

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 11 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. Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2009

Issue: Privacy - Proposed section 29A - Requirement to disclose criminal record

17. The Committee notes that proposed section 29A requires a person's criminal record be disclosed when applying to change their name with the Registrar of Births, Deaths and Marriages. As stated in the Agreement in Principle Speech, the proposed amendments are intended to "ensure that people with a criminal record do not abuse the change of name system". The Committee notes the need to balance individual rights and liberties, in particular rights to privacy with the public interest of ensuring that people with a criminal record do not avoid detection by law enforcement agencies through changing their name. However, the Committee considers that it may be more appropriate to restrict the requirement to serious offences committed within a certain time period. Accordingly, it refers proposed section 29A to Parliament for its consideration.

Issue: Privacy - Proposed section 46A - Access to change of name information by law enforcement agencies

20. However, the Committee also notes that proposed section 46A(2) states that the Registrar must not enter into a memorandum of understanding unless satisfied that the terms of the memorandum, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy. The Committee notes these safeguards and refers to Parliament whether proposed section 46A unduly trespasses on personal rights and liberties, specifically rights to privacy.

Issue: Excessive Punishment – Proposed section 29A(3) – Requirement to Disclose Criminal Record

22. Proposed section 29A(3), which includes a penalty of 100 penalty units or two years imprisonment, or both for providing false or misleading information in relation to the disclosure of convictions of offences may be considered excessive punishment, particularly given that this offence may be in addition to another offence of providing misleading information under section 57 of the Act. The Committee notes the public interest in ensuring that persons with a criminal record do not avoid detection by law enforcement agencies through changing their name. However, the Committee refers to Parliament for its consideration whether proposed section 29A(3) strikes the appropriate balance between personal rights and liberties and the public interest.

2. Crimes (Appeal And Review) Amendment (Double Jeopardy) Bill 2009

Issue: Double Jeopardy – Schedule 1 Amendment of Crimes (Appeal and Review) Act 2001:

26. The Committee is concerned that in effect, the amendments will enable the prosecution to retry a person for more than once under the exceptions to double jeopardy by allowing the proposed section 105 (1A) of Schedule 1 [2] to be made for a further retrial of a person already acquitted in another retrial under this Part of the Act on the ground that the acquittal at the retrial was tainted (such as perversion of the course of justice, bribery or perjury).
27. The Committee is also concerned that the Bill will erode the long established principle that an acquittal is not to be contradicted or undermined by a subsequent charge that raises the similar ultimate issues or similar facts as were involved in the acquittal.
28. The Committee refers to similar comments made in its Digest report number 13 of 26 September 2006 in relation to the then (Appeal And Review) Amendment (Double Jeopardy) Bill 2006. The Committee, at the time, had expressed its concerns that the amendments did not confine the new proceedings to retrial on the same offence (ie, the offence that had been the subject of the original acquittal). For example, new proceedings should be restricted to serious offences, which are the same as the ones charged at the original trial.
29. The Committee notes the Australian High Court judgment cited above, and is concerned that the Bill's proposed amendments may potentially lead to an abuse of process to charge a person with an offence of perjury or perversion of justice when proof of the charge could necessarily contradict or undermine an acquittal of the accused in respect of another criminal charge.
33. The Committee notes that the double jeopardy rule is a fundamental principle of the common law. The right not to be tried twice for the same offence is recognised as a fundamental human right under Article 14 (7) of the International Covenant on Civil and Political Rights (ICCPR) and other human rights instruments.
34. The Committee holds concerns that the proposed section 105 (1A) of Schedule 1 [2] will enable a person acquitted of a serious offence in a retrial (once) under the exception to double jeopardy to be retried (twice) again if the acquittal was tainted because of an administration of justice offence. This may potentially subject the person to be tried more than once in connection with similar facts or ultimate issues that were connected with the proceeding in which the person was first acquitted.
35. Accordingly, the Committee refers this to Parliament on the question of whether the Bill trespasses unduly on a person's right not to be tried twice for an acquittal that may be contradicted or undermined by a subsequent charge (administration of justice offence such as perjury or perversion of the course of justice) that may raise similar ultimate issues or similar facts as were involved in connection with the proceedings in which the person was acquitted.

36. The Committee also refers to Parliament the question of whether the Bill's proposed section 68A of Schedule 1 [1] trespasses unduly on the double jeopardy rule by sentencing the person twice and by potentially re-sentencing the person for a higher penalty or more severe sentence without the recognition of the element of double jeopardy suffered by the person in being re-sentenced especially if the person has already served a substantial part of their sentence.
37. The Committee is concerned that the amendments in this Bill may appear to risk incompatibility with Australia's obligations under the ICCPR despite the Bill giving effect to proposals in the recommendations of the Double Jeopardy Law Reform Working Group that were agreed to by the Council of Australian Governments (COAG).

3. Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009

Issue: Right to Notice (Procedural Fairness) and Right to Personal Physical Integrity – Schedule 1 [5] – proposed sections 75ZB (2) and 75ZC (2):

15. The Committee is concerned that the proposed new section 75ZC (2) of Schedule 1 [5] for the making of an order for the carrying out of a forensic procedure on an untested registrable person when the person is not present could mean that the person has not been given notice of the proceedings. The making of an application to a court under proposed section 75ZB (2) for an order for the carrying out of a forensic procedure on an untested registrable person when the person has not been requested to consent could also mean the person has not been provided an opportunity to consent to the carrying out of the forensic procedure.
16. The Committee notes that making such an order for carrying out of a forensic procedure without the person subject of the order being given notice of the proceedings or given the opportunity to consent may trespass unduly on the person's right to be heard in proceedings affecting them, especially with reference to that person's right to personal physical integrity. The Committee refers this to Parliament.

Issue: Presumption of Innocence – Schedule 1 [2] – proposed sections 75W (2), (3), (4) and (5); and Schedule 1 [4] – proposed section 75X (2):

19. The Committee is concerned with the above amendments to sections 75W (2), (3), (4) and (5) proposed in Schedule 1 [2] and the amendment to section 75X (2) as proposed in Schedule 1 [4] of the Bill, with respect to the principle of presumption of innocence as a fundamental right established by Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR). This includes the right to be treated as though innocent. The Committee refers this to Parliament to consider whether the proposed amendments trespass unduly on individual rights and liberties as the amendments might undermine the individual right to be treated as innocent.

4. Education Further Amendment (Publication of School Results) Bill

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

5. Liquor Amendment (Temporary Licence Freeze) Bill 2009

Issue: Retrospectivity – Proposed Schedule 1 [3] (Clause 29)

13. Proposed Schedule 1 [3] (Clause 29) states that Division 1A of Part 4 extends to an application under this Act for any licence or other matter referred to in that Division that was made on or after 25 June 2009 but not granted or otherwise determined as at the commencement of the amending Act. The Committee will always be concerned with any retrospective effect of legislation, which impacts on personal rights and refers proposed Schedule 1 [3] (Clause 29) to Parliament for its consideration.

Issue: Right to appeal - Proposed section 47I(7)

15. The Committee has concerns that proposed section 47I(7), which impacts on right to appeal to the Land and Environment Court unduly trespasses on personal rights and refers this to Parliament for its consideration.

Issue: Proposed section 47J – Inappropriate Delegation of Legislative Power

17. The Committee is of the view that any amendments varying a freeze precinct could be more appropriately made to the Principal Act by an amending Act rather than through the regulations. Accordingly, the Committee refers to Parliament for its consideration whether proposed section 47J(d) is an inappropriate delegation of legislative power.

Issue: Proposed Section 47A(1) – Definition of “Freeze Period”

18. Section 47A(1) provides that the freeze period ends on 24 June 2010 or such later date as may be prescribed by the regulations before the end of the freeze period. The Committee has concerns that this provision may be considered to be an inappropriate delegation of legislative power. Accordingly, it refers proposed section 47A(1) to Parliament for its consideration.

6. Occupational Health And Safety Amendment (Authorised Representatives) Bill 2009

Issue: Retrospectivity – Schedule 1 [3] – insertion of Schedule 3, Part 6 – proposed clause 23:

15. The Committee notes that the amendments will validate any previous entry and inspection carried out under the Principal Act by a person who, at the time of entry or inspection, was an employee of an industrial organisation of employees and an authorised industrial officer, by providing that any such person is taken to have been an authorised representative and that any act or omission of such a person is validated if it would have been valid had Schedule 1 [1] commenced before the act or omission. The validation also applies for the purposes of the Principal Act or for any other Act or law and will flow through to other Acts that rely on the definition in the Principal Act such as section 173 of the *Coal Mine Health and Safety Act 2002*.

16. The Committee will usually be concerned with any retrospective effect of legislation which impacts on personal rights. However, the Committee notes that clauses 23 (2) and (3) of the proposed Schedule 3, Part 6 to be inserted by Schedule 1 [3], will not affect any decision of a court made before the commencement of the clause. The Committee also takes into consideration that at the time of the act or omission by the person carried out under the Principal Act for the purposes of the Act, the person was an employee of an industrial organisation of employees and was still an authorised industrial officer. Accordingly, the Committee is satisfied that the retrospectivity of the proposed amendments, in this instance, does not unduly trespass on individual rights.

Part One – Bills

SECTION A: Comment on Bills

1. BIRTHS, DEATHS AND MARRIAGES REGISTRATION AMENDMENT (CHANGE OF NAME) BILL 2009

Date Introduced: 3 September 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon David Campbell
Portfolio: Transport

Purpose and Description

1. The object of this Bill is to amend the Births, Deaths and Marriages Registration Act 1995 (the Act):
 - (a) to change the application criteria for the registration of a change of name, and
 - (b) to place restrictions on the registration of a change of name, and
 - (c) to require that an applicant for registration of a change of name disclose whether he or she has a criminal record, and
 - (d) to facilitate access to change of name information on the Register by specified law enforcement and investigative agencies.

Background

2. The Act provides for the registration of births, deaths, marriages, changes of name and other events with the Registry of Births, Deaths and Marriages. Part 5 of the Act provides for changes of name by applying to the Registrar of Births, Deaths and Marriages. As stated in the Agreement in Principle Speech, in practice, a person applies for a change of name by completing a statutory declaration and providing evidence of their identity.
3. There are a number of reasons why a person may wish to register a change of name, for example a victim fleeing domestic violence. However, as stated in the Agreement in Principle Speech, the process may also be used to conceal a criminal history to avoid detection by law enforcement agencies. The Bill intends to strengthen change of name procedures to prevent the latter situation.
4. The Bill amends the Act so that if a person was born in Australia his or her birth must be registered in New South Wales for him or her to be eligible to apply to the Registrar for a change of name (proposed Section 27). As stated in the Agreement in Principle Speech, this amendment will enable an applicant's change of name to be directly linked to their birth record to minimise opportunity for fraud and abuse of the change of name system.

Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2009

5. Under proposed section 27(b), a person who was born outside Australia and whose birth has not been registered in Australia must have resided in NSW for at least three consecutive years in order to apply to the Registrar to change their name. Proposed section 29C provides a number of exceptions to change of name restrictions, for example it allows victims of domestic violence to change their names regardless of whether or not their birth has been registered in NSW (proposed section 29C(1)).
6. If a child is born in Australia the parents or person with parental responsibility can apply to change the child's name only if the child's birth is registered in New South Wales. If a child is born overseas the parents or person with parental responsibility must have resided in New South Wales for at least three consecutive years to be eligible to apply to change the child's name.
7. The Bill will only allow a person to change their name by registration once in a 12 month period and only three times in their lifetime (proposed section 29B). However, proposed section 29C provides certain exceptions, for example if a Court has ordered a change of name. It also provides the Registrar with discretion to allow a further change of name. The restrictions will also not include any change of name by marriage.
8. The provision of false or misleading information in an application for registration of a change of name in relation to disclosure of convictions for relevant offences constitutes an offence against section 57 with a maximum penalty of 100 penalty units or 2 years imprisonment, or both (proposed section 29A(3)). As stated in the Agreement in Principle Speech, "A false or misleading disclosure about one's criminal history in a change of name application is in addition to an offence for any other false or misleading representation made in the same application".
9. Under proposed section 46A, the Registrar may allow access by an officer of a law enforcement agency to entries in the Register regarding change of names, in accordance with a Memorandum of Understanding entered into by the Registrar with the head of the agency. As stated in the Agreement in Principle Speech, NSW recently implemented a memorandum of understanding between the NSW Police Force and the NSW Registrar of Births, Deaths and Marriages so that information is exchanged between the agencies regarding people with criminal histories who change their names.
10. Under section 46A(5) law enforcement agencies that may access the Registrar include the NSW Police Force, the NSW Crime Commission, the police force of another State or Commonwealth or any other law enforcement or investigative agency as prescribed by the regulations.
11. The Agreement in Principle Speech states that proposed section 46A is intended to address the problem of those with a criminal history avoiding detection across borders by changing their name. Further, according to the Agreement in Principle Speech, a national best practice approach is being developed to prevent the abuse of the change of name system.

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.

Schedule 1 Amendment of Births, Deaths and Marriages Registration Act 1995 No 62

Schedule 1 [1] substitutes section 27 of the Principal Act to provide that an adult may apply for registration of a change of his or her name only if the applicant's birth is registered in New South Wales or, if the applicant was born overseas and his or her birth is not registered in Australia, the applicant has been resident in New South Wales for the period of 3 years immediately preceding the application.

Schedule 1 [2] amends section 28 of the Principal Act to provide that an application may be made for a change of a child's name only if the child's birth is registered in New South Wales or, if the child was born overseas and his or her birth is not registered in Australia, the child has been resident in New South Wales for the period of 3 years immediately preceding the application.

Schedule 1 [3] inserts proposed sections 29A–29C into the Principal Act.

Proposed section 29A states that the Registrar is to include a requirement in an application form for registration of a change of name that the applicant disclose whether or not he or she has been convicted of any specified offences or, if the application is made on behalf of a child, whether the child has been convicted of any specified offences. The provision of false or misleading information in this regard constitutes a separate offence against section 57 of the Principal Act with a maximum penalty of 100 penalty units or 2 years imprisonment or both.

Proposed section 29B prevents the Registrar from registering a change of name if the Registrar is aware that the applicant has already registered a change of name in Australia during the preceding 12 months or has already registered 3 or more changes of name in Australia.

Proposed section 29C specifies circumstances in which a change of name may be registered despite the restrictions imposed by the proposed amendments and gives the Registrar a discretion to register a change of name in certain circumstances. The Registrar is given discretion to register a change of a person's name despite the restriction that the person's birth must be registered in New South Wales if satisfied that an order has been made for the protection of the person or the person's children from domestic violence.

The Registrar is given a discretion to register a change of name despite the restrictions referred to in proposed section 29B and the restriction for persons born overseas and whose birth is not registered in Australia that they must be resident in New South Wales for the preceding 3 years if satisfied that registration is warranted and, in particular, is given a discretion to register a change of name if satisfied that the change of name is for the protection of the person concerned, the person's children or anyone else associated with the person.

Schedule 1 [4] amends section 30 of the Principal Act to enable the Registrar to require an applicant for a change of name to produce evidence to satisfy the Registrar that the Registrar should exercise his or her discretion under proposed section 29C to register the change of name.

Schedule 1 [5] inserts proposed section 46A into the Principal Act to enable the Registrar to give access to change of name information on the Register to the NSW Police Force and other specified law enforcement and investigative agencies. Access to the information is to be in accordance with a memorandum of understanding entered into by the Registrar and the head of the agency concerned. Currently, clause 8 (2) and (3) of the Births, Deaths and Marriages Registration Regulation 2006 provide for such a memorandum of understanding between the Commissioner of Police and the Registrar. Clause 8 (2) and (3) of that Regulation are to be repealed by Schedule 2 to the proposed Act.

Schedule 1 [6] and [7] amend Schedule 3 to the Principal Act to provide for savings and transitional matters.

Schedule 2 Amendment of Births, Deaths and

Marriages Registration Regulation 2006

Schedule 2 repeals clause 8 (2) and (3) of the Births, Deaths and Marriages Registration Regulation 2006 to remove provisions that will be covered by proposed section 46A of the Principal Act (See Schedule 1 [5]).

Issues Considered by the Committee

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

Issue: Privacy - Proposed section 29A - Requirement to disclose criminal record

13. Proposed section 29A(1) requires that the form approved by the Registrar for an application for registration of a change of an adult's name is to include a requirement to the effect that the applicant disclose whether he or she has been convicted of a relevant offence. Proposed section 29(2) provides that the form approved by the Registrar for an application for registration of a change of a child's name must include a requirement to the effect that the applicant disclose whether the child has been convicted of a relevant offence.
14. Under proposed section 29A a conviction for an offence includes orders under s 10 Crimes (Sentencing Procedure) Act 1999. Furthermore, a relevant offence under the provision refers to an offence in NSW that is punishable by imprisonment for 12 months or more or another Australian jurisdiction, which would have had the same penalty if it had been committed in NSW.
15. Proposed section 29A(3) states that an offence against section 57 Births, Deaths and Marriages Registration Act 1995 in relation to a false or misleading disclosure referred to in this section in an application for registration of a change of name is in addition to an offence against that section for any other false or misleading representation made in the same application.
16. Pursuant to section 57 Births, Deaths and Marriages Registration Act 1995, the provision of false or misleading information in an application for registration of a change of name in relation to disclosure of convictions for relevant offences constitutes an offence against section 57 with a maximum penalty of 100 penalty units or 2 years imprisonment or both.

- 17. The Committee notes that proposed section 29A requires a person's criminal record be disclosed when applying to change their name with the Registrar of Births, Deaths and Marriages. As stated in the Agreement in Principle Speech, the proposed amendments are intended to "ensure that people with a criminal record do not abuse the change of name system". The Committee notes the need to balance individual rights and liberties, in particular rights to privacy with the public interest of ensuring that people with a criminal record do not avoid detection by law enforcement agencies through changing their name. However, the Committee considers that it may be more appropriate to restrict the requirement to serious offences committed within a certain time period. Accordingly, it refers proposed section 29A to Parliament for its consideration.**

Issue: Privacy - Proposed section 46A - Access to change of name information by law enforcement agencies

18. Proposed section 46A states that the Registrar may allow access by officers of a law enforcement agency to entries in the Register regarding changes of names, but only in accordance with a memorandum of understanding entered into by the Registrar with the head of the agency.
19. The Committee notes that access to the Register by law enforcement agencies may be considered to be an infringement of personal rights and liberties, in particular rights to privacy. The Committee also notes that proposed section 46A(5)(d) states that the regulations may prescribe any other law enforcement or investigative agency of the government of NSW or the government of another State or Commonwealth.
- 20. However, the Committee also notes that proposed section 46A(2) states that the Registrar must not enter into a memorandum of understanding unless satisfied that the terms of the memorandum, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy. The Committee notes these safeguards and refers to Parliament whether proposed section 46A unduly trespasses on personal rights and liberties, specifically rights to privacy.**

Issue: Excessive Punishment – Proposed section 29A(3) – Requirement to Disclose Criminal Record

21. The provision of false or misleading information in an application for registration of a change of name in relation to disclosure of convictions for relevant offences constitutes an offence against section 57 of the Act with a maximum penalty of 100 penalty units or 2 years imprisonment or both. Proposed section 29A(3) states that an offence against section 57 in relation to a false or misleading disclosure referred to in this section in an application for registration of a change of name is in addition to an offence against that section for any other false or misleading representation made in the same application. Accordingly, as stated in the Agreement in Principle Speech, "A false or misleading disclosure about one's criminal history in a change of name application is in addition to an offence for any other false or misleading representation made in the same application".

- 22. Proposed section 29A(3), which includes a penalty of 100 penalty units or two years imprisonment, or both for providing false or misleading information in relation to the disclosure of convictions of offences may be considered excessive punishment, particularly given that this offence may be in addition to another offence of providing misleading information under section 57 of the Act. The Committee notes the public interest in ensuring that persons with a criminal record do not avoid detection by law enforcement agencies through changing their name. However, the Committee refers to Parliament for its consideration whether proposed section 29A(3) strikes the appropriate balance between personal rights and liberties and the public interest.**

The Committee makes no further comment on this Bill.

2. CRIMES (APPEAL AND REVIEW) AMENDMENT (DOUBLE JEOPARDY) BILL 2009

Date Introduced: 2 September 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon John Hatzistergos MLC
Portfolio: Attorney General

Purpose and Description

1. This Bill amends the Crimes (Appeal and Review) Act 2001 to make further provision in relation to the principle of double jeopardy in criminal proceedings.
2. There are two main changes proposed in the Bill. Firstly, to ensure that where an acquittal is tainted, the acquitted person can be tried again without interference whether the tainted acquittal arises in the first trial or any subsequent trial. Secondly, to remove the principle of sentencing double jeopardy.
3. The effect of the second reform will be that, where a lower court has made an error, appeal courts will be allowed to impose a penalty that reflects the criminality of the offending, without reducing the sentence because of the sentencing double jeopardy principle.
4. This Bill inserts into the Crimes (Appeal and Review) Act 2001 a new section 68A, which specifies that an appeal court must not dismiss a prosecution appeal against sentence or impose a less severe penalty than the court would otherwise consider appropriate because of any element of double jeopardy. Under the current common law principles that apply to Crown appeals against sentence, the appeal court has a wide discretion to refuse to intervene and adjust a sentence, even when there has been an error. In considering whether to intervene, the court currently takes into account that the person is facing "double jeopardy" as the person is re-sentenced for a second time.
5. The other major amendment involves the new section 105, which provides that a person can be retried again if their retrial acquittal is tainted. Tainted acquittals take place where a person has been convicted of an administration of justice offence in connection with the acquittal and it is more likely than not that, but for the administration of justice offence, the person would have been convicted.
6. Administration of justice offences include bribery of, or interference with, a juror or witness, perversion of the course of justice, and perjury.
7. Under the current legislation, a person can be retried only once under the exception to double jeopardy provisions. However, with the proposed changes, if a double jeopardy retrial is itself found to be tainted, an application can be made for another further retrial.

Background

8. The Bill gives effect to proposals included in recommendations of the Double Jeopardy Law Reform Working Group that were agreed to by the Council of Australian Governments (COAG).
9. New South Wales has already released an exposure draft bill in 2003 and passed laws to allow retrials in serious cases in 2006.
10. The rule against double jeopardy is the legal principle that a person should not be tried twice for the same offence.
11. New South Wales has amended the rule by allowing retrials in two situations: firstly, if a person is acquitted of a life sentence offence and fresh and compelling evidence has subsequently arisen; and, secondly, when a person is acquitted of an offence carrying a penalty of 15 years imprisonment or more where the acquittal was tainted.
12. COAG agreed on a series of recommendations for double jeopardy law reform, with the majority based upon the New South Wales Act. However, some recommendations went beyond the New South Wales existing provisions.
13. According to the Agreement in Principle speech:

The Double Jeopardy Law Reform Working Group, which reported to the Council of Australian Governments, considered this issue. It gave weight to the argument that where an appeal court finds that a sentence imposed at first instance is inadequate, but through the operation of sentencing principles—in particular the principle of sentencing double jeopardy—the inadequacy remains uncorrected, this does not serve the community's interest in seeing crimes punished appropriately.
14. It is intended that the amended provision will apply to all appeal courts where sentences are considered. However, the Bill is not intended to apply to the Industrial Court, which deals with sentencing matters under occupational health and safety legislation.

The Bill

15. The object of this Bill is to amend the Crimes (Appeal and Review) Act 2001:
 - (a) to enable a person acquitted of a serious offence in a retrial under the exception to the rule against double jeopardy to be again retried if the acquittal was tainted because of an administration of justice offence, and
 - (b) to provide that an appeal court must not dismiss a prosecution appeal against sentence, or impose a less severe sentence than it would otherwise consider appropriate, because of any element of double jeopardy involved in the respondent being sentenced again.

16. Outline of provisions

Schedule 1 Amendment of Crimes (Appeal and Review) Act 2001 No 120

Division 2 of Part 8 of the Crimes (Appeal and Review) Act 2001 allows an acquitted person to be retried if there is fresh and compelling evidence against the person or if the acquittal was tainted. An acquittal is tainted if the accused person or another person has been convicted of an administration of justice offence (such as perversion of the course of justice or perjury) in connection with the proceedings in which the person was acquitted.

Schedule 1 [2] enables an application to be made for a further retrial of a person who was acquitted at a retrial if the acquittal was tainted.

Schedule 1 [1] provides that an appeal court must not:

- (a) dismiss a prosecution appeal against sentence, or
- (b) impose a less severe sentence on any such appeal than the court would otherwise consider appropriate, because of any element of double jeopardy involved in the respondent being sentenced again. The existing law requires a court hearing a prosecution appeal against sentence to impose a sentence at the lower end of the range that could properly have been imposed by the sentencing judge.

Schedule 1 [3] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [4] provides that the amendment in Schedule 1 [1] extends to appeals that are commenced but not finalised before the amendment.

Issues Considered by the Committee

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

Issue: Double Jeopardy – Schedule 1 Amendment of Crimes (Appeal and Review) Act 2001:

17. Double jeopardy is represented as an '800 year rule'. The general rule against double jeopardy provides that a person shall not be convicted of, or punished for, a single crime twice.
18. The general principle is that a person should not be tried for a second time on substantially the same facts as it is an abuse of process, which is known as the 'Connelly principle' from the case of *Connelly v Director of Public Prosecutions* [1964] AC 1254 in the United Kingdom's House of Lords decision. This principle was referred to by the High Court of Australia in *R v Carroll* [2002] HCA 55; (2003) 194 ALR 1.
19. In the Australian High Court case of *R v Carroll*, Carroll was charged with perjury as the Crown alleged that Carroll had given false evidence at the murder trial by testifying that he did not kill Deidre Kennedy, the 17 month old girl. Carroll's defence argued that this was an abuse of process and in contravention of the rule against double jeopardy. The High Court unanimously held that the proceedings for perjury should have been stayed because they were an abuse of process. Gleeson CJ and Hayne J (at para 51) and Gaudron, Gummow and McHugh JJ also agreed, that although Carroll was not tried for the same offence twice, nevertheless, the prosecution for perjury sought to undermine the earlier acquittal on the charge of murder.
20. In *R v Carroll*, Gleeson CJ and Hayne J in a joint judgment stated (at para 44):

The inconsistency between the charge of perjury and the acquittal of murder was direct and plain. The laying of the charge of perjury, solely on the basis of the respondent's sworn denial of guilt, for the evident purpose of establishing his guilt of murder, was an abuse of process regardless of the cogency and weight of the further evidence that was said to be available.

21. Gaudron and Gummow JJ held (at para 114):

...the laying of that indictment [for perjury] was vexatious or oppressive in the sense necessary to constitute an abuse of process; in substance there was an attempt to relitigate the earlier prosecution.

22. McHugh J agreed and said (at para 118):

It is an abuse of process for the Crown to charge a person with an offence of perjury when proof of the charge necessarily contradicts or tends to undermine an acquittal of the accused in respect of another criminal charge. A perjury charge that has that effect is an abuse of process even if the evidence supporting the charge is different from the evidence that supported the prosecution case in respect of the charge on which the accused was acquitted. The long established policy of the law is that an acquittal is not to be contradicted or undermined by a subsequent charge that raises the same ultimate issue or issues as was or were involved in the acquittal. That is so even though the evidence proving perjury is unanswerable.

23. The Committee notes the above High Court decision and relevant judgments against double jeopardy in relation to the accused person convicted of an administration of justice offence such as perjury in connection with the proceedings in which the person was acquitted. The Committee notes that this Bill is aiming to make amendments to allow an acquitted person to be retried if the acquittal was tainted (such as perversion of the course of justice or perjury) in connection with the proceedings in which the person was acquitted.

24. The Committee also notes the Model Criminal Code Officers' Committee's (MCCOC's) report on double jeopardy in March 2004 as a result of its Discussion Paper on Issue Estoppel, Double Jeopardy and Prosecution Appeals Against Acquittals. The SCAG (Standing Committee of Attorneys-General) on 10 April 2003 agreed to review the double jeopardy principle and referred to the MCCOC to review it for model provisions. MCCOC's *Discussion Paper* made it clear that the exception to the double jeopardy rules can be applied to attack the acquittal of a person only once. The prosecution must elect between the following three alternatives or circumstances when seeking to retry the person under the exception to double jeopardy:

1. prosecution for an administration of justice offence connected to the original trial; or
2. retrial of the original or similar offence where there is fresh and compelling evidence, or
3. retrial of the original or similar offence where the acquittal is tainted.

25. The Committee observes that this Bill under Schedule 1 [2] in its proposed section 105 (1A) will ensure that there can be a further retrial of a person acquitted in a retrial under this Part 8 of the Act if it is made on the basis that the acquittal at the retrial was tainted. It appears that the prosecution does not have to elect only one alternative or circumstance as an exception to double jeopardy. Proposed section 105 (1) omits the following words from the current section 105 (1): "An application cannot be made in relation to an acquittal resulting from a retrial under this Part". This will enable a person acquitted of a serious offence in a retrial under the

exception to the rule against double jeopardy to be again retried if the acquittal was tainted because of an administration of justice offence.

26. **The Committee is concerned that in effect, the amendments will enable the prosecution to retry a person for more than once under the exceptions to double jeopardy by allowing the proposed section 105 (1A) of Schedule 1 [2] to be made for a further retrial of a person already acquitted in another retrial under this Part of the Act on the ground that the acquittal at the retrial was tainted (such as perversion of the course of justice, bribery or perjury).**
27. **The Committee is also concerned that the Bill will erode the long established principle that an acquittal is not to be contradicted or undermined by a subsequent charge that raises the similar ultimate issues or similar facts as were involved in the acquittal.**
28. **The Committee refers to similar comments made in its Digest report number 13 of 26 September 2006 in relation to the then (Appeal And Review) Amendment (Double Jeopardy) Bill 2006. The Committee, at the time, had expressed its concerns that the amendments did not confine the new proceedings to retrial on the same offence (ie, the offence that had been the subject of the original acquittal). For example, new proceedings should be restricted to serious offences, which are the same as the ones charged at the original trial.**
- 29, **The Committee notes the Australian High Court judgment cited above, and is concerned that the Bill's proposed amendments may potentially lead to an abuse of process to charge a person with an offence of perjury or perversion of justice when proof of the charge could necessarily contradict or undermine an acquittal of the accused in respect of another criminal charge.**
30. Schedule 1 [1] inserts a new proposed section 68A where double jeopardy must not be taken into account in prosecution appeals against sentence. Proposed section 68A reads: (1) An appeal court must not: (a) dismiss a prosecution appeal against sentence, or (b) impose a less severe sentence on any such appeal than the court would otherwise consider appropriate, because of any element of double jeopardy involved in the respondent being sentenced again. (2) This section extends to an appeal under the Criminal Appeal Act 1912 and accordingly a reference in this section to an appeal court includes a reference to the Court of Criminal Appeal.
31. The NSW Parliamentary Library Research Service's Briefing Paper No 16/03 on Double Jeopardy¹, discussed that:
- "There is an element of double jeopardy in Crown appeals against sentence because the offender is brought back before the court to face the prospect of being re-sentenced to a higher penalty. As a result of their serious consequences, Crown appeals are exercised relatively infrequently and must be lodged as promptly as possible. The Court of Criminal Appeal may decline to intervene, even if it finds a sentence to be 'manifestly inadequate'²...When a court allows a Crown appeal, it directly substitutes a new sentence. The court usually adjusts the sentence to be more lenient than would be appropriate if passing

¹ Rowena Johns, Double Jeopardy, Briefing Paper No 16/03, NSW Parliamentary Library Research Service, August 2003, p 5.

² R v Holder (1983) 3 NSWLR 245 at 255 per Street CJ. The Court might decline to interfere, for example, when a respondent has already served a substantial part of their sentence or has made excellent progress at rehabilitation.

sentence for the first time, in recognition of the double jeopardy suffered by the offender in being sentenced twice³. ”

32. By way of background information, the Committee notes the ACT Chief Minister John Stanhope had expressed concerns in 2007 about the COAG and the Double Jeopardy Law Reform Working Group in terms of the lack of public consultation and lack of public calls for submissions⁴. At the time, Victoria and the ACT have also reserved their positions on the COAG Working Group’s recommendations⁵.

33. **The Committee notes that the double jeopardy rule is a fundamental principle of the common law. The right not to be tried twice for the same offence is recognised as a fundamental human right under Article 14 (7) of the International Covenant on Civil and Political Rights (ICCPR) and other human rights instruments.**
34. **The Committee holds concerns that the proposed section 105 (1A) of Schedule 1 [2] will enable a person acquitted of a serious offence in a retrial (once) under the exception to double jeopardy to be retried (twice) again if the acquittal was tainted because of an administration of justice offence. This may potentially subject the person to be tried more than once in connection with similar facts or ultimate issues that were connected with the proceeding in which the person was first acquitted.**
35. **Accordingly, the Committee refers this to Parliament on the question of whether the Bill trespasses unduly on a person’s right not to be tried twice for an acquittal that may be contradicted or undermined by a subsequent charge (administration of justice offence such as perjury or perversion of the course of justice) that may raise similar ultimate issues or similar facts as were involved in connection with the proceedings in which the person was acquitted.**
36. **The Committee also refers to Parliament the question of whether the Bill’s proposed section 68A of Schedule 1 [1] trespasses unduly on the double jeopardy rule by sentencing the person twice and by potentially re-sentencing the person for a higher penalty or more severe sentence without the recognition of the element of double jeopardy suffered by the person in being re-sentenced especially if the person has already served a substantial part of their sentence.**
37. **The Committee is concerned that the amendments in this Bill may appear to risk incompatibility with Australia’s obligations under the ICCPR despite the Bill giving effect to proposals in the recommendations of the Double Jeopardy Law Reform Working Group that were agreed to by the Council of Australian Governments (COAG).**

The Committee makes no further comment on this Bill.

³ R v Holder (1983) 3 NSWLR 245 at 256 per Street CJ.

⁴ Lawyers Weekly, ‘Doors closed on double jeopardy debate’, April 27, 2007.

⁵ Lawyers Weekly, ‘Disagreement over double jeopardy’, April 20, 2007.

3. CRIMES (FORENSIC PROCEDURES) AMENDMENT (UNTESTED REGISTRABLE PERSONS) BILL 2009

Date Introduced: 2 September 2009
House Introduced: Legislative Council
Minister Responsible: Hon John Hatzistergos MLC
Portfolio: Attorney General

Purpose and Description

1. This Bill amends the *Crimes (Forensic Procedures) Act 2000* to make further provision with respect to the carrying out of forensic procedures on untested registrable persons.
2. Part 7B of the *Crimes (Forensic Procedures) Act 2000* (the *Forensic Procedures Act*) authorises the conduct of certain forensic procedures on persons who have been found guilty of sexual and other serious offences against children and who are required to be registered, and are subject to certain reporting obligations, under the *Child Protection (Offenders Registration) Act 2000* (the *Child Protection Act*).
3. The Bill substitutes section 75W to enable a police officer to detain an untested registrable person when that person attends a police station to make a report in accordance with the person's reporting obligations under the *Child Protection (Offenders Registration) Act 2000* if that is necessary in order for a forensic procedure to be carried out.
4. It amends section 75X (1) of the *Forensic Procedures Act* to make it clear that the police officer must inform a registrable person of certain matters before asking that person whether he or she consents to the carrying out of a forensic procedure.
5. It also amends section 75X (2) to provide that a police officer must inform the registrable person that reasonable force may be used to enable the forensic procedure to be carried out.
6. Schedule 1 [6] amends section 75ZD to enable a police officer to arrest an untested registrable person who fails to comply with a Local Court order for the carrying out of a forensic procedure for the purpose of carrying out the procedure in accordance with the order.

Background

7. The primary purpose of the Bill is to clarify the powers of police to take DNA materials from untested registrable offenders.
8. The amendment is based on advice from the Crown Solicitor that there was ambiguity in Part 7B of the *Crimes (Forensic Procedures) Act 2000*.

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9. Offenders who are sentenced to prison for indictable offences have their DNA materials taken from the forensic procedures carried out under the Crimes (Forensic Procedures) Act 2000. However, those who have committed offences earlier or prior to the legislation in 2000, or interstate offenders now living in NSW, do not have their DNA materials on the registry as they were not subjected to the required forensic procedures.
10. Schedule 1 [5] clarifies the parameters in which a court can make an order for the carrying out of a forensic procedure.

The Bill

11. The object of this Bill is to amend Part 7B of the Crimes (Forensic Procedures) Act 2000:
 - (a) to enable a police officer to detain an untested registrable person when the person attends a police station or other place in person to make a report in accordance with the person's reporting obligations under the Child Protection Act at a police station or other place:
 - (i) for the purpose of determining whether the person consents to the carrying out of a forensic procedure in accordance with the Forensic Procedures Act, and
 - (ii) if the person consents, for the purpose of carrying out the forensic procedure, and
 - (iii) if the person does not consent, for the purpose of obtaining a senior police officer's order to carry out the non-intimate forensic procedure and carrying it out, and
 - (b) to enable the police officer to use reasonable force to ensure the detained person remains at the police station or other place, and
 - (c) to make it clear that an application may be made to a court for an order for the carrying out of a forensic procedure on an untested registrable person whether or not the untested registrable person has been requested to consent to the carrying out of the forensic procedure or been ordered to undergo the forensic procedure by a senior police officer, and
 - (d) to make it clear that a court may order the carrying out of a forensic procedure on an untested registrable person whether or not the person is present, and
 - (e) to enable a police officer to arrest an untested registrable person who fails to comply with a court order for the carrying out of a forensic procedure for the purpose of carrying out the procedure in accordance with the order, and
 - (f) to make other minor and consequential amendments.

12. Outline of provisions

Schedule 1 Amendment of Crimes (Forensic Procedures) Act 2000 No 59

Currently, section 75W of the Forensic Procedures Act enables a police officer to request an untested registrable person (other than a child or an incapable person) to consent to the carrying out of a forensic procedure on the person.

Schedule 1 [2] substitutes section 75W to achieve the objects referred to in paragraphs (a) and (b) of the Overview.

Schedule 1 [3] amends section 75X (1) of the Forensic Procedures Act to make it clear that the police officer must inform a registrable person of certain matters before asking that person whether he or she consents to the carrying out of a forensic procedure.

Schedule 1 [4] amends section 75X (2) of that Act to provide that a police officer must also inform the registrable person that reasonable force may be used to enable the forensic procedure to be carried out.

Currently, section 75ZB of the Forensic Procedures Act provides that a police officer may apply to any court for an order for the carrying out of a forensic procedure on an untested registrable person and that the court may make the order if satisfied that the carrying out of the forensic procedure is justified in all the circumstances. Section 75ZC sets out some requirements for the making of the order.

Schedule 1 [5] substitutes sections 75ZB and 75ZC to achieve the objects set out in paragraphs (c) and (d) of the Overview. Proposed new section 75ZB provides that a police officer may apply to any court for an order for the carrying out of an intimate forensic procedure on an untested registrable person and makes it clear that an application may be made whether or not the untested registrable person has been requested to consent to the carrying out of the forensic procedure under Part 7B or been ordered to undergo the non-intimate forensic procedure by a senior police officer. Proposed new section 75ZC provides for the making of the order. It incorporates the requirement currently in section 75ZB (2) that the court may make the order if satisfied that the carrying out of the forensic procedure is justified in all the circumstances and the provisions currently in section 75ZC (1) and (2) relating to the making of a court order. In addition, it makes it clear that an order may be made whether or not the registrable person is present and requires a police officer to advise a registrable person who is not present of the making of the order.

Schedule 1 [1] makes consequential amendments.

Schedule 1 [6] amends section 75ZD of the Forensic Procedures Act to achieve the object described in paragraph (e) of the Overview.

Issues Considered by the Committee

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

Issue: Right to Notice (Procedural Fairness) and Right to Personal Physical Integrity – Schedule 1 [5] – proposed sections 75ZB (2) and 75ZC (2):

13. Schedule 1 [5] amends sections 75ZB and 75ZC of the Crimes (Forensic Procedures) Act 2000 to make it that an application may be made to a court for an order for the carrying out of an intimate forensic procedure on an untested registrable person whether or not the untested registrable person has been requested to consent to the carrying out of the forensic procedure or been ordered to undergo the non-intimate forensic procedure by a senior police officer, and to make it that a court may order the carrying out of a forensic procedure on an untested registrable person whether or not the person is present.
14. Part 7B of the Crimes (Forensic Procedures) Act 2000 authorises the conduct of certain forensic procedures on persons who have been found guilty of sexual and other serious offences against children and who are required to be registered, and are also subject to certain reporting obligations, under the Child Protection (Offenders Registration) Act 2000.

15. **The Committee is concerned that the proposed new section 75ZC (2) of Schedule 1 [5] for the making of an order for the carrying out of a forensic procedure on an untested registrable person when the person is not present could mean that the person has not been given notice of the proceedings. The making of an application to a court under proposed section 75ZB (2) for an order for the carrying out of a forensic procedure on an untested registrable person when the person has not been requested to consent could also mean the person has not been provided an opportunity to consent to the carrying out of the forensic procedure.**
16. **The Committee notes that making such an order for carrying out of a forensic procedure without the person subject of the order being given notice of the proceedings or given the opportunity to consent may trespass unduly on the person's right to be heard in proceedings affecting them, especially with reference to that person's right to personal physical integrity. The Committee refers this to Parliament.**

Issue: Presumption of Innocence – Schedule 1 [2] – proposed sections 75W (2), (3), (4) and (5); and Schedule 1 [4] – proposed section 75X (2):

17. Proposed new section 75W deals with the carrying out of forensic procedure on untested registrable person. Under new proposed sections 75W (2), (3) and (4), the police officer may detain the untested registrable person at the police station or other place for so long as is reasonably necessary for determining whether the person consents to the carrying out of the forensic procedure under this Part. Under new subsection (5), the police officer may use reasonable force to ensure the detained person remains at the police station or other place for the period referred to in subsection (4).
18. Proposed new section 75X (2) deals with the failure to consent to non-intimate forensic procedure: The police officer must (personally or in writing) inform an untested registrable person requested to undergo a non-intimate forensic procedure to which this Part applies that, if the registrable person does not consent, a senior police officer may order the carrying out of the non-intimate forensic procedure under section 75Y “and that reasonable force may be used to enable the forensic procedure to be carried out”. Section 75Y provides the circumstances in which senior police officer may order non-intimate forensic procedure.

19. **The Committee is concerned with the above amendments to sections 75W (2), (3), (4) and (5) proposed in Schedule 1 [2] and the amendment to section 75X (2) as proposed in Schedule 1 [4] of the Bill, with respect to the principle of presumption of innocence as a fundamental right established by Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR). This includes the right to be treated as though innocent. The Committee refers this to Parliament to consider whether the proposed amendments trespass unduly on individual rights and liberties as the amendments might undermine the individual right to be treated as innocent.**

The Committee makes no further comment on this Bill.

4. EDUCATION FURTHER AMENDMENT (PUBLICATION OF SCHOOL RESULTS) BILL

Date Introduced: 2 September 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon Verity Firth
Portfolio: Education and Training

Purpose and Description

1. The object of this Bill is to amend the Education Act 1990 to repeal certain provisions introduced by the Education Amendment (Publication of School Results) Act 2009 that created an offence regarding the publication of school results. The Legislation Review Committee considered this Bill in Legislation Review Digest No 9 of 2009, 23 June 2009.
2. The sections of the Education Act 1990 that are proposed to be repealed are sections 18A (4) and (5) *Education Act 1990*. Sections 18A (4) and (5) Education Act 1990 were included in the Education Amendment (Publication of School Results) Act 2009 by way of amendment in Committee when the Education Amendment (Publication of School Results) Bill 2009 was before the Legislative Council on 24 June 2009.

Background

3. The object of the Education Amendment (Publication of School Results) Act 2009, which was assented to on 1 August 2009 was to transfer relevant provisions from the regulations to the Education Act 1990 and amend provisions in the regulations under that Act regarding the prohibition on the public release of school results that disclose the results of particular students or rank particular schools.
4. The Education Amendment (Publication of School Results) Act 2009 amended the Education Act 1990 to include Section 18A, which authorized the State to provide school results to the Commonwealth or an authority established by the Commonwealth in accordance with any national agreement to which NSW is a party and for the publication of results relating to particular schools in accordance with any such agreement.
5. The amendments to the Education Act 1990 implemented the agreement reached by the Council of Australian Governments in 2008 and the Ministerial Council on Education, Employment, Training and Youth Affairs that there will be nationally uniform reporting about the results of individual schools through the Australian Curriculum, Assessment and Reporting Authority.
6. School results is defined in section 18A Education Act 1990 and include results of national basic skills testing, results of School Certificate and Higher School Certificate Examinations and results of annual or other periodic assessments of the academic performance of students in reports to parents on student achievement.
7. Sections 18A (4) and (5) Education Act 1990 make it a criminal offence (with certain exceptions) to publish, in a newspaper or other publicly available document in NSW, any ranking or other comparison of particular schools according to school results (except with the permission of the principals of the schools involved) or the identity of a school with a percentile result of less than 90% in relation to school results.

8. Section 18A(5) Education Act 1900 clarifies that section 18A(5) does not prohibit anything authorised to be done by or under a relevant national agreement, or the publication of the ranking of the schools in the top 10 per cent in relation to the results of Higher School Certificate examinations and related assessments.
9. As stated in the Agreement in Principle Speech, section 18A(4) Education Act 1900 applies differently to different types of media as it refers to publication in a newspaper as well as “other document”. Section 21 Interpretation Act 1987 defines “document” as any record of information, and includes anything on which there is writing; or anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or a map, plan, drawing or photograph.
10. The Agreement in Principle Speech also suggests that the Bill intends to address concerns that a person may unknowingly commit an offence under 18(4) *Education Act 1900*, in particular if the principles in *Dow Jones v Gutnick* (2002) 210 CLR 575 were applied with respect to the publication of school results. In *Dow Jones v Gutnick* (2002) 210 CLR 575, the High Court held that when a newspaper based in New York published an article on its website with servers in New Jersey, if the web page is read in Australia the article is considered to have been “published” in Australia.
11. Further, as stated in the Agreement in Principle Speech, the proposed repeal of sections 18A(4) and (5) responds to concerns regarding the role of school principals in granting permission to publish school comparisons. In the Agreement in Principle Speech, the Minister stated that:

For this Parliament to hand the right to the individual principal of a school to decide whether or not the public is allowed to know particular information about that school's performance is to abrogate its accountability to the voters.

12. Finally, sections 18A(4) Education Act 1900 provides a maximum penalty of 50 penalty units in the case of an individual and 500 penalty units in any other case, for example organizations such as newspapers. Concerns were raised in the Agreement in Principle Speech regarding the proportionality of these penalties. Accordingly, as outlined in the Agreement in Principle Speech, this Bill responds to these concerns by proposing the repeal sections 18A(4) and (5) Education Act 1900.

The Bill

13. 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 18A of the Education Act 1990 by omitting sections 18A(4) and (5) *Education Act 1900*, that were introduced by the Education Amendment (Publication of School Results) Bill 2009.

Issues Considered by the Committee

<p>14. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987</p>

The Committee makes no further comment on this Bill.

5. LIQUOR AMENDMENT (TEMPORARY LICENCE FREEZE) BILL 2009

Date Introduced: 3 September 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon Nathan Rees
Portfolio: Premier

Purpose and Description

1. The object of this Bill is to impose restrictions on the granting of liquor licences and various other liquor-related authorisations, such as extended trading hour authorisations in relation to certain premises in central Sydney.
2. The liquor licence freeze will operate until 24 June 2010 or a later date prescribed by the regulations and will extend to applications for liquor licences and other liquor-related authorisations made on or after 25 June 2009 that had not been determined or granted at the commencement of the proposed Act.
3. The Bill also provides for a freeze on the granting of development consent under the *Environmental Planning and Assessment Act 1979* in relation to those premises that are the subject of the liquor licensing freeze.

Background

4. This Bill is part of a package of reforms introduced by the NSW Government to address alcohol-related violence, for example the Liquor Amendment (Special Licence Conditions) Bill 2008, which was considered in Legislation Review Digest No 1 of 2009.⁶
5. The reforms were introduced to address alcohol-related violence and included a freeze on new 24-hour liquor licences, new powers for police to confiscate alcohol in alcohol-free zones and new standard licensing conditions for 48 venues across NSW.⁷
6. As stated in the Agreement in Principle Speech, further to the above reforms, a freeze on liquor licences in certain parts of the Sydney central business district was announced on 25 June 2009 in response to concerns about alcohol-related violence in the city of Sydney. The Agreement in Principle Speech notes that this Bill, which implements the announcement on 25 June 2009 was developed in consultation with a number of Government agencies, namely the City of Sydney Council, the Australian Hotels Association, Clubs New South Wales, the Liquor Stores

⁶ See also *McGuinness v State of NSW* (2009) NSWSC 40, which was a Supreme Court case that arose in response to the new liquor licensing reforms.

⁷ See also Jason Arditi, *Liquors, Licences and Lockouts*, NSW Parliamentary Library Research Service E Brief No 4/08, November 2008.

Liquor Amendment (Temporary Licence Freeze) Bill 2009

Association and Restaurant and Catering New South Wales-ACT through the Sydney Liquor Task Force, reporting to the Premier and Lord Mayor.

7. According to the Agreement in Principle Speech, the boundaries of the licence freeze precincts (Schedule 5 of the Bill) are focused on areas with a concentration of licensed premises, particularly those with late night trading as well as identified trouble areas for alcohol-related antisocial behaviour and violence. As stated in the Agreement in Principle Speech, the Bill aims to stabilise the number of persons who enter designated freeze precincts principally to consume alcohol (for example, section 47B).
8. The Bill provides that no new liquor licences for new pubs, bars, clubs, nightclubs or liquor stores will be granted for premises in the identified freeze precinct for a 12-month period. The 12-month freeze applies to liquor licence applications received from the 25 June 2009 but not determined or granted.
9. The Bill also provides that existing venues are not able to extend their trading hours or increase the patron capacity of the venue. Further, as stated in the Agreement in Principle Speech, to ensure consistency between liquor licensing laws and planning laws the Bill provides a freeze on consent authorities granting development consent if the development requires a licence, approval or other authorisation which cannot be granted because of the licence freeze.

The Bill

10. Outline of provisions

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

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

Schedule 1 Amendment of Liquor Act 2007 No 90

Schedule 1 [1] inserts provisions to give effect to the liquor licensing freeze described in the above Overview. The licensing freeze will only apply in relation to premises (referred to as **subject premises**) that are situated in a freeze precinct (see **Schedule 1 [4]**). The freeze precincts are the CBD South precinct (which includes George Street south of Park Street to Hay Street), the Kings Cross precinct and the Oxford Street, Darlinghurst precinct. The regulations will be able to add or remove a precinct or vary the description of a precinct (see proposed section 47J).

Proposed section 47B provides that certain types of liquor licences must not be granted during the freeze period (these include hotel licences, club licences and packaged liquor licences, eg bottle shops). In the case of certain on-premises licences (such as for a restaurant), the Casino, Liquor and Gaming Control Authority (**the Authority**) must not grant such a licence if it is satisfied that the granting of the licence is likely to result in an increase in the number of people who enter the relevant freeze precinct principally to consume alcohol.

Proposed section 47C provides that extended trading authorisations (which enable licensed premises to trade past midnight) must not be granted during the freeze period in relation to subject premises or be varied so as to increase the trading hours of subject premises.

Liquor Amendment (Temporary Licence Freeze) Bill 2009

However, an extended trading authorisation for a special “one off” occasion may be granted during the freeze period in relation to subject premises so long as the authorisation is not likely to result in an increase in the number of people who enter the relevant freeze precinct principally to consume alcohol or an increase in the patron capacity of the premises.

Proposed section 47D provides that the licence conditions applying to subject premises must not be varied or revoked during the freeze period if the variation or revocation would result in an increase in the trading hours of subject premises. In addition, the Authority must not, during the freeze period, take any action to vary or revoke the licence conditions applying to subject premises if that action is likely to result in an increase in the number of people who enter the relevant freeze precinct principally to consume alcohol or an increase in the patron capacity of the premises.

Proposed section 47E provides that an authorisation under section 24 (3) of the *Liquor Act 2007* (which, for example, would allow a licensed restaurant to sell liquor otherwise than with a meal) must not be granted during the freeze period for subject premises comprising licensed restaurants or licensed public entertainment venues. However, such an authorisation may be granted during the freeze period in relation to other types of on-premises licences so long as the authorisation is not likely to result in an increase in the number of people who enter the relevant freeze precinct principally to consume alcohol or an increase in the patron capacity of the premises.

Proposed section 47F imposes restrictions on the removal of liquor licences to subject premises during the freeze period. Generally, liquor licences cannot be removed into a freeze precinct. However, certain on-premises licences (such as for a restaurant) may be removed into a freeze precinct so long as the removal is not likely to result in an increase in the number of people who enter the freeze precinct principally to consume alcohol or an increase in the patron capacity of the premises. This test will also apply in relation to the removal of liquor licences between premises that are situated in the same freeze precinct. Proposed section 47G provides that the boundaries of subject premises must not be changed during the freeze period if the boundary change is likely to result in an increase in the number of people who enter the relevant freeze precinct principally to consume alcohol or an increase in the patron capacity of the premises.

Proposed section 47H prevents the Director-General of Communities NSW, during the freeze period, from imposing conditions on licences held in respect of subject premises, or from varying or revoking any such conditions, if that action is likely to result in an increase in the number of people who enter the relevant freeze precinct principally to consume alcohol or an increase in the patron capacity of the premises.

Proposed section 47I provides that development consent under the *Environmental Planning and Assessment Act 1979* must not be granted during the freeze period for the carrying out of development on premises that are subject to the liquor licensing freeze. The proposed development consent freeze will initially only apply in relation to premises that are situated in one of the 3 central Sydney precincts initially caught by the liquor licensing freeze and will only apply in relation to other premises if the precinct in which those premises are situated is listed in Part 1 of proposed Schedule 5.

Proposed section 47J enables the regulations to impose restrictions on the granting or determination of licences or other matters that are not otherwise dealt with under the proposed Division being inserted by the proposed Act (including the extension of the development consent freeze in certain circumstances). The regulations may also create

exceptions to the proposed Division (including exceptions to the development consent freeze).

Schedule 1 [2] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [3] provides that the liquor licensing freeze provisions will apply to applications under the *Liquor Act 2007* that were made on or after 25 June 2009 but not granted or determined as at the commencement of the proposed Act. Applications that were made before 25 June 2009 (but that are still pending as at the commencement of the proposed Act) are not affected by the freeze. Provision is also made for the Crown not to be liable for any damages or compensation as a consequence of the enactment of the proposed Act or the operation of the amendments made by it.

Issues Considered by the Committee

11. While the Committee acknowledges that the intent of this Bill is to address problems occurring in identified trouble spots for alcohol-related antisocial behaviour and violence, the following issues are brought to the attention of the Parliament:

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

Issue: Proposed Schedule 1 [3] (Clause 30) - Denial of compensation

12. This Bill, which implements a liquor license freeze on certain premises in the freeze precinct as provided in Schedule 5 makes a number of amendments that may unduly trespass on individual rights and liberties. For example, pursuant to proposed Clause 30 damages or compensation are not payable by or on behalf of the Crown, which includes any employee or agent of the Crown:

- (a) because of the enactment of the amending Act or the operation of the amendments made by the amending Act (including the provisions of this Part), or
- (b) for the consequences of that enactment or operation, or
- (c) because of a representation or conduct of any kind about the sale or supply of liquor on any premises or kind of premises.

Issue: Retrospectivity – Proposed Schedule 1 [3] (Clause 29)

- | |
|---|
| <ol style="list-style-type: none">13. Proposed Schedule 1 [3] (Clause 29) states that Division 1A of Part 4 extends to an application under this Act for any licence or other matter referred to in that Division that was made on or after 25 June 2009 but not granted or otherwise determined as at the commencement of the amending Act. The Committee will always be concerned with any retrospective effect of legislation, which impacts on personal rights and refers proposed Schedule 1 [3] (Clause 29) to Parliament for its consideration. |
|---|

Non-reviewable decisions [s 8A(1)(b)(iii) LRA]

Issue: Right to appeal - Proposed section 47I(7)

14. The Committee has concerns regarding proposed section 47I(7), which removes the right to appeal to the Land and Environment Court. Proposed section 47I(7) states that the provisions of the *Environmental Planning and Assessment Act 1979* that provide for an appeal to the Land and Environment Court on the basis that the period

Liquor Amendment (Temporary Licence Freeze) Bill 2009

for determining an application for development consent has expired before the application is determined do not, for the duration of the freeze period, apply in relation to an application for development consent that cannot be granted by the consent authority because of this section. In the case of any such application for development consent, the period under the relevant provision of the *Environmental Planning and Assessment Act 1979* for determining the application is taken to commence immediately on the expiration of the freeze period.

- 15. The Committee has concerns that proposed section 47I(7), which impacts on right to appeal to the Land and Environment Court unduly trespasses on personal rights and refers this to Parliament for its consideration.**

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

Issue: Proposed section 47J – Inappropriate Delegation of Legislative Power

16. Proposed section 47J(d) states that the regulations may amend Part 1 or 2 of Schedule 5 (including, without limitation, by adding or removing, or varying the description of, a precinct). As stated in the Agreement in Principle Speech: “The freeze on new liquor licences may be extended and applied to other areas should the need arise.”

- 17. The Committee is of the view that any amendments varying a freeze precinct could be more appropriately made to the Principal Act by an amending Act rather than through the regulations. Accordingly, the Committee refers to Parliament for its consideration whether proposed section 47J(d) is an inappropriate delegation of legislative power.**

Issue: Proposed Section 47A(1) – Definition of “Freeze Period”

- 18. Section 47A(1) provides that the freeze period ends on 24 June 2010 or such later date as may be prescribed by the regulations before the end of the freeze period. The Committee has concerns that this provision may be considered to be an inappropriate delegation of legislative power. Accordingly, it refers proposed section 47A(1) to Parliament for its consideration.**

The Committee makes no further comment on this Bill.

6. OCCUPATIONAL HEALTH AND SAFETY AMENDMENT (AUTHORISED REPRESENTATIVES) BILL 2009

Date Introduced: 3 September 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon Joseph Tripodi MP
Portfolio: Finance

Purpose and Description

1. This Bill amends the *Occupational Health and Safety Act 2000* in relation to authorised representatives of industrial organisations who may exercise investigation powers under that Act.
2. It amends the *Occupational Health and Safety Act 2000* to clarify the definition of "authorised representative".
3. In New South Wales, authorised representatives must hold permits issued by the Industrial Registrar under the *Industrial Relations Act 1996* and must satisfy the Industrial Registrar that they are a fit and proper person. The Industrial Registrar can revoke a permit if a permit holder has intentionally hindered or obstructed employers or employees during their work time or has acted in an improper manner in the exercise of any power conferred on the person.
4. These safeguards remain unchanged by the amendments in this Bill. Therefore, an authorised representative of a union will only be allowed to enter a worksite where members (or who are eligible to be members) of that organisation work. The notice periods regarding union entry will apply and entry may only be made at a reasonable time in the daytime or at any hour when work is carried on or usually carried on at the premises.

Background

5. The need to clarify the definition of 'authorised representative' arose as a result of a Federal Court of Australia decision, which affected the ability of authorised representatives to enter workplaces and perform health and safety functions. In the case of *John Holland Pty Ltd & the Construction, Forestry, Mining and Energy Union (New South Wales Branch)*, the Federal Court held that two Construction, Forestry, Mining and Energy Union organisers did not have a right of entry under the New South Wales *Occupational Health and Safety Act 2000* in relation to the Sydney Desalination Plant. The Court held that the right of entry was denied because they were not officers of the Construction, Forestry, Mining and Energy Union, as defined in the Act.
6. According to the Agreement in Principle speech:

6. Occupational Health And Safety Amendment (Authorised Representatives) Bill 2009

The Federal Court decision threw into doubt many years of custom and practice in New South Wales where union employees, even if not elected as officers of a union, can be authorised under occupational health and safety laws to have a right of entry to workplaces for health and safety purposes. The amendments contained in the Bill will restore the definition to the previously accepted position. The amendments are consistent with the significant progress being made towards the national harmonisation of occupational health and safety laws...the New South Wales Government has argued strongly in favour of preserving right of entry laws throughout the harmonisation negotiations. The Workplace Relations Ministerial Council has endorsed the development of a national model occupational health and safety bill, following the first and second reports of the National Review into Model Occupational Health and Safety Laws, which were released in late 2008 and earlier this year respectively. I anticipate that a draft national occupational health and safety bill will be released for public consultation later this year. The approach taken in the Occupational Health and Safety Amendment (Authorised Representatives) Bill is consistent with the position endorsed by the national review and the Workplace Relations Ministerial Council. The amendments contained in this bill are consistent with Federal occupational health and safety laws.

7. Under Commonwealth industrial laws, authorised representatives must hold permits issued by Fair Work Australia to exercise occupational health and safety powers in workplaces. The *Commonwealth Fair Work Act 2009* provides for the permits to be issued to officials of unions, as defined in section 12 of that Act to include employees.

8. The Agreement in Principle also stated that:

This Bill restores New South Wales right of entry provisions and recognises the important role played by unions in making workplaces safe. For this reason the amendment will be made retrospective to ensure that any powers exercised by authorised representatives before the commencement of the amendment are valid.

The Bill

9. The objects of this Bill are:

(a) to ensure that any person who is an **authorised industrial officer** within the meaning of Part 7 (Entry and inspection by officers of industrial organisations) of Chapter 5 of the *Industrial Relations Act 1996* in respect of an industrial organisation of employees is also an **authorised representative** of that industrial organisation of employees for the purposes of Division 3 (Entry and inspection powers of authorised employees' representatives) of Part 5 of the *Occupational Health and Safety Act 2000*, and

(b) to provide that a person who was an authorised industrial officer but not an authorised representative before the commencement of the proposed Act is taken to have been an authorised representative and to validate certain acts or omissions of such a person.

10. Outline of provisions

Schedule 1 Amendment of *Occupational Health and Safety Act 2000* No 40

Schedule 1 [1] substitutes the definition of **authorised representative** in section 76 of the *Occupational Health and Safety Act 2000* (the **Principal Act**) to provide that, for the purposes of Division 3 (Entry and inspection powers of authorised employees' representatives) of Part 5 of the Principal Act, an authorised representative of an industrial organisation of employees means a person who is an **authorised industrial officer** within the meaning of Part 7 (Entry and inspection by officers of industrial organisations) of

6. Occupational Health And Safety Amendment (Authorised Representatives) Bill 2009

Chapter 5 of the *Industrial Relations Act 1996* in respect of that industrial organisation of employees. This means that a person who is an employee of an industrial organisation of employees and who is an authorised industrial officer is now also an authorised representative who is able to carry out entry and inspection functions under the Principal Act.

Schedule 1 [2] permits regulations under the Principal Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [3] validates any previous entry and inspection carried out under the Principal Act by a person who, at the time of the entry or inspection, was an employee of an industrial organisation of employees and an authorised industrial officer. This is done by providing that any such person is taken to have been an authorised representative and that any act or omission of such a person is validated if it would have been valid had **Schedule 1 [1]** commenced before the act or omission. The validation applies for the purposes of the Principal Act or for any other Act or law and will therefore flow through to other Acts that rely on the definition in the Principal Act (for example, section 173 of the *Coal Mine Health and Safety Act 2002*).

Issues Considered by the Committee

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

Issue: Retrospectivity – Schedule 1 [3] – insertion of Schedule 3, Part 6 – proposed clause 23:

11. The proposed clause 23 (2) reads: Before the commencement of Schedule 1 [1] to the amending Act, a person who for any period was an authorised industrial officer within the meaning of Part 7 of Chapter 5 of the *Industrial Relations Act 1996* is taken, for the purposes of this or any other Act or law, to have been an authorised representative during that same period.
12. Proposed clause 23 (3) reads: Any act or omission of a person referred to in subclause (2), that would have been valid had Schedule 1 [1] to the amending Act commenced before the act or omission, is validated.
13. The proposed definition of ‘authorised representative’ under the new section 76 reads: **authorised representative** of an industrial organisation of employees, means a person who is an authorised industrial officer within the meaning of Part 7 of Chapter 5 of the *Industrial Relations Act 1996* in respect of that industrial organisation of employees.
14. The effect of the above amendments to insert Schedule 3, Part 6 with the proposed clause 23 in Schedule 1 [3], will enable a person who was an authorised industrial officer but not an authorised representative before the commencement of the proposed Act, to be taken to have been an authorised representative and also to validate certain acts or omissions of such a person.

- 15. The Committee notes that the amendments will validate any previous entry and inspection carried out under the Principal Act by a person who, at the time of entry or inspection, was an employee of an industrial organisation of employees and an authorised industrial officer, by providing that any such person is taken to have been an authorised representative and that any act or omission of such a person is validated if it would have been valid had Schedule 1 [1] commenced before the act or omission. The validation also applies for the purposes of the Principal Act or for any other Act or law and will flow through to other Acts that rely on the definition in the Principal Act such as section 173 of the *Coal Mine Health and Safety Act 2002*.**
- 16. The Committee will usually be concerned with any retrospective effect of legislation which impacts on personal rights. However, the Committee notes that clauses 23 (2) and (3) of the proposed Schedule 3, Part 6 to be inserted by Schedule 1 [3], will not affect any decision of a court made before the commencement of the clause. The Committee also takes into consideration that at the time of the act or omission by the person carried out under the Principal Act for the purposes of the Act, the person was an employee of an industrial organisation of employees and was still an authorised industrial officer. Accordingly, the Committee is satisfied that the retrospectivity of the proposed amendments, in this instance, does not unduly trespass on individual rights.**

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
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
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 Legislation Amendment (Wood Inquiry Recommendations) Bill 2009	2
Civil Procedure Amendment (Transfer of Proceedings) Bill 2009	6
Coroners Bill 2009	8
Courts and Other Legislation Amendment Bill 2009	8
Crimes (Administration of Sentences) Amendment Bill 2009	10
Crimes (Administration of Sentences) Amendment (Private Contractors) Bill 2009	2
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

6. Occupational Health And Safety Amendment (Authorised Representatives) Bill 2009

	Digest Number
Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009	11
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Criminal Organisations Legislation Amendment Bill 2009	6
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Electricity Supply Amendment (Energy Savings) Bill 2009	7
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	8
Energy Legislation Amendment (Infrastructure Protection) Bill 2009	7
Fisheries Management Amendment Bill 2009	10
Food Amendment (Meat Grading) Bill 2008*	1
Game and Feral Animal Control Amendment Bill 2009	8
Garling Inquiry (Clinician and Community Council) Bill 2009*	5
Gas Supply Amendment (Ombudsman Scheme) Bill 2009	5
Government Information (Information Commissioner) Bill 2009	9
Government Information (Public Access) Bill 2009	9
Government Information (Public Access) (Consequential Amendments and Repeal) Bill 2009	9
Greyhound Racing Bill 2009	5
Harness Racing Bill 2009	5
Hawkesbury-Nepean River Bill 2009	4
Health Legislation Amendment Bill 2009	4
Heritage Amendment Bill 2009	7

6. Occupational Health And Safety Amendment (Authorised Representatives) Bill 2009

	Digest Number
Home Building Amendment (Insurance) Bill 2009	6
Hurlstone Agricultural High School Site Bill 2009	3, 6
Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009	4
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
Local Government Amendment (Planning and Reporting) Bill 2009	10
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
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Occupational Health and Safety Amendment (Authorised Representatives) Bill 2009	11
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	8
Parliamentary Remuneration Amendment (Salary Packaging) Bill 2009	10
Parking Space Levy Bill 2009	3
Personal Property Securities (Commonwealth Powers) Bill 2009	9
Racing Legislation Amendment Bill 2009	5
Real Property and Conveyancing Legislation Amendment Bill 2009	4
Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009	8

6. Occupational Health And Safety Amendment (Authorised Representatives) Bill 2009

	Digest Number
Road Transport (General) Amendment (Consecutive Disqualification Periods) Bill 2009	10
Road Transport Legislation Amendment (Traffic Offence Detection) Bill 2009	9
Rookwood Necropolis Repeal Bill 2009	8
Rural Lands Protection Amendment Bill 2009	8
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 Further Amendment Bill 2009	9
Statute Law (Miscellaneous Provisions) Bill 2009	9
Surveillance Devices Amendment (Validation) Bill 2009	4
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
Western Lands Amendment Bill 2008	1

Appendix 2: Index of Ministerial Correspondence on Bills

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

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

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Aboriginal Land Rights Amendment Bill 2009	N, R		N, R	N	
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				
Courts and Other Legislation Amendment Bill 2009	R, 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				
Criminal Legislation Amendment Bill 2009		N			
Criminal Organisations Legislation	R, N			N	
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	N				
Fisheries Management Amendment Bill 2009	R, N			N	
Game and Feral Animal Control Amendment Bill 2009	R, N				
Gas Supply Amendment (Ombudsman Scheme) Bill 2009				N	
Greyhound Racing Bill 2009				N	
Harness Racing Bill 2009				N	
Hawkesbury-Nepean River Bill 2009				N	
Health Legislation Amendment Bill 2009	N				

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Heritage Amendment Bill 2009	N			N, R	
Home Building Amendment (Insurance) Bill 2009	N				
Industrial Relations 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	
Motor Accidents Compensation Amendment Bill 2009				N	
Motor Sports (World Rally Championship) Bill 2009	N				
NSW Lotteries (Authorised Transaction) Bill 2009	R, N				
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	N		N	N	
Occupational Health and Safety Amendment (Authorised Representatives) Bill 2009	N				
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	R, N				
Parking Space Levy Bill 2009				N	N, C
Racing Legislation Amendment Bill 2009				N	
Road Transport (General) Amendment (Consecutive Disqualification Periods) Bill 2009	N			N	
Real Property and Conveyancing Legislation Amendment Bill 2009	N, R				
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 Note

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	