N	
Courts and Other Legislation Amendment Bill 2009	R, N			N	
Crimes (Administration of Sentences) Amendment Bill 2009	R, N, C	N, R	N, R		
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2009	R, N				
Crimes (Criminal Organisations Control) Bill 2009	R, N		R		
Crimes (Forensic Procedures) Amendment Bill 2009	N				
Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009	R, N				
Crimes Legislation Amendment (Possession of Knives in Public) Bill 2009*		R, N			
Criminal Legislation Amendment Bill 2009		N			
Criminal Organisations Legislation	R, N			N	
Crown Lands Amendment (Special Purpose Leases) Bill 2009		N, R			
Education Amendment (School Attendance) Bill 2009	R, N			N	
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	N				

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Fisheries Management Amendment Bill 2009	R, N			N	
Game and Feral Animal Control Amendment Bill 2009	R, N				
Gas Supply Amendment (Ombudsman Scheme) Bill 2009				N	
Greyhound Racing Bill 2009				N	
Harness Racing Bill 2009				N	
Hawkesbury-Nepean River Bill 2009				N	
Health Legislation Amendment Bill 2009	N				
Heritage Amendment Bill 2009	N			N, R	
Home Building Amendment (Insurance) Bill 2009	N				
Housing Amendment (Registrable Persons) Bill 2009	N, R		R		
Industrial Relations Further Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009				N	
Land Acquisition (Just Terms Compensation) Amendment Bill 2009	N				
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	N, R, C	R			
Liquor Amendment (Special Licence) Conditions Bill 2008				N, R	
Liquor Amendment (Temporary Licence Freeze) Bill 2009	R, N		R, N	R, N	
Major Events Bill 2009	R, N	R, N		R, N	R, N
Motor Accidents Compensation Amendment Bill 2009				N	
Motor Sports (World Rally Championship) Bill 2009	N				
NSW Lotteries (Authorised Transaction) Bill 2009	R, N				
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	N		N	N	
Occupational Health and Safety Amendment (Authorised Representatives) Bill 2009	N				
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	R, N				
Parking Space Levy Bill 2009				N	N, C

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Racing Legislation Amendment Bill 2009				N	
Real Property Amendment (Land Transactions) Bill 2009	N			N	
Road Transport (General) Amendment (Consecutive Disqualification Periods) Bill 2009*	N			N	
Road Transport (Vehicle Registration) Amendment (Heavy Vehicle Registration Charges) Bill 2009				N	
Real Property and Conveyancing Legislation Amendment Bill 2009	N, R				
Rural Fires Amendment Bill 2009	N	N		N	
Succession Amendment (Intestacy) Bill 2009	N			N	
Surveillance Devices Amendment (Validation) Bill 2009	N, R				
Western Lands Amendment Bill 2008				R	

Key

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

Appendix 4: Index of correspondence on regulations

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008	Digest 2009
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	5/01/09	10	2
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10	