

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 15 of 2009

9 November 2009

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

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

Legislation Review Digest, Legislation Review Committee, Parliament NSW Legislative Assembly. [Sydney, NSW]: The Committee, 2009, 59pp, 30cm

Chair: Mr Allan Shearan MP

9 November 2009

ISSN 1448-6954

1. Legislation Review Committee—New South Wales

2. Legislation Review Digest No. 15 of 2009

I Title.

II Series: New South Wales. Parliament. Legislative Assembly. Legislation Review Committee Digest; No. 15 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. Commission For Children And Young People Amendment Bill 2009

Issue: Privacy – Proposed section 38A *Commission for Children and Young People Act 1998*; Proposed section 13(4A) *Criminal Records Act 1991*

15. The Committee notes the that intention of the Bill is to protect children through ensuring that complete and reliable criminal history information is available across jurisdictions through the working with children check. However, the Committee refers to Parliament whether the Bill, including proposed section 38A strikes the appropriate balance between the personal rights of the individual, in particular the right to privacy and the interests of the community.

Issue: Proposed section 38A(4) – Inappropriate delegation of legislative power

17. The Committee is of the view that any proposed amendments to extend the application of the one year trial period of proposed section 38A *Commission for Children and Young People Act 1998* could be more appropriately made by an amending Act rather than through the Regulations. Accordingly, the Committee refers to Parliament for its consideration whether proposed section 38A(4) is an inappropriate delegation of legislative power.

Issue: Clause 2 – Commencement by Proclamation - Provide the executive with unfettered control over the commencement of an Act.

19. The Committee accepts the above reasons and has not identified any issues identified under s 8A (1)(b)(iv) of the Legislation Review Act 1987.

2. Criminal Procedure Amendment (Case Management) Bill 2009

Issue: Right To Silence and Onus Of Proof – Schedule 1 [4]: Clause 143 (Defence response – court-ordered pre-trial disclosure); Clause 145 (Dispensing with formal proof), Clause 146 (Sanctions for non-compliance with pre-trial disclosure requirements):

29. The Committee, therefore, is of the view that clauses 143, 145 and 146 potentially undermine the right to silence, onus of proof or the presumption of innocence notwithstanding that clause 148 enables discretion for the courts to waive any requirements of the pre-trial disclosure requirements under Division 3.
30. The Committee also notes the relevant reports of the SCAG Working Group on Criminal Trial Reform, the SCAG Deliberative Forum, the Law Reform Commission of Western Australia and the NSW Law Reform Commission during the period of 1999 and 2000, which had recommended reciprocal pre-trial disclosure for the prosecution and the defence. Accordingly, the Committee does not consider the Bill as unduly trespassing on individual rights and liberties.

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

32. The Committee accepts the advice above and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

3. Food Amendment (Food Safety Supervisors) Bill 2009

Issue: Clause 2 – Commencement by Proclamation - Provide the executive with unfettered control over the commencement of an Act.

12. The Committee notes the above reasons and has not identified any issues identified under s 8A (1)(b)(iv) of the *Legislation Review Act 1987*.

4. Health Practitioner Regulation Bill 2009

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

5. Passenger Transport Amendment (Taxi Licensing) Bill 2009

Issue: Retrospectivity – Schedule 1 [12]: insertion of proposed Part 12 into Schedule 3 – Provisions consequent on enactment of *Passenger Transport Amendment (Taxi Licensing) Act 2009*:

19. The Committee will always be concerned to identify the retrospective effects of legislation that may have an adverse impact on a person. However, the Committee considers that the retrospectivity of the proposed Part 12 to be inserted into Schedule 3 of the Principal Act, does not, in this instance, unduly trespass on individual rights as it aims to provide a seamless transition and to provide arrangements to cover the conditions and licences existing before the commencement of the proposed Act.

20. Therefore, the Committee is of the view that by inserting savings and transitional provisions as a consequence of the enactment of the proposed Act, under proposed Part 12 of Schedule 3 contained in the Schedule 1 [12] of the Bill, does not trespass unduly on individual rights.

6. Road Transport (Vehicle Registration) Amendment (Special Number-Plates) Bill 2009

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

7. State Revenue Further Amendment Bill (No 2) 2009

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

**8. Wine Grapes Marketing Board (Reconstitution) Amendment
(Extension) Bill 2009**

- | |
|---|
| 13. The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</i> |
|---|

Part One – Bills

SECTION A: Comment on Bills

1. COMMISSION FOR CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2009

Date Introduced:	30 October 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Graham West MP
Portfolio:	Juvenile Justice

Purpose and Description

1. The object of the Bill is to amend the *Commission for Children and Young People Act 1998* to give effect to the Council of Australian Government (COAG) agreement to enable the exchange of information between the States and Territories about the criminal history of a person who works with or wishes to work with children. Accordingly, the Bill proposes to amend the *Commission for Children and Young People Act 1998*:
 - (a) to enable the Commissioner of Police to disclose information relating to criminal histories to Commonwealth and interstate law enforcement agencies and employment screening agencies of other States and Territories; and
 - (b) makes a consequential amendment to the *Criminal Records Act 1991*.

Background

2. Working with children checks have been established throughout Australia in order to protect children. Through a working with children check, an employer can obtain information to assist in estimating the risk to children posed by a person who works with or wishes to work with children. However, as stated in the Agreement in Principle Speech:

For these checks to be effective, we need access to complete and reliable criminal history information. Currently, the variations in legislative arrangements in Australian States and Territories mean that jurisdictions cannot release full criminal histories to other jurisdictions for their working with children checks.
3. The Bill implements an agreement made by the COAG on 29 November 2008 to enable a full and consistent exchange of information between the States, Territories and Commonwealth about the criminal history of people working with children.
4. In 2008, COAG agreed that legislative barriers to the release of full criminal history information for working with children checks would be removed by all jurisdictions. COAG also agreed that jurisdictions should provide to each other, on a one-year trial basis, background information about relevant criminal history information so that working with children check screening units could better assess the risk presented by a person with a criminal record.
5. Accordingly, the Bill amends the *Commission for Children and Young People Act 1998* and the *Criminal Records Act 1991* to allow for the release of criminal history

Commission For Children And Young People Amendment Bill 2009

information to all jurisdictions for the working with children check. The proposed amendments to the *Criminal Records Act 1991* also facilitate the exchange of criminal history information for working with children checks by providing a defence to the offence of disclosing information about a spent conviction if the disclosure was made in accordance with proposed section 38A of the *Commission for Children and Young People Act 1998*.

6. The Bill amends the *Commission for Children and Young People Act 1998* to allow for the inter-jurisdictional exchange of the following criminal history information for working with children checks:
 - convictions, including spent convictions, quashed convictions and offences for which a pardon has been given;
 - information relating to criminal charges, whether heard or not heard, proven, dismissed, withdrawn or discharged,
 - information about all charges and convictions that is held by police. “Circumstances information” may include information such as whether a child was the target of an offence or was otherwise impacted by an offence. This power will have effect for 12 months, but may be extended by the regulations.
7. As stated in the Agreement in Principle Speech, the working with children check is subject to safeguards to ensure that information is dealt with appropriately and to limit any potential misuse of the information. Participation in the information exchange will be governed by the intergovernmental agreement between the States, Territories and Commonwealth and only screening agencies that meet certain participation requirements will be able to receive information through the exchange.
8. According to the Agreement in Principle Speech, the New South Wales Police Force will only release extended criminal history information to an interstate screening agency if:
 - the screening agency is authorised by the Government of the State or Territory in which they operate to conduct working with children checks;
 - has a legislative basis for screening that prohibits further release or use of the information;
 - complies with the relevant privacy, human rights and records management legislation;
 - has policies that reflect principles of natural justice; and
 - has evidence-based risk assessment frameworks and appropriately skilled staff to assess the risks to children.

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 or days to be appointed by proclamation.

Schedule 1 Amendment of Commission for Children and Young People Act 1998 No 146

Schedule 1 [6] inserts proposed section 38A into the *Commission for Children and Young People Act 1998*. The proposed section enables the Commissioner of Police to disclose information about the criminal history of persons for the purposes of child related employment screening to CrimTrac, the police forces of the Commonwealth or other States or Territories and specified employment screening agencies of other States or Territories. Such information may then be disclosed to the employment screening agencies. The Commissioner of Police may also disclose, or arrange for the disclosure of, information about the circumstances of offences or alleged offences to be disclosed to the employment screening agencies. The power to provide this additional information will only have effect for a period of 12 months but may be extended by the regulations.

Schedule 1 [5] makes a consequential amendment.

Schedule 1 [7] makes it clear that interstate child-related employment screening and related disclosures, as effected by proposed section 38A, may be carried out despite any other Act or law to the contrary.

Schedule 1 [1]–[4] and [8]–[10] update references to Government bodies and employees.

Schedule 1 [11] enables regulations providing for savings and transitional matters to be made consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Criminal Records Act 1991 No 8

Schedule 2 makes it a defence to the offence of disclosing information about a spent conviction, quashed conviction or pardon if the disclosure was made in accordance with proposed section 38A of the *Commission for Children and Young People Act 1998*.

Issues Considered by the Committee

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

Issue: Privacy – Proposed section 38A *Commission for Children and Young People Act 1998*; Proposed section 13(4A) *Criminal Records Act 1991*

10. The Bill makes a number of amendments to allow for the disclosure of information relating to the criminal history of a person for the purposes of interstate child related employment screening. For example, proposed section 38A(1) reads that the Commissioner of Police may disclose (or arrange for a member of the NSW Police Force to disclose) information relating to any criminal history of persons to the following persons for the purposes of interstate child-related employment screening:

- (a) CrimTrac,
- (b) a police force or service of the Commonwealth or another State or Territory,
- (c) an approved interstate screening agency.

11. Proposed section 38A(3) also reads that the Commissioner of Police may also disclose (or arrange for a member of the NSW Police Force to disclose) to an

Commission For Children And Young People Amendment Bill 2009

approved interstate screening agency information relating to the circumstances of an offence or alleged offence disclosed under this section for the purposes of interstate child-related employment screening.

12. The Committee notes that the power to disclose information relating to the circumstances of an offence or an alleged offence under proposed section 38A(3) covers a broad range of information about a person's criminal history. As stated in the Agreement in Principle Speech, information about the circumstances of an offence may include "whether a child was the target of an offence or was otherwise impacted by an offence".
13. Proposed section 38A(5) also provides that a wide range of information may be provided to approved interstate screening agencies. This information includes spent convictions, quashed convictions, offences for which a pardon has been given as well as information relating to criminal charges that have not been heard, dismissed, withdrawn or discharged. The Committee also notes the proposed amendments to section 13 *Criminal Records Act 1991* to facilitate the exchange of information about spent convictions.
14. Further, proposed section 38A(6) does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record of persons, may be disclosed apart from the Act.

15. The Committee notes the that intention of the Bill is to protect children through ensuring that complete and reliable criminal history information is available across jurisdictions through the working with children check. However, the Committee refers to Parliament whether the Bill, including proposed section 38A strikes the appropriate balance between the personal rights of the individual, in particular the right to privacy and the interests of the community.

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

Issue: Proposed section 38A(4) – Inappropriate delegation of legislative power

16. Under proposed section 38A(4), proposed section 38A(3) would apply for a period of twelve months after the commencement of the section. As stated in the Agreement in Principle Speech, this is consistent with the COAG agreement, which provided for a one-year trial period of the exchange of information about a person's criminal history across jurisdictions for the working with children check. However, the Committee notes that under proposed section 38A(4), the regulations may prescribe that proposed section 38A(3) apply for further time periods than the initial one-year trial period.

17. The Committee is of the view that any proposed amendments to extend the application of the one year trial period of proposed section 38A *Commission for Children and Young People Act 1998* could be more appropriately made by an amending Act rather than through the Regulations. Accordingly, the Committee refers to Parliament for its consideration whether proposed section 38A(4) is an inappropriate delegation of legislative power.

Issue: Clause 2 – Commencement by Proclamation - Provide the executive with unfettered control over the commencement of an Act.

18. The Committee notes that under Clause 2 the proposed Act is to commence on a day or days 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 advice received from the Minister that the Inter Governmental Agreement establishing the initiative has not yet been finalised. Further, the Minister has provided advice that the relevant Commonwealth legislation, which will list approved “screening units” has not yet been introduced. According to the Minister, there are also further operational issues between “screening units”, jurisdictional police and CrimTrac that need to be resolved prior to the introduction of the Bill.

19. The Committee accepts the above reasons and has not identified any issues identified under s 8A (1)(b)(iv) of the Legislation Review Act 1987.

The Committee makes no further comment on this Bill.

2. CRIMINAL PROCEDURE AMENDMENT (CASE MANAGEMENT) BILL 2009

Date Introduced: 28 October 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon John Hatzistergos MLC
Portfolio: Attorney General

Purpose and Description

1. This Bill amends the *Criminal Procedure Act 1986* in relation to case management of criminal trials; and for other purposes.
2. The Bill replaces Part 3, Division 3 of the *Criminal Procedure Act 1986*, which contains provisions relating to pre-trial disclosure in complex trials, with new provisions that provide for multiple tiers of case management.
3. Where it becomes apparent to the court that a case would benefit from pre-trial disclosure, it will be able to make relevant orders without first needing to conduct pre-trial hearings or conferences.
4. In addition to these pre-trial measures, courts will be given a general power to manage the trial on or after its commencement, such as, to make such orders, determinations and findings, or give directions or rulings, as it thinks appropriate for the efficient management and conduct of the trial. This will include making orders for disclosure that were made or could have been made prior to the commencement of the trial under the proposed amendments.
5. Schedule 1[4] substitutes Division 3 of Part 3 of Chapter 3 of the principal Act to set out a new scheme for the management of proceedings on indictment. Clause 137 and 138 require the prosecutor, at a time to be specified by the judge at the first mention of the matter, to give the accused person notice of the prosecution case, and for the accused person to give a response to the prosecutor's notice. The court has been given the discretion to determine the time frames within which these notices must be given.
6. The clauses set out the matters that are to be included in the notices. Among other things, the prosecution notice will include a statement of facts, and copies of any documents and reports the prosecution proposes to adduce at trial. The defence response will include notice of any consents to be given under section 190 of the *Evidence Act*, and statements as to whether the accused intends to give a notice of alibi or a notice of intention to adduce evidence of substantial mental impairment.
7. Clause 139 enables the court to order the prosecutor and the accused person to attend one or more pre-trial hearings. The court may make various orders and rulings during those hearings—such as, the admissibility of evidence or on questions of law that might arise at the trial. These will be binding on the trial judge unless, in the opinion of the trial judge, it would not be in the interests of justice. If a pre-trial hearing

was held and certain matters were not raised at the hearing, the leave of the court will be required before those matters can be raised at the trial.

8. The pre-trial disclosure requirements for the accused person are to provide a defence response in accordance with clause 143, including statements as to the facts alleged by the prosecution that the defence intends to dispute, and notice of certain matters that the defence intends to raise in relation to the evidence proposed to be adduced by the prosecution. This includes a requirement to give notice as to whether the admissibility of any proposed evidence disclosed by the prosecution will be disputed, and the basis for the objection.
9. Clause 145 enables the court to dispense with formal proof of certain matters in proceedings where the matters were not disputed in the course of pre-trial disclosure. Clause 145(1) is of relevance to facts. The proposed section enables the court to allow evidence of two or more witnesses to be adduced in the form of a summary in certain circumstances.
10. Clause 146 enables the court to refuse to admit evidence that was not disclosed in accordance with the pre-trial disclosure requirements of the proposed division and to exclude expert evidence where a copy of the report of the evidence was not provided to the other party in accordance with those requirements. The court may grant an adjournment if a party seeks to adduce evidence not previously disclosed that would prejudice the case of the other party to the proceedings. The court cannot use its powers under the proposed section to prevent the accused person adducing evidence unless the prosecutor has complied with the pre-trial disclosure requirements.
11. Clause 149D provides that, with exceptions, the prosecutor is not required to disclose anything in a notice under the proposed division if it has already been included in the brief of evidence or otherwise provided or disclosed to the accused person. Similarly, the accused person is not required to include in a notice anything that has already been provided to the prosecutor.

Background

12. The Government formed the Trial Efficiency Working Group, made up of members of the judiciary and representatives of the legal profession, and government and non-government bodies, to consider the causes of delay in criminal trials and to propose possible solutions.
13. This Bill aims to implement the recommendations of the working group, and according to the Agreement in Principle speech, is the result of discussion and agreement between the Chief Judge at Common Law of the Supreme Court of New South Wales, the Chief Judge of the District Court, the Director of Public Prosecutions, and the Senior Public Defender on the best way to give effect to those recommendations.
14. At present, a court is able to order a similar form of pre-trial disclosure under section 136 of the *Criminal Procedure Act 1986* where, having regard to the likely length of the trial, the nature of the evidence to be adduced at the trial, or the legal issues likely to arise, the court is satisfied that the trial will be complex. However, the provisions were very rarely used, especially in the District Court. The working group believed

Criminal Procedure Amendment (Case Management) Bill 2009

that the test for identifying complex criminal trials was unnecessarily restricting the application of section 136.

15. The major difference with the new pre-trial disclosure provisions is that a court will be able to order them in any case where it would be in the interests of the administration of justice to do so, rather than applying the existing complex criminal trial test. Schedule 1[3] substitutes section 130A of the principal Act to extend its application to all proceedings on indictment, not just sex offences. All orders made during the course of a trial, not just pre-trial orders, will be binding on a subsequent trial judge.
16. Clause 149F creates miscellaneous provisions, including clarification that the proposed Act is not intended to limit any disclosure requirements currently imposed on the parties in a criminal trial by the common law, other legislation and rules of court, and the prosecution guidelines of the Office of the Director of Public Prosecutions. The proposed Act will only prevail over such requirements where it is impossible, or impracticable, to comply with both.

The Bill

17. The object of this Bill is to amend the *Criminal Procedure Act 1986* (the Principal Act):
 - (a) to make further provision in relation to the management of cases to reduce delays in proceedings on indictment, including provision in respect of pre-trial disclosure, pre-trial hearings and pre-trial conferences, and
 - (b) to extend section 130A of that Act to all proceedings on indictment and to orders whether or not they are pre-trial orders (currently, that section provides for pre-trial orders by Judges in sexual offence proceedings to be binding on trial Judges, except in certain circumstances).

18. **Outline of provisions**

Schedule 1 Amendment of *Criminal Procedure Act 1986* No 209

Case management in proceedings on indictment

Currently, Division 3 of Part 3 of Chapter 3 of the Principal Act enables the Supreme Court or District Court to order pre-trial disclosure by the prosecutor and the accused person in proceedings on indictment, but only if satisfied that the trial will be a complex trial having regard to the likely length of the trial, the nature of the evidence to be adduced at the trial and the legal issues likely to arise at the trial.

Schedule 1[4] substitutes Division 3 of Part 3 of Chapter 3 of the Principal Act to set out a new scheme for the management of proceedings on indictment. The proposed Division contains the following provisions:

Proposed section 134 sets out the purpose of the proposed Division, which is principally to reduce delays in proceedings on indictment.

Proposed section 135 defines certain terms for the purposes of the proposed Division.

Proposed section 136 requires the presiding Judge, at the first mention of proceedings in the court before which the trial is proposed to be heard, to give directions for the conduct of

the trial and, in particular, to give directions as to the time by which the notices under proposed sections 137 and 138 are to be given by the prosecution and the defence.

Proposed section 137 requires the prosecutor to give the accused person notice of the prosecution case and sets out the matters that are to be included in the notice.

Proposed section 138 requires the accused person to give a response to the notice of the prosecution case and sets out the matters to be included in the response.

Proposed section 139 enables the court to order the prosecutor and the accused person to attend one or more pre-trial hearings. The court may make various orders and rulings during those hearings (for example, as to the admissibility of evidence or on questions of law that might arise at the trial) that will be binding on the trial Judge except in certain circumstances. The proposed section also prevents certain matters being raised at trial without the leave of the court if a pre-trial hearing was held and those matters were not raised at the pre-trial hearing.

Proposed section 140 enables the court to order that the prosecutor and the accused person's legal representative attend a pre-trial conference for the purpose of reaching agreement regarding the evidence to be admitted at trial. The court may make such an order only if the accused person is represented by an Australian legal practitioner.

Proposed section 141 enables the court to order further pre-trial disclosure on application of a party to the proceedings or on the court's own initiative. The court must be of the opinion that it is in the interests of the administration of justice to do so. The pre-trial disclosure requirements for the prosecutor are to provide a notice of certain matters and to respond to the defence response to the notice. The pre-trial disclosure requirement for the accused person is to provide a defence response in accordance with proposed section 143.

Proposed section 142 sets out the matters to be included in the prosecution's notice to the accused person for the purposes of proposed section 141.

Proposed section 143 sets out the court-ordered pre-trial disclosure requirements for the accused person. Those requirements include the giving of a more detailed defence response to the prosecution's case than the requirements for a defence response under proposed section 138. The proposed section 143 requirements for a defence response include statements as to the facts, matters or circumstances alleged by the prosecution that the defence intends to dispute and notice of certain matters that the defence intends to raise in relation to the evidence proposed to be adduced by the prosecution.

Proposed section 144 requires the prosecutor to provide specified information to the accused person in response to the defence response given under proposed section 143.

Proposed section 145 enables the court to dispense with formal proof of certain matters in proceedings where the matters were not disputed in the course of pre-trial disclosure. The proposed section also enables the court to allow evidence of 2 or more witnesses to be adduced in the form of a summary in certain circumstances.

Proposed section 146 enables the court to refuse to admit evidence that was not disclosed in accordance with the pre-trial disclosure requirements of the proposed Division and to exclude expert evidence where a copy of the report of the evidence was not provided to the other party in accordance with those requirements. The court may also grant an

adjournment if a party to proceedings seeks to adduce evidence not previously disclosed that would prejudice the case of the other party to the proceedings. The court cannot use its powers under the proposed section to prevent the accused person adducing evidence unless the prosecutor has complied with the pre-trial disclosure requirements.

Proposed section 147 provides that the obligation to undertake pre-trial disclosure under the proposed Division continues during the proceedings concerned.

Proposed section 148 enables the court to waive any of the pre-trial disclosure requirements under the proposed Division.

Proposed section 149 deals with the manner in which notices are to be given under the proposed Division.

Proposed section 149A provides that copies of proposed documents, exhibits and other things need not be included in a notice under the proposed Division if it is impractical to do so. However, they are to be made available for inspection at a reasonable time and place.

Proposed section 149B prevents the prosecutor in proceedings disclosing the address or the telephone number of proposed witnesses and other persons in a notice under the proposed Division, except in specified circumstances.

Proposed section 149C deals with the form in which statements of witnesses are to be provided in notices under the proposed Division.

Proposed section 149D provides that the prosecutor is not required to disclose anything in a notice under the proposed Division if it has already been included in the brief of evidence or otherwise provided or disclosed to the accused person. Similarly, the accused person is not required to include anything in a notice that has been previously disclosed to the prosecution.

Proposed section 149E makes it clear that, on or after the commencement of the trial in proceedings, the court may make orders, determinations or findings, or give directions or rulings, for the efficient management and conduct of the trial, including ordering any of the parties to proceedings to make disclosures that could have been required under the proposed Division before the commencement of the trial.

Proposed section 149F contains miscellaneous provisions in relation to the proposed Division, including provisions giving the court power to resolve disputes arising from the matters dealt with in the proposed Division and stating the relationship of the proposed Division to other Acts and laws.

Orders in proceedings on indictment

Currently, section 130A of the Principal Act provides that a pre-trial order made by a Judge in certain sexual offence proceedings is generally binding on the trial Judge in the proceedings unless it would not be in the interests of justice for the order to be binding.

Schedule 1 [3] substitutes section 130A of the Principal Act to extend its application to all proceedings on indictment. The amendment also extends the application of the section to orders of the trial Judge in the proceedings so that where there is a new hearing ordered or

the proceedings are discontinued the orders of the original trial Judge are generally binding on another trial Judge hearing fresh proceedings.

Other amendments

Schedule 1 [5] inserts proposed section 314A into the Principal Act to require the Attorney General to review the provisions of proposed Division 3 of Part 3 of Chapter 3 of the Principal Act as soon as possible after 24 months after the commencement of the proposed section.

Schedule 1 [6] amends Schedule 2 to the Principal Act to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [7] amends Schedule 2 to the Principal Act to include specific savings and transitional provisions in relation to the proposed amendments.

Issues Considered by the Committee

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

Issue: Right To Silence and Onus Of Proof – Schedule 1 [4]: Clause 143 (Defence response – court-ordered pre-trial disclosure); Clause 145 (Dispensing with formal proof), Clause 146 (Sanctions for non-compliance with pre-trial disclosure requirements):

19. Clause 143 sets out the court-ordered pre-trial disclosure requirements for the accused person. These requirements include the giving of a more detailed defence response to the prosecution's case than the requirements for a defence response under Clause 138. The requirements for a defence response include statements as to the facts, matters or circumstances alleged by the prosecution that the defence intends to dispute and notice of certain matters that the defence intends to raise in relation to the evidence proposed to be adduced by the prosecution.
20. Clause 145 enables the court to dispense with formal proof of certain matters in proceedings where the matters were not disputed in the course of pre-trial disclosure. The proposed section also enables the court to allow evidence of 2 or more witnesses to be adduced in the form of a summary in certain circumstances. Clause 145 (1) is of relevance to facts.
21. Clause 146 outlines the sanctions for non-compliance with pre-trial disclosure requirements. The proposed section enables the court to refuse to admit evidence that was not disclosed in accordance with the pre-trial disclosure requirements of the proposed Division and to exclude expert evidence where a copy of the report of the evidence was not provided to the other party in accordance with those requirements. The court may also grant an adjournment if a party to proceedings seeks to adduce evidence not previously disclosed that would prejudice the case of the other party to the proceedings. However, the court cannot use its powers under the proposed section to prevent the accused person adducing evidence unless the prosecutor has complied with the pre-trial disclosure requirements.
22. The Committee notes that the general debate about pre-trial disclosure and the specific debate about compulsory defence disclosure, had a long history in NSW and

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in Australia, as far back as in the mid-1980s. Pre-trial disclosure had been considered by the NSW Law Reform Commission on a number of occasions.

23. The Committee also notes that the main argument against defence disclosure focuses on principles such as the right to silence, onus of proof and the presumption of innocence.
24. The Working Group of the Australian Standing Committee of Attorney-Generals (SCAG) on Criminal Trial Procedure, the SCAG Deliberative Forum on Criminal Trial Reform and the Law Reform Commission of Western Australia, between September 1999 and June 2000, had released reports recommending reciprocal pre-trial disclosure for the defence and prosecution.¹
25. Under the Bill, clause 146 provides the sanctions for non-compliance with pre-trial disclosure requirements. Together with clauses 143 and 145, this may undermine the principle that the prosecution usually carries the onus of proof and, that the failure by the defendant to meet the disclosure requirements may lead to the undermining of the presumption of innocence.
26. The Committee observes that both the SCAG Working Group on Criminal Trial Procedure and the SCAG Deliberative Forum had opposed the introduction of formal sanctions for breaches of or non-compliance of disclosure requirements and instead, preferred a sentencing discount scheme as an incentive for co-operation.²
27. However, the Committee also considers the recommendations of the NSW Law Reform Commission in its Report 95 on The Right To Silence (2000), which recommended judges be given a discretion to impose consequences for non-disclosure including a discretion to refuse to admit material not disclosed in accordance with the requirements, and a discretion to grant an adjournment to a party whose case would be prejudiced by material introduced by the other party which was not disclosed in accordance with the requirements.
28. Clause 146 (3) provides the court to grant an adjournment to a party if the other party seeks to adduce evidence in the proceedings that the other party failed to disclose in accordance with pre-trial disclosure requirements. The Committee further notes that under clause 148, the court, by order, may also waive requirements of the pre-trial disclosure that apply under Division 3 of the Bill.

29. The Committee, therefore, is of the view that clauses 143, 145 and 146 potentially undermine the right to silence, onus of proof or the presumption of innocence notwithstanding that clause 148 enables discretion for the courts to waive any requirements of the pre-trial disclosure requirements under Division 3.

30. The Committee also notes the relevant reports of the SCAG Working Group on Criminal Trial Reform, the SCAG Deliberative Forum, the Law Reform Commission of Western Australia and the NSW Law Reform Commission during the period of 1999 and 2000, which had recommended reciprocal pre-trial disclosure for the prosecution and the defence. Accordingly, the Committee does not consider the Bill as unduly trespassing on individual rights and liberties.

¹ Gareth Griffith, Briefing Paper No. 12/2000, *Pre-Trial Defence Disclosure: Background to the Criminal Procedure Amendment (Pre-Trial Disclosure) Bill 2000*, Executive Summary.

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

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

31. The Committee notes that under Clause 2, the proposed Act is to commence on a day or days 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 accepts the following advice received from the Attorney General's office:

The main reason for commencement upon proclamation is to allow the Attorney General's Department to coordinate the commencement of the legislation with efforts to educate the profession about its operation, as well as giving stakeholders in the criminal justice system the time to prepare their own internal protocols on how they will comply with any new obligations. The amendments represent a significant change in the way criminal trials are conducted, and will require a cultural change in the way the profession approaches criminal matters. The Director of Public Prosecutions and Public Defenders, Legal Aid, the Aboriginal Legal Service and other stakeholders will need time to digest and understand what the amendments mean for them, and change current practices and prepare internal procedures on how to meet their obligations, while courts may need to develop rules or practice notes on the new requirements. There are also plans to publish articles summarising the legislation in the Law Society Journal and possibly the Judicial Officers' Bulletin.

An additional reason for the commencement on proclamation is that the court system will need to develop forms for the 'pre-trial conference form' under the proposed s 140. Commencement on proclamation will give the Government and the stakeholders the time to do all these things, so that the legislation can have meaningful effect from the moment it commences, rather than having an initial period after commencement where there is confusion and mistakes are made by those in the profession and other court users that could create problems and undermine the effectiveness of the reforms and confidence in the operation of the legal system. While the trial efficiency measures, if implemented properly and with sufficient time for preparation by those involved in the court system, will result in shorter trials, lower costs and greater efficiencies, hurried implementation upon assent may create delays because the participants will not properly understand how the new system operates. Commencement upon proclamation will avoid these issues.

32. The Committee accepts the advice above and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

The Committee makes no further comment on this Bill.

² Gareth Griffith, Briefing Paper No. 12/2000, Executive Summary.

3. FOOD AMENDMENT (FOOD SAFETY SUPERVISORS) BILL 2009

Date Introduced:	29 October 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Ian MacDonald MLC
Portfolio:	Primary Industries

Purpose and Description

1. The Bill amends the *Food Act 2003* (the Act):
 - (a) to require the proprietors of certain food businesses to appoint food safety supervisors who hold certain qualifications and have the authority to supervise food handling;
 - (b) to require that those appointments be notified to relevant enforcement agencies;
 - (c) to allow the Food Authority to approve registered training organisations to issue food safety supervisor certificates to persons who have the prescribed qualifications;
 - (d) to make other amendments to facilitate the administration of the Act.

Background

2. According to the Agreement in Principle Speech, poor food handling practices in hospitality businesses cause over a third of food-borne illness outbreaks in New South Wales. The direct cost to New South Wales is estimated at \$150 million. As stated in the Agreement in Principle Speech:

The hospitality industry is one of the cornerstones of the New South Wales economy. The industry is keen to target food-borne illness and continue to build its reputation. This bill is the next step in realising the New South Wales Government's twin visions of a safe and secure food supply coupled with a strong, profitable hospitality industry.

3. Under the national Food Standards Code all food businesses in New South Wales are already required to meet basic food safety and hygiene requirements. Local councils, under a partnership arrangement with the New South Wales Food Authority undertake regulation and enforcement in this area.
4. The Food Standards Code requires that food handlers have adequate skills and knowledge in relation to food safety. However, as stated in the Agreement in Principle Speech, this approach does not require accredited training and has been criticised across all jurisdictions, including New South Wales, as being unenforceable.
5. Accordingly, the Bill intends to protect consumers from food-borne illness by ensuring that food handlers have the skills and knowledge to handle food. The Bill will require mandatory food handler training to formalise skills and knowledge by requiring the completion of accredited training within the national vocational and education and

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training system. The initiative will align with the training requirements for a food safety supervisor already prescribed in Queensland and Victoria.

6. According to the Agreement in Principle Speech, The Food Authority has consulted extensively with industry in the development of the initiative. The Hospitality Sector Co-regulatory Working Group, which included Australian Hotels Association, ClubsNSW, Restaurant and Catering New South Wales and the Australian National Retailers Association worked with the New South Wales Food Authority to develop its key features.
7. The Bill only covers businesses conducting defined high-risk food handling activities, namely, the processing of ready to eat, potentially hazardous foods. Food businesses that sell only pre-packaged food will not be affected. Further, as stated in the Agreement in Principle Speech businesses licensed by the New South Wales Food Authority will be exempt because they are already subject to specific food safety management requirements.
8. As stated in the Agreement in Principle Speech, there are a number of different types of businesses that may be required to meet food safety supervisor requirements. These businesses have different needs, priorities, issues and challenges. Accordingly, the Bill and underlying regulations enable a staged approach to the implementation of the food safety supervisor requirement.
9. According to the Agreement in Principle Speech, during stage one of the implementation the regulations will exempt not-for-profit community and charitable causes; school canteens; delicatessens who sell slice smallgoods, cheeses and processed meats; greengrocers who process fresh fruit and vegetables; seafood retailers who sell only raw seafood and childcare centres. The food safety supervisor requirement may be extended to these in future stages if supported by consultation and evaluation.

The Bill

10. Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Food Act 2003 No 43

Amendments relating to food safety supervisors

Schedule 1 [4] inserts proposed Division 3 into Part 8 of the Act, which contains the following provisions relating to food safety supervisors:

Proposed section 106 contains definitions of terms used in the proposed Division. In particular, relevant enforcement agency for a food business means the enforcement agency specified on the Food Authority's website as the relevant enforcement agency for food businesses of the same class. Enforcement agencies under the Act are the Food Authority, local councils and certain other bodies that are appointed under the Act as enforcement agencies and bodies prescribed by the regulations (currently, the Lord Howe Island Board).

Temporary premises means premises comprising a tent or stall or the like from which food is sold by retail on an occasional basis only, such as for a fete, fair, market or other event.

Proposed section 106A provides that the proposed Division applies to ready-to-eat food that is potentially hazardous but does not apply to certain prepackaged food.

Proposed section 106B sets out the criteria for appointing a person as a food safety supervisor for premises or for a mobile catering business. The person must hold a food safety supervisor certificate and have the authority to supervise the relevant food handling activities and ensure that the handling is done safely. In the case of a food safety supervisor for premises, the person must not hold the position of food safety supervisor for any other premises. In the case of a food safety supervisor for a mobile catering business, the person must not hold the position of food safety supervisor for any other business. A food safety supervisor certificate is a certificate issued in accordance with the regulations by a registered training organisation approved under proposed section 106H or by another person or body prescribed by the regulations.

Proposed section 106C requires the proprietor of a food business to ensure that, before food to which the proposed Division applies is processed and sold by retail at premises in the course of carrying on the business, at least one food safety supervisor is appointed for the premises. The proposed section also requires the proprietor to ensure that at least one person continues to be appointed as food safety supervisor for the premises at all times at which food to which the proposed Division applies is processed and sold from the premises in the course of carrying on the business. A defence is provided in cases where a food safety supervisor ceases to be appointed for the premises and the relevant food handling activities are not carried out on the premises on more than 30 days after that occurs.

Proposed section 106D requires the proprietor of a mobile catering business to ensure that, before food to which the proposed Division applies is processed in the course of carrying on the business at least one food safety supervisor is appointed for the business. The proposed section also requires the proprietor to ensure that at least one food safety supervisor continues to be appointed for the business at all times that food to which the proposed Division applies is processed in the course of carrying on the business. A defence is provided in cases where a food safety supervisor ceases to be appointed for the business and the relevant food handling activities are not carried out on more than 30 days after that occurs.

Proposed section 106E requires the proprietor of a food business to give notice to the relevant enforcement agency of the appointment of a food safety supervisor. The requirement does not apply to the appointment of a food safety supervisor for temporary premises or for premises that are a vehicle or vessel from which food is sold at more than one location.

Proposed section 106F requires the proprietor of a food business to give notice to the relevant enforcement agency of a change in the particulars provided in relation to a food safety supervisor. The requirement does not apply to a food safety supervisor for temporary premises or for premises that are a vehicle or vessel from which food is sold at more than one location.

Proposed section 106G requires the proprietor of a food business for which a food safety supervisor is required to be appointed to keep a copy of the relevant food safety supervisor

certificate and produce it for inspection on the request of an authorised officer of an enforcement agency.

Proposed section 106H enables the Food Authority to approve registered training organisations (within the meaning of the *Vocational Education and Training Act 2005*) to issue food safety supervisor certificates. Regulations may be made in relation to approvals.

Proposed section 106I enables regulations to be made in respect of certain fees and charges under the proposed Division and provides that no fee or charge is payable in relation to the giving of notice under proposed section 106E or 106F.

Proposed section 106J enables the regulations to provide for exemptions from all or any of the provisions of the proposed Division.

Schedule 1 [5] amends section 113A of the Act to require the Food Authority to keep records of relevant enforcement agencies for the purposes of proposed Division 3 of Part 8.

Schedule 1 [9] amends Schedule 2 to the Act to provide for specific savings and transitional provisions relating to the operation of proposed Division 3 of Part 8 and, in particular, to provide 12-month lead-in times for the new offences under the proposed Division.

Schedule 1 [1]–[3] make consequential amendments.

Other amendments

Schedule 1 [6] amends section 133F of the Principal Act to give the Food Authority the power to remit the whole or part of any fee accompanying an application to correct or add to particulars on, or remove particulars from, the register of offences.

Schedule 1 [7] inserts proposed section 137 into the Principal Act to provide for the way in which documents may be served under that Act.

Schedule 1 [8] amends Schedule 2 to the Principal Act to enable the regulations to prescribe savings and transitional provisions as a consequence of the enactment of the proposed Act.

Issues Considered by the Committee

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

Issue: Clause 2 – Commencement by Proclamation - Provide the executive with unfettered control over the commencement of an Act.

11. The Committee notes that the proposed Act is to commence on a day or days 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 advice received from the Minister that there are a number of arrangements that need to be finalised before the Bill's commencement, namely "matters such as training, compliance and guidance documentation, along with drafting of relevant Regulations." According to the Minister these actions are expected to take approximately six months to allow

for “detailed consultation with training providers, local government and industry”.

12. The Committee notes the above reasons and has not identified any issues identified under s 8A (1)(b)(iv) of the *Legislation Review Act 1987*.

The Committee makes no further comment on this Bill.

4. HEALTH PRACTITIONER REGULATION BILL 2009

Date Introduced: 28 October 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon Carmel Tebbutt MP
Portfolio: Health

Purpose and Description

1. This Bill applies as a law of this State a national law relating to health practitioner regulation.
2. New South Wales is not adopting Divisions 3 to 12 of Part 8 of the National Law (and related definitions), which provide for health, performance and conduct matters relating to registered health practitioners and students. New South Wales will participate in national registration as a co-regulatory jurisdiction.
3. New South Wales will retain a separate system to deal with complaints about registered health practitioners and students practising or studying in this State. The provisions dealing with the complaints system for registered health practitioners and students practising or studying in New South Wales will be addressed in this Bill.
4. Under the proposed New South Wales approach, the national registration boards will be expressly precluded from dealing with complaints about matters occurring in New South Wales and those matters must be referred to the New South Wales authorities, including the Health Care Complaints Commission.
5. The Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland sets out the provisions of the National Law which is to be part of the law of New South Wales. The National Law is applied as a law of Queensland by the *Health Practitioner Regulation National Law Act 2009* of Queensland and will be applied as the law in force in other participating States or Territories, or a law that corresponds to the National Law will be enacted in other participating States or Territories.
6. Under the national law, registered health practitioners will pay a single registration fee that will entitle them to work across the country without being required to meet additional criteria or pay additional fees. The national law will ensure that nationally uniform processes and criteria exist for registering practitioners and accrediting educational programs.
7. The national law provides for the mandatory reporting of practitioners who are placing the public at risk of harm due to the manner in which they practise, including practising while intoxicated or affected by drugs; practising in a manner that represents a substantial departure from accepted professional practice; or engaging in sexual misconduct in the course of practice.

8. The national law provides for the registration at a national level of 10 health professions: chiropractic, dentistry (including dental hygienists, dental therapists and dental prosthetists), medicine, nursing and midwifery, optometry, osteopathy, pharmacy, physiotherapy, podiatry and psychology. Four other professions will be added in July 2012: Aboriginal and Torres Straight Islander health practice, Chinese medicine, medical radiation practice and occupational therapy.

Background

9. Before the National Law commences, it will be necessary for New South Wales, and other States and Territories, to enact legislation providing for consequential amendments of other Acts and transitional and savings arrangements consequent on the adoption of the National Law.
10. The Bill provides for the implementation in New South Wales of the Health Practitioner Regulation National Law. The national law sets out the regulatory framework for the new National Registration and Accreditation Scheme for Health Professionals, which implements the agreement signed in 2008 by the Council of Australian Governments (COAG) to establish the National Registration Scheme by 1 July 2010.
11. According to the Agreement in Principle speech:
- The processes for approving standards for the accreditation of education courses have been contentious. During the consultation process on the national law professional groups identified concerns that the original Council of Australian Government's agreement gave the ministerial council final power of approval over the standards that will be used to accredit courses. Under clause 11 (4) of the national law the council now will have power to intervene only where there is a concern that the standards will have a substantive and negative impact on the recruitment or supply of health practitioners. The council will be required also to give consideration to the potential impact of the council's direction on the quality and safety of health care.
12. The NSW health care complaints system divides the complaints and disciplinary roles between the health professional boards and the independent Health Care Complaints Commission.
13. The Agreement in Principle speech explained that:
- The national law's complaints model adopts processes similar to those that currently apply in most other States and Territories. It is markedly different from the current New South Wales model as it relies primarily on the health professional boards to undertake disciplinary functions and does not provide for an independent investigator and prosecutor, such as the Health Care Complaints Commission...the Government has brokered an agreement with the other States and Territories, which will enable New South Wales to maintain the current New South Wales health complaints system and retain the New South Wales Health Care Complaints Commission.
14. Therefore, the Bill specifically provides that New South Wales will not adopt the national law complaints model, as set out in Divisions 3 to 12 of Part 8 of the national law.
15. Further legislation will be required at a State level to re-establish and consolidate the New South Wales professional regulation system since New South Wales is not adopting the National Complaints Model.

The Bill

16. The object of this Bill is to adopt the Health Practitioner Regulation National Law (the National Law) hosted by the Queensland Parliament and set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland. The National Law gives effect to the *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions*, signed by the Council of Australian Governments on 26 March 2008 and establishes a national registration and accreditation scheme for:

- (a) the regulation of health practitioners, and
- (b) the registration of students undertaking:
 - (i) programs of study that provide a qualification for registration in a health profession, or
 - (ii) clinical training in a health profession.

17. Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act is the *Health Practitioner Regulation Act 2009*.

Clause 2 provides for the commencement of the proposed Act on:

- (a) 1 July 2010, or
- (b) a later day appointed by a proclamation made before 1 July 2010.

Clause 3 provides for definitions of terms used in the proposed Act. Specifically, clause 3 (1) provides that the Health Practitioner Regulation National Law (the National Law) set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland, as applied in New South Wales, is to be known as the *Health Practitioner Regulation National Law (NSW)*.

Clause 3 (2) provides that if a term is used in the proposed Act and in the National Law, the term has the same meaning in the proposed Act as it has in the National Law.

Part 2 Adoption of Health Practitioner Regulation National Law

Clause 4 provides that the National Law, as in force from time to time, applies as a law of New South Wales (clause 4 (a)).

Each jurisdiction that adopts the National Law will have an equivalent provision in its adopting Act so that the National Law will be the law of each jurisdiction and is not only the law of Queensland. The effect is that a person registered as a health practitioner under the National Law is registered nationally, rather than requiring registration in each jurisdiction, and each of the entities created by the National Law is created not only by Queensland law but the law of each jurisdiction. For example, each National Board will be not only a Queensland body but also a body of each of the jurisdictions in which the National Law is applied. Section 7 of the National Law clarifies that the effect is the creation of one single national entity rather than separate bodies in each jurisdiction.

Clause 4 (b) provides that the National Law, as applying in New South Wales, may be referred to by the name *Health Practitioner Regulation National Law (NSW)*.

Clause 4 (c) provides that the National Law, as applying in New South Wales, is part of the proposed Act. This is to ensure that the text of the National Law has effect for all purposes in New South Wales as an ordinary Act of Parliament. The effect of the proposed provision is that a reference in legislation to “an Act” or “any other Act” will include the National Law as applying in New South Wales.

Clause 5 defines some generic terms used in the National Law for the purposes of the application of that Law in New South Wales. Specifically, clause 5 provides that in the *Health Practitioner Regulation National Law (NSW)*:

- (a) the term Magistrate means a Magistrate appointed under the *Local Court Act 2007*, and
- (b) the term this jurisdiction means New South Wales.

Clause 6 provides that Divisions 3 to 12 of Part 8 of the National Law (and related definitions) are not to be adopted by New South Wales. This is because New South Wales will be retaining, with minor modifications, its existing complaints system in relation to registered health practitioners and students. These provisions will be dealt with in the consequential amendments and transitional and savings arrangements to be enacted before the National Law commences.

Clause 7 provides that a number of Acts that generally apply to New South Wales legislation do not apply to the *Health Practitioner Regulation National Law (NSW)* or instruments, including regulations, made under that Law. In particular, Acts dealing with the interpretation of legislation, financial matters, privacy, freedom of information, the role of the ombudsman and matters relating to the employment of public servants will not apply to the *Health Practitioner Regulation National Law (NSW)*. Instead, provisions have been included in the National Law to deal with each of these matters, ensuring that the same law applies in relation to each jurisdiction that adopts the National Law.

Part 3 Miscellaneous

Clause 8 is the general regulation-making power.

Clause 9 provides that the Minister must review the Act as soon as possible after the period of 5 years from the date of assent to the Act to determine whether the policy objectives of the Act remain valid. A copy of the report must be tabled in each House of Parliament.

Issues Considered by the Committee

<p>18. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p>

The Committee makes no further comment on this Bill.

5. PASSENGER TRANSPORT AMENDMENT (TAXI LICENSING) BILL 2009

Date Introduced:	30 October 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Transport

Purpose and Description

1. This Bill amends the *Passenger Transport Act 1990* with respect to taxi-cab licences; and for other purposes.
2. The main reform is the creation of a new category of non-transferable taxi licences, which will be able to be renewed each year as long as the licence holder meets the necessary conditions. On the commencement of the new legislation, this licence will be available in the Sydney metropolitan area, replacing the current "ordinary" transferable and renewable licence and "short-term" non-transferable and non-renewable licence categories.
3. This means that in Sydney, and any further areas eventually to be covered, there will no longer be non-renewable taxi licences available. This seeks to ensure greater certainty for those wanting to take up new licences. For the first time, no further new transferable licences (licences that can be sold on the secondary market) will be issued.
4. The Bill allows for the fee for the new annual licence to be determined by the Director General of NSW Transport and Infrastructure as is currently the case.
5. Under the Bill, existing transferable licences will continue to be able to be operated, renewed and bought and sold on the open market. It makes it clear that "ordinary" and "short-term" licences will continue to operate until the expiry of their terms. Ordinary licences can be renewed and transferred in accordance with the relevant provisions of the Act. Short-term licence holders will be able to obtain one of the new licences on the expiry of the term of their existing licence.
6. This Bill also makes it clear that "perpetual" licences are valid licences and that they are perpetual such that they will remain in force unless they are surrendered or lawfully cancelled. Like "ordinary" licences, this Bill makes it clear that they may also be transferred in accordance with the relevant provisions of the Act.
7. These licensing changes also aim to create certainty about the "nexus" licences: as a statutory condition of "nexus" licences, the paired WAT licences must be operated; the "nexus" licence and its WAT pair may only be transferred together; and the licences may only be transferred to another network that is an accredited operator.
8. This means that current nexus licence operators can continue operating and supporting those requiring wheelchair accessible taxis. It enshrines in the Act the

conditions under which it is understood that these licences were issued and these conditions will be enforced by New South Wales Transport and Infrastructure.

Background

9. There will be no cap on the number of new licences that may be issued. This is consistent with obligations under the national competition policy.
10. Long-term passenger demand growth is estimated to be around 3 per cent to 4 per cent, while the take-up of new licences has been around 1 per cent per annum. Growth in the taxi fleet has not kept pace with growth in demand for services.
11. From the Agreement in Principle speech:

We also know that the high cost of taxi licences is pushing up taxi fares and reducing the affordability of taxi services. In the past 12 months, the price of an ordinary Sydney licence has increased by 16 per cent, to \$414,000, and this is not sustainable. According to the Independent Pricing and Regulatory Tribunal, licence costs are the second-largest input into increases in metropolitan taxi fares. This is a double-edged sword for the industry. The more expensive taxi fares are, the fewer people tend to use the services. This inevitably impacts on the long-term viability of the industry. Ongoing increases in licence costs, with commensurate increases in fares, could lead to the industry effectively pricing itself out of the transport market. If taxi fares are too expensive and there is a demand for service the reality is that competing providers will find ways to fill the gap.

12. According to the Agreement in Principle speech:

The Government does not want a flood of new licences on the market. Experience in other jurisdictions has shown that in the long run this does not benefit anybody... Instead, we want gradual, sustainable growth in taxi licences.

13. The Government will soon be announcing the annual fee. Wheelchair-accessible taxi licences will still be available for \$1,000 a year in metropolitan areas, and continue to be free in country areas. NSW Transport and Infrastructure will also monitor the impact of the new arrangements to ensure that the objectives of the Government are being met.

The Bill

14. The object of this Bill is to amend the *Passenger Transport Act 1990* (the Principal Act) as follows:
 - (a) to provide for non-transferrable and renewable taxi-cab licences having terms of 12 months (annual licences), with such licences to be phased in,
 - (b) to recognise, and standardise provisions applying to, the category of existing taxi-cab licences (nexus licences) associated with licences for wheelchair accessible taxis (paired licences),
 - (c) to validate certain existing operative taxi-cab licences issued before the commencement of the Principal Act and to validate previous transactions relating to them,
 - (d) to make other provision of a savings and transitional nature.

15. **Outline of provisions**

Schedule 1 Amendment of *Passenger Transport Act 1990* No 39

New licence scheme

Schedule 1 [4] provides for new taxi-cab licences to have terms of 12 months, if they are for taxi-cabs operated wholly or partly in the Metropolitan transport district (Sydney) or are licences, or licences of a class, prescribed by order of the Director-General. In any other case, a taxi-cab licence (an ordinary licence) is to have a term determined by the Director-General of the Department of Transport and Infrastructure (the Director-General) or a term so determined not exceeding 6 years (a short-term licence).

Schedule 1 [1] and [3] make consequential amendments.

Schedule 1 [5] omits sections 32C and 32D and inserts proposed sections 32C–32DA into the Principal Act.

Proposed section 32C enables annual licences to be renewed and continues the existing provision for renewal of ordinary licences.

Proposed section 32D continues the existing provision for transferral of ordinary licences and prohibits the transfer of annual and short-term licences except on the death of the licence holder (as is currently the case for short-term licences).

Proposed section 32DA applies to all taxi-cab licences and makes it clear that they can be let or sublet without the approval of the Director-General.

Schedule 1 [6] provides for licence fees for annual licences to be payable when the licences are first issued and when they are renewed.

Schedule 1 [7] makes it clear that the amount of a licence fee determined by the Director-General is not limited to the amount required to cover the costs of the taxi-cab licensing scheme.

Schedule 1 [10] provides for the fees payable for annual licences to be determined by the Director-General.

Schedule 1 [8] and [9] make consequential amendments.

Savings and transitional provisions

Schedule 1 [11] enables regulations to be made containing savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 1 [12] inserts proposed Part 12 into Schedule 3 to the Principal Act. The proposed Part contains the following provisions:

Division 1 (proposed clauses 56 and 57).

Division 2 (proposed clauses 58–60).

Division 3 (proposed clauses 61–63).

Division 4 (proposed clauses 64–68).

Statute law revision

Schedule 1 [2] updates references to a Government department and the head of that department.

Issues Considered by the Committee

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

Issue: Retrospectivity – Schedule 1 [12]: insertion of proposed Part 12 into Schedule 3 – Provisions consequent on enactment of *Passenger Transport Amendment (Taxi Licensing) Act 2009*:

16. Division 2 (proposed clauses 58–60) in the proposed Part 12 to be inserted into Schedule 3 of the Principal Act continues existing ordinary licences and short-term licences after the commencement of the proposed Act and provides for the continuation of existing licences on the introduction of annual licences. Any existing ordinary licence is renewable and both short-term and ordinary licences are transferrable (but only as permitted by the applicable provisions of Part 4 of the Principal Act). The Division also enables applications for licences that are pending when the annual licensing scheme comes into force to be dealt with as applications for short-term or ordinary licences.
17. Division 3 (proposed clauses 61–63) in the proposed Part 12 to be inserted into Schedule 3 applies to taxi-cab licences issued before the commencement of the Principal Act that are operative or could be operative immediately before the commencement of the proposed Act. The Division validates the licences and previous transactions relating to them. The licences will be in force until surrendered or cancelled and are transferrable. Existing conditions are saved and provisions that apply generally to taxi-cab licences under the Principal Act are applied to the licences (except provisions relating to licence terms, renewal and initial licence fees). Division 3 is subject to Division 4 which also contains provisions that apply to such licences, if those licences are also nexus licences or paired licences.
18. Division 4 (proposed clauses 64–68) in the proposed Part 12 to be inserted into Schedule 3 provides for nexus licences and paired licences to be identified by order of the Director-General published in the Gazette. The Division validates the licences. Licences issued before the commencement of the Principal Act will also be subject to Division 2, other licences will be subject to the applicable provisions of Part 4 of the Principal Act. The conditions to which nexus and paired licences are subject, and the terms of the licences (in the case of ordinary and short-term licences), are set out in the Division. The conditions link the operation of taxi-cabs under nexus licences with the continued operation of wheelchair accessible taxi-cabs under associated paired licences and also limit the transfer of such licences. New licence documents, which do not create new licences, may be issued for nexus licences and paired licences.
- 19. The Committee will always be concerned to identify the retrospective effects of legislation that may have an adverse impact on a person. However, the Committee considers that the retrospectivity of the proposed Part 12 to be inserted into Schedule 3 of the Principal Act, does not, in this instance, unduly trespass on individual rights as it aims to provide a seamless transition and to provide arrangements to cover the conditions and licences existing before the commencement of the proposed Act.**

20. Therefore, the Committee is of the view that by inserting savings and transitional provisions as a consequence of the enactment of the proposed Act, under proposed Part 12 of Schedule 3 contained in the Schedule 1 [12] of the Bill, does not trespass unduly on individual rights.

The Committee makes no further comment on this Bill.

6. ROAD TRANSPORT (VEHICLE REGISTRATION) AMENDMENT (SPECIAL NUMBER-PLATES) BILL 2009

Date Introduced: 28 October 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon David Campbell MP
Portfolio: Transport

Purpose and Description

1. This Bill amends the *Road Transport (Vehicle Registration) Act 1997* to make further provision in respect of special number-plates.
2. The Bill contains amendments to the *Road Transport (Vehicle Registration) Act 1997* to:
 - make explicit the power of the RTA to enter into commercial arrangements for the provision of marketing and other services with respect to special number-plates;
 - provide for the concessionaire to fix fees and charges for special number-plates and related services without a requirement for ministerial approval or gazettal, including allowing the market to fix fees for sale by public auction;
 - broaden the definition of special number-plates to allow the RTA to determine what is a special number-plate, including to convert general issue plates to special number-plates;
 - provide the RTA with powers to issue special number-plates independently of vehicle registration, with persons who are not registered operators;
 - provide that "issue" of a number-plate does not constitute physical possession, and includes entering into an agreement for rights to a number-plate that will not be displayed on a vehicle;
 - require any special number-plate arrangements to include a provision ensuring that a party to the arrangements will be subject to the same restrictions with respect to privacy and personal information protection requirements as the RTA under the *Privacy and Personal Information Protection Act 1998*.
3. Concession arrangements will exclude the supply of special number-plates for vehicles over 4.5 tonnes gross vehicle mass, general issue number-plates, and regulatory and conditional number-plates.

Background

4. The Bill introduces minor reforms to facilitate the granting of a concession of the Roads and Traffic Authority's [RTA] special number-plate business. These

Road Transport (Vehicle Registration) Amendment (Special Number-Plates) Bill 2009

amendments are consistent with Government policy announced in the November 2008 New South Wales mini-budget by the Treasurer, that the lease of the RTA's special number-plate marketing business would be investigated.

5. Currently, the special number-plate business sits within the RTA, which provides personalised number-plates to the public for a fee. At present, the special number-plate operation within the RTA is not an autonomous business, and it is also not a core function of the RTA.

6. From the Agreement in Principle speech:

It is expected that a private operator will have specialised abilities beyond those within the RTA to increase the value of the business and therefore revenue from the business, while bearing a level of commercial risk that would be inappropriately taken on by a government agency. The amendments are the result of extensive consultation with the public, government agencies and business representatives with an interest in the regulation of special numberplates.

7. The Agreement in Principle speech further explained that:

The objectives of creating the special numberplate concession are: to transfer the business risk of the future volatility in business revenues to the private sector while securing a more stable income stream for the RTA; to maximise the long-term value to the Government of its right to issue special numberplates, including beyond the term of the initial concession, subject to mitigating future earnings volatility; to generate additional business growth by the application of private sector marketing and product development resources and skills; to establish a concession structure that fully aligns the Government's interests and those of the concessionaire; to create meaningful financial incentives, and sanctions, on any future operators of the business to maximise long-term value; to deliver both a competitive outcome from offering the initial concession and implement a long-term framework for the issue and management of future concessions; and to separate the policy for and regulation of numberplates from the commercial development and marketing of that product.

The Bill

8. The object of this Bill is to amend the *Road Transport (Vehicle Registration) Act 1997* to provide for the Roads and Traffic Authority (RTA) to enter into commercial arrangements to create a concession for the marketing of special number-plates issued by the Authority. The Bill provides for the RTA to determine the design, format or content that is to constitute a special number-plate.

9. The Bill also makes various minor amendments to the Act to clarify the powers of the RTA, and the power to make regulations under the Act, in connection with special number-plates.

10. Outline of provisions

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

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

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

Schedule 1 [3] inserts proposed section 8A which authorises the RTA to enter into commercial arrangements for the provision of marketing and other services to the RTA in connection with special number-plates. The section requires the commercial arrangements to include provisions to ensure that a party to the arrangements is subject to the same restrictions as apply to the RTA under the *Privacy and Personal Information Protection Act 1998*.

The section also establishes a broad regulation-making power for regulations to make provision for or with respect to the issue of special number-plates by the RTA, including provision for the issue of special number-plates independently of vehicle registration (as a commercial operation of the RTA) and the fixing and determination of fees and charges in connection with the issue of special number-plates.

Schedule 1 [1] and [2] make consequential changes to provisions for the fixing of fees by the RTA, to facilitate the fixing of charges in connection with the issue of special number-plates.

Schedule 1 [4] makes a consequential change to a provision dealing with the ownership of number-plates issued in connection with vehicle registration so that the provision extends to special number-plates that are not issued in connection with vehicle registration.

Schedule 1 [5] omits a provision that will be covered by proposed section 8A.

Issues Considered by the Committee

<p>11. 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.

7. STATE REVENUE FURTHER AMENDMENT BILL (NO 2) 2009

Date Introduced:	30 October 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Joseph Tripodi MP
Portfolio:	Finance

Purpose and Description

1. The objects of this Bill are as follows:
 - (a) to amend the *Duties Act 1997*:
 - (i) to make further provision for the valuation of land holdings of unit trust schemes, private companies and listed companies in connection with determining whether those unit trust schemes or companies are landholders for the purposes of landholder duty, and
 - (ii) to make further provision for liability for landholder duty in respect of an acquisition of an interest in a landholder that is made by a trustee or by a person acting in more than one capacity, and
 - (iii) to make persons who acquire or hold an interest in a landholder as a creditor liable for landholder duty in certain circumstances and to clarify the meaning of “interest” in a landholder, and
 - (iv) to prevent the use of terms contracts or other means to avoid liability for landholder duty, and
 - (v) to clarify the types of interests in land that are treated as dutiable property under that Act, and
 - (vi) to make other changes to that Act as a consequence of the recent significant changes to landholder duty and mortgage duty provisions,
 - (b) to amend the *Parking Space Levy Act 2009* to clarify the time within which the parking space levy must be paid in order to avoid penalty,
 - (c) to amend the *Payroll Tax Act 2007* to establish a new test for determining whether wages are taxable in this jurisdiction, which is consistent with complementary legislation being adopted by other States and the Territories.

Background

Amendments to the *Payroll Tax Act 2007*

2. The Bill makes amendments to the *Payroll Tax Act 2007* and the *Duties Act 1997* to protect the revenue and improve compliance and administration. The Bill amends the jurisdictional nexus provisions in the *Payroll Tax Act 2007* for payments of tax where an employee performs services partly in New South Wales and partly outside New South Wales. According to the Agreement in Principle Speech, these amendments were agreed to by all State and Territory Commissioners of State Revenue and commenced from 1 July 2009.
3. As stated in the Agreement in Principle Speech, payroll tax legislation has always contained nexus provisions in order to avoid double taxation on wages. Liability has

State Revenue Further Amendment Bill (No 2) 2009

previously been based on where the services are performed and where the wages are paid. However, due to electronic funds transfer, it is now common for employees to have wages paid into more than one account and in jurisdictions other than where they performed services.

4. Under the Bill, a “primary nexus test” will continue to apply the principles currently used to determine initial liability. This means that if employees provide services wholly in one State or Territory, then payroll tax is payable in that jurisdiction. As stated in the Agreement in Principle Speech, this test applies to approximately 90 per cent of the workforce in New South Wales.
5. However, new tests will apply where employees provide services in more than one jurisdiction, for example interstate truck drivers. In such situations, a “secondary nexus test” will apply so that tax will be payable in the jurisdiction where the employee has their principal place of residence.
6. In situations where an employee does not have an Australian principal place of residence, a “tertiary nexus test” will apply, determined by the ABN registered address of the business.
7. According to the Agreement in Principle Speech, in order to allow employers to adjust to the new arrangements, anyone facing transitional issues will be able to make any necessary adjustments without a penalty as part of the annual reconciliation process for the 2009-10 assessment year.

Amendments to the *Duties Act 1997*

8. The Bill amends the *Duties Act 1997* to continue the implementation of landholder duty. The new landholder duty replaced land rich duty on 1 July 2009 and imposes transfer duty on acquisitions of significant interests in companies and unit trusts that own land in New South Wales with a value of \$2 million or more. The current landholder provisions in New South Wales impose duty only on the acquisition of the legal entitlement to an interest in a landholding entity.
9. According to the Agreement in Principle Speech, the widespread use of trustees and custodians to hold interests in companies and unit trusts could result in an unintended liability to landholder duty. Accordingly, the Bill provides that the interests of certain trustees will be ignored so that landholder duty is only imposed on changes of beneficial ownership in landholding companies and trusts.
10. The Bill also amends the land value threshold test for landholder duty. The current provisions apply to companies or trusts owning land in New South Wales with an unencumbered or improved value of \$2 million or more. To enable taxpayers to easily determine whether the landholder provisions apply, the Bill provides that where the land holdings have a land value for land tax purposes, the unimproved value will be used for the purposes of the \$2 million threshold test. As stated in the Agreement in Principle Speech, this will significantly raise the threshold at which interests in companies that hold land will have a potential liability to landholder duty.
11. The Bill includes two new revenue protection measures for landholder duty. The interest of a creditor, such as a mortgagee is currently not treated as a dutiable interest for the purposes of landholder duty. According to the Agreement in Principle

State Revenue Further Amendment Bill (No 2) 2009

Speech, this exclusion is being exploited by the creation of interests which give the holder the right to most of the income and distributions from the company or trust, but no entitlement on winding up. The Bill clarifies the creditor exclusion by applying tests in the *Commonwealth Income Tax Assessment Act 1997* to distinguish between debt and equity interests to determine which interests are dutiable interests for landholder duty purposes.

12. The second revenue protection measure relates to the timing rules used to determine when an interest is acquired. As stated in the Agreement in Principle Speech, these rules have been misused in some situations by delaying the full payment of the purchase price, sometimes indefinitely, thereby avoiding duty on the acquisition. The Bill clarifies that an agreement for sale of an interest in a landholder is taken to be completed 12 months from the date of the agreement, unless it is otherwise completed before this date.
13. The Bill includes amendments to the *Duties Act 1997*, which will affect the duty on changes of ownership of land regardless of whether by direct or indirect means. It also clarifies the types of mining interests that are included as interests in land for duties purposes. Further, consistent with the Intergovernmental Agreement on Federal Financial Relations, it provides that carbon sequestration rights are not interests in land for the purposes of the *Duties Act 1997*.
14. These amendments have been the subject of consultation with professional and industry bodies, including the Institute of Chartered Accountants and CPA Australia, the Law Society of New South Wales, the Property Council of Australia and the Taxation Institute of Australia. As stated in the Agreement in Principle Speech, the Bill will improve State tax Acts by increasing consistency with other States and Territories, while protecting the revenue bases for both payroll tax and landholder duty.

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.

Schedule 1 Amendment of Duties Act 1997

Valuation of land holdings for landholder duty

Schedule 1 [2] and [3] change the method by which the value of the land holdings of a unit trust scheme, private company or listed company is determined for the purposes of landholder duty. A unit trust scheme, private company or listed company is considered to be a landholder for the purposes of the landholder duty provisions if it has land holdings in New South Wales with an unencumbered value of \$2,000,000 or more. Under the amendments, if a land holding consists of an estate in fee simple in land, the land value of the land (as determined under the *Valuation of Land Act 1916*), rather than the unencumbered value of the land, will be used for the purpose of determining the value of the land holdings of a unit trust scheme or company.

Charging of landholder duty on acquisitions made by trustees and others

Schedule 1 [7] provides that if a person who acquires or holds an interest in a landholder is a trustee for 2 or more trusts, any interests in the landholder acquired or held by the person for different trusts are to be treated as if they were acquired or held independently by separate persons. This means that the trustee may not be required to aggregate together acquisitions that are made for different trusts. The amendment includes a similar provision in relation to life companies. Life companies may acquire interests in landholders for different statutory funds or for purposes not related to the conduct of the business of a statutory fund. These acquisitions will be treated as if they were independent acquisitions by separate persons.

Schedule 1 [10] provides for liability for landholder duty where a person acquires or holds an interest in a landholder as bare trustee (including as custodian) for another person. The amendments require the duty payable in respect of an acquisition of an interest in a landholder to be paid by the ultimate beneficial owner of that interest. Under the amendments, if a person acquires or holds an interest in a landholder as bare trustee for another person, the other person is a beneficial owner of the interest in the landholder. If a person who is a beneficial owner of an interest in a landholder holds the interest as bare trustee for another person, that other person is also a beneficial owner of the interest. The ultimate beneficial owner of the interest is a beneficial owner of an interest in a landholder who does not hold the interest as bare trustee for another person (so that, if there is a chain of bare trustees, the ultimate beneficial owner is the last beneficial owner in that chain).

The amendment provides that if an interest in a landholder is acquired or held by a person (the legal owner) as bare trustee for another person, the interest is taken, for the purposes of landholder duty, to have been acquired by, or to be held by, the ultimate beneficial owner of the interest in the landholder, rather than the legal owner. As a result, the ultimate beneficial owner of an interest in a landholder, rather than the legal owner, will be required to lodge an acquisition statement and to pay duty chargeable in respect of an acquisition made in a landholder that is chargeable with landholder duty under the Act.

Schedule 1 [26] includes a transitional provision in relation to the new liability provisions. Generally speaking, the new liability provisions will apply to acquisitions made on or after the commencement of the amendments. Pre-commencement acquisitions may be aggregated with post-commencement acquisitions for the purpose of determining whether a relevant acquisition (an acquisition that is chargeable with duty) has been made by a beneficial owner. However, a beneficial owner will not, as a result of the amendments, become liable for duty in respect of those pre-commencement acquisitions.

Meaning of “interest” in a landholder

At present, a person does not become liable for landholder duty in respect of an acquisition of an interest in a landholder if the person’s interest in the landholder arises merely because the person is a creditor or other person to whom the landholder is liable.

Schedule 1 [8] removes this exception to this rule. Instead, a person who has a debt interest (within the meaning of certain provisions of the *Income Tax Assessment Act 1997* of the Commonwealth) in a landholder (or an interest that would be a debt interest if the landholder were a company under the relevant provisions of that Act) will not be treated

as having an interest in the landholder. Accordingly, an acquisition of a debt interest will not be chargeable with landholder duty.

Schedule 1 [11], [12], [14] and [19] are related amendments. The amendments ensure that the rules regarding the winding up of a company do not determine whether a person has an interest in a landholder. That is, the fact that a person who would otherwise be regarded as having an interest in a landholder is not entitled to participate in a winding up of a landholder will not prevent the acquisition of the interest being chargeable with landholder duty.

Schedule 1 [20] prevents the acquisition of an interest from being regarded as an exempt acquisition merely because it is acquired as a result of the making of a compromise or arrangement under Part 5.1 of the *Corporations Act 2001* of the Commonwealth. The exemption will be limited to the making of a compromise or arrangement with creditors. The amendment also removes an anti-avoidance function of the Chief Commissioner of State Revenue that has been made redundant by Chapter 11A of the *Duties Act 1997*.

Schedule 1 [26] includes a transitional provision related to this amendment. The amendment in **Schedule 1 [21]** is intended to prevent any argument that a person entitled to a payment of money from a landholder is not entitled to a distribution of property of a landholder. An entitlement to payment of money by a landholder can give rise to an interest in a landholder.

Point in time at which an interest in a landholder is acquired

Schedule 1 [16] is an anti-avoidance measure. At present the purchaser of a share or unit in a landholder or a person to whom a share or unit is to be issued is taken to have an interest in the landholder on completion of an agreement to purchase or issue the share or unit. Liability also arises in respect of the agreement if the necessary transfer or title documents are delivered or the consideration for the purchase or issue is paid. The amendment extends these provisions so that a purchaser or person to whom a share or unit in a landholder is to be issued under an agreement is taken to acquire an interest in the landholder 12 months after the date of first execution of the agreement. This prevents the use of a “terms contract”, or any other means by which completion of an agreement is deferred indefinitely, to avoid liability for landholder duty. The Chief Commissioner of State Revenue is given the discretion to extend the 12-month period. In addition, provision is made for reassessment of any duty payable if the agreement is terminated before it is actually completed.

Schedule 1 [13] and [15] are consequential amendments.

Schedule 1 [26] includes a transitional provision related to the amendments.

Interests in land

Under the *Duties Act 1997* duty is chargeable on a transfer of land in New South Wales or of an interest in land in New South Wales.

Schedule 1 [27] provides that mining leases and mining claims give the holder an interest in the land to which they relate. Accordingly, a transfer of a mining lease or mining claim will be chargeable with duty.

The amendment also clarifies that the following do not give rise to an interest in land:

- (a) an assessment lease, exploration licence or opal prospecting licence under the *Mining Act 1992*,
- (b) a carbon sequestration right within the meaning of Division 4 of Part 6 of the *Conveyancing Act 1919*,
- (c) a petroleum title within the meaning of the *Petroleum (Onshore) Act 1991*,
- (d) a licence, permit, lease, access authority or special prospecting authority under the *Petroleum (Offshore) Act 1982*.

Schedule 1 [1] and [5] are consequential amendments.

Schedule 1 [26] includes a transitional provision related to the amendments.

Other changes

Schedule 1 [6] is a law revision amendment that is consequential on the amendments made by the *State Revenue Legislation Further Amendment Act 2009* which extended landholder duty to acquisitions of interests in public landholders, in addition to private landholders. The amendment clarifies that a reference to an arrangement under which a private landholder ceases to be a landholder is a reference to it ceasing to be a private landholder.

Schedule 1 [9] is also related to the extension of landholder duty to acquisitions of interests in public landholders. The amendment clarifies that if duty is chargeable on an acquisition by a person in a public landholder, no duty is chargeable in respect of any further acquisition in that landholder (whether the landholder is a public landholder or a private landholder at the time of the acquisition).

Schedule 1 [18] is a law revision amendment that is consequential on the amendments made by the *State Revenue Legislation Further Amendment Act 2009* which provided for the charging of landholder duty on acquisition of interests in goods of a landholder. The amendment inserts an omitted reference to the goods of a landholder.

The amendment in **Schedule 1 [22]** makes further provision for goods held on trust by a landholder. The amendment deals with the circumstances in which goods held on trust (including goods held by a custodian) are treated as goods of a company or unit trust scheme (and included in duty calculations). The amendments (which are made to section 163K of the *Duties Act 1997*) will be similar to existing section 147 (2) and (3) of the *Duties Act 1997* (which applies to land holdings of a landholder).

Schedule 1 [4] substitutes section 147 (2) of the *Duties Act 1997* so that an interest in land that is held by the custodian to a trustee of a unit trust scheme is treated as a land holding of the unit trust scheme. Together these amendments ensure consistency between sections 163K and 147 of the *Duties Act 1997*.

Schedule 1 [24] also relates to the extension of landholder duty to the acquisition of interests in the goods of a landholder. The amendment makes it clear that an interest in goods is not to be counted for the purposes of charging duty payable in respect of an acquisition made before 1 July 2009 (the date on which the charging of landholder duty was extended to an acquisition of an interest in goods of a landholder).

Schedule 1 [25] relates to the changes to mortgage duty made by the *State Revenue Legislation Further Amendment Act 2009*. The amendment clarifies the application of a concessional arrangement for certain mortgages first executed before 1 July 2009 (the date on which the relevant changes to mortgage duty commenced).

Schedule 1 [23] enables regulations of a savings and transitional nature to be made as a consequence of the amendments.

Schedule 1 [26] provides for transitional matters. In general, the amendments apply to dutiable transactions occurring on or after the commencement of the amendments and to interests that are acquired in landholders on or after the commencement of the amendments.

Schedule 2 Amendment of Parking Space Levy Act 2009

The *Parking Space Levy Act 2009* imposes a levy on certain parking spaces on 1 July in each year.

Schedule 2 [1] amends that Act to make it clear that the levy does not have to be paid until 1 September in that year. A failure to pay the levy by that date means that a tax default occurs, and interest and penalty tax can be charged under the *Taxation Administration Act 1996*.

Schedule 2 [2] provides that the amendment described above applies from the year 2009 and onwards.

Schedule 3 Amendment of Payroll Tax Act 2007

Schedule 3 provides for a new method of determining the jurisdiction in which wages are liable for payroll tax. The amendments implement an agreement between the States and the Territories to adopt complementary nexus provisions in relation to the imposition of payroll tax. At present, the question of whether wages paid or payable by an employer are taxable in New South Wales under the *Payroll Tax Act 2007* is determined chiefly by reference to the place in which the wages are paid or payable. Generally speaking, wages that are paid or payable in New South Wales are taxable in New South Wales (unless the wages are paid or payable for services performed wholly outside New South Wales). Wages are also taxable in New South Wales if they are paid or payable for services performed wholly or mainly in New South Wales (regardless of where they are paid or payable).

Under the new provisions, the question of whether wages are taxable in New South Wales will be determined chiefly by reference to the place where the services of the employee were performed. The jurisdiction in which an employee or employer is based is also relevant to determining whether wages are taxable in New South Wales.

The new provisions provide that wages are taxable in this jurisdiction (that is, liable for payroll tax in New South Wales) if:

- (a) the wages are paid or payable by an employer for or in relation to services performed by an employee wholly in this jurisdiction, or
- (b) the wages are paid or payable by an employer for or in relation to services performed by an employee in 2 or more Australian jurisdictions, or partly in one or more Australian jurisdictions and partly outside all Australian

jurisdictions, and:

- (i) the employee is based in this jurisdiction, or
- (ii) the employer is based in this jurisdiction (in a case where the employee is not based in an Australian jurisdiction), or
- (iii) the wages are paid or payable in this jurisdiction (in a case where both the employee and the employer are not based in an Australian jurisdiction), or
- (iv) the wages are paid or payable for services performed mainly in this jurisdiction (in a case where both the employee and the employer are not based in an Australian jurisdiction and the wages are not paid or payable in an Australian jurisdiction); or

(c) the wages are paid or payable by an employer for or in relation to services performed by an employee wholly outside all Australian jurisdictions and are paid or payable in this jurisdiction. An employee is based in this jurisdiction if his or her principal place of residence is in this jurisdiction. In cases where the employee is a company, the test for whether the employee is based in this jurisdiction is the same as it is for an employer. An employer is based in this jurisdiction if the employer's registered business address (for ABN purposes) is in this jurisdiction. If the employer does not have a registered business address, or has a registered business address in more than one Australian jurisdiction, the employer is based in this jurisdiction if the employer's principal place of business is in this jurisdiction. The question of where services were provided is determined by reference to services provided by the employee in the month in which the wages are paid or payable or, if no services were provided in that month, in the most recent prior month in which services were provided. If wages are paid or payable to an employee before services are provided, the question of whether they are taxable in this jurisdiction is determined by reference to the place where it may be reasonably expected that services will be provided. Provision is also made for the circumstances in which wages will be treated as being paid or payable in this jurisdiction.

The principal provisions, as described above, are set out in **Schedule 3 [2]**.

Schedule 3 [1] provides for definitions of expressions used in the new provisions.

Schedule 3 [3] is a related amendment to ensure that when the expression "employee" is used in the new provisions (and elsewhere in the *Payroll Tax Act 2007*) this includes any person to or in relation to whom amounts treated as wages under the Act are paid or payable. For example, some payments to company directors are treated as wages under the Act. The new provisions will apply in relation to those payments in the same way as they apply to wages paid to employees.

Schedule 3 [4]–[6] are consequential amendments, which remove provisions made redundant by the new provisions.

Schedule 3 [7] relocates an existing exemption from payroll tax for wages paid or payable for or in relation to services performed in other countries to the part of the *Payroll Tax Act 2007* dealing with exemptions.

Schedule 3 [8] enables the making of savings and transitional regulations as a consequence of the amendments.

Schedule 3 [9] provides for the application of the amendments. The amendments apply in respect of wages paid or payable on or after 1 July 2009, so that the new provisions will apply to the financial year commencing on that date. An annual adjustment will be made in respect of each employer at the end of the payroll tax year to reflect any changes in liability arising as a result of the new provisions.

Issues Considered by the Committee

<p>16. 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.

8. WINE GRAPES MARKETING BOARD (RECONSTITUTION) AMENDMENT (EXTENSION) BILL 2009

Date Introduced:	29 October 2009
House Introduced:	Legislative Council
Minister Responsible:	Hon Ian MacDonald MLC
Portfolio:	Primary Industries

Purpose and Description

1. The Bill postpones the repeal of the *Wine Grapes Marketing Board (Reconstitution) Act 2003* from 1 January 2010 until 1 January 2012.
2. The main purpose of the Bill is to extend the power of the Wine Grapes Marketing Board (the Board) for a further two years while wine grape growers in the Riverina move from "spot sales" of grapes towards contracted wine grape sales and adopt the Australian Wine Industry Code of Conduct.

Background

3. The Board was established in 1993 to represent the interests of wine grape growers in the city of Griffith and the local government areas of Leeton, Carrathool and Murrumbidgee. It is constituted under the *Wine Grapes Marketing Board (Reconstitution) Act 2003*.
4. The Board performs a number of services for the wine grape industry, including marketing and promotional activities on behalf of growers, research and development, education and training, and the collection and dissemination of market and industry information. It also assists growers improve their own private marketing arrangements, promoting the sale of wines under private contracts and developing a code of conduct for contract negotiations.
5. The Act vests certain additional powers in the Board, which were intended to promote the development of supply contracts between growers and wineries to further the development of a competitive wine grape market in the region. According to the Second Reading Speech, these powers were only ever intended to operate for a transitional period, which is why the Act included a sunset clause.
6. Under the Act, the Board has the power to set and enforce terms and conditions of payment for sales that are not sold under a "complying contract" (otherwise known as "spot market" wine grape sales). A complying contract is one that operates for two or more vintages and it fixes the way prices will be calculated and how payments will be made. The main purpose of the bill is to extend the power of the board to set default terms and conditions of payment for wine grape sales that are not the subject of a complying contract. As stated in the Second Reading Speech, the Board's powers are intended to increase competition in the market.

7. In 2007, the Act was extended until 1 January 2010. According to the Second Reading Speech, since the Act was extended 270 of the 500 growers in the Riverina region have been using contracts. Further, contracted wine grape sales in the Riverina have grown to around 53 per cent of the harvest, which represents a move towards an open market.
8. As stated in the Second Reading Speech, the Bill will give growers another two years to develop their marketing and negotiation skills, ensuring a smooth transition to an unregulated market, which is consistent with the original intention of the Act.
9. The Board has also worked with Wine Grape Growers Australia to develop a national code (the Australian Wine Industry Code of Conduct). The object of the code is to increase the adoption of contract sales in the industry. It also aims to establish a common Australian wine grape supply contract framework and provide a dispute resolution system to manage disagreements over price or quality assessments.
10. The code was finalised in December 2008 and took effect from 1 January 2009. However, according to the Second Reading Speech, by this time most growers in the region had already entered into arrangements for the sale of their 2009 vintage grapes.
11. According to the Second Reading Speech the code will only become fully operational for the 2010 vintage, however it is anticipated that it will be in use by most growers and wineries in the region by the end of the 2011 vintage. Accordingly, as stated in the Second Reading Speech:

In view of the late adoption of the Australian Wine Industry Code of Conduct, and the gradual increase in contracted wine grape sales, the Government proposes to further extend the operation of the Act until 1 January 2012.

The Bill

12. Outline of provisions

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

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

Clause 3 amends section 26 of the Wine Grapes Marketing Board (Reconstitution).

Issues Considered by the Committee

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| <p>13. The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</i></p> |
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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
Commission for Children and Young People Amendment Bill 2009	15
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

	Digest Number
Crimes (Administration of Sentences) Amendment (Private Contractors) Bill 2009	2
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
Criminal Procedure Amendment (Case Management) Bill 2009	15
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 (Food Safety Supervisors) Bill 2009	15
Food Amendment (Meat Grading) Bill 2008*	1
Game and Feral Animal Control Amendment Bill 2009	8

	Digest Number
Garling Inquiry (Clinician and Community Council) Bill 2009*	5
Gas Supply Amendment (Ombudsman Scheme) Bill 2009	5
Government Information (Information Commissioner) Bill 2009	9
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
Health Practitioner Regulation Bill 2009	15
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

	Digest Number
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
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
Passenger Transport Amendment (Taxi Licensing) Bill 2009	15
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

	Digest Number
Road Transport (Vehicle Registration) Amendment (Special Number-Plates) Bill 2009	15
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
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
State Revenue Legislation Further Amendment Bill (No 2) 2009	15
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
Wine Grapes Marketing Board (Reconstitution) Amendment (Extension) Bill 2009	15

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	
Commission for Children and Young People Amendment Bill 2009	R			R, N	R
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	
Criminal Procedure Amendment (Case Management) Bill 2009	N			N	
Crown Lands Amendment (Special Purpose Leases) Bill 2009		N, R			

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Education Amendment (School Attendance) Bill 2009	R, N			N	
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	N				
Fisheries Management Amendment Bill 2009	R, N			N	
Food Amendment (Food Safety Supervisors) Bill 2009				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	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
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
Passenger Transport Amendment (Taxi Licensing) Bill 2009	N				
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	