

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

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No 13 of 2004

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* Denotes Private Member's Bill

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

8A Functions with respect to Bills

- (1) The functions of the Committee with respect to Bills are:
 - (a) to consider any Bill introduced into Parliament, and
 - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - (i) trespasses unduly on personal rights and liberties, or
 - (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
 - (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
 - (iv) inappropriately delegates legislative powers, or
 - (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny
- (2) A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations:

- (1) The functions of the Committee with respect to regulations are:
 - (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
 - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
 - (i) that the regulation trespasses unduly on personal rights and liberties,
 - (ii) that the regulation may have an adverse impact on the business community,
 - (iii) that the regulation may not have been within the general objects of the legislation under which it was made,
 - (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,
 - (v) that the objective of the regulation could have been achieved by alternative and more effective means,
 - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
 - (vii) that the form or intention of the regulation calls for elucidation, or
 - (viii) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
 - (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- (2) Further functions of the Committee are:
 - (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
 - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.
- (3) The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (NORFOLK ISLAND PRISONERS) BILL 2004

Date Introduced: 21/09/2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon John Hatzistergos, MLC
Portfolio: Justice

Pursuant to suspensions of Sessional and Standing Orders, the Bill passed all stages in the Legislative Assembly on 21 September 2004 and the Legislative Council on 22 September 2004. Under s 8A(2) of the Legislation Review Act 1987, the Committee is not precluded from reporting on a Bill because it has passed a House of the Parliament or become an Act.

Purpose and Description

1. This Bill amends the *Crimes (Administration of Sentences) Act 1999* ("Act") to enable persons who are on remand for offences committed on Norfolk Island to be held in a NSW correctional centre until required for trial on Norfolk Island.

Background

2. In July 2004, Mr Leith Buffet was remanded into custody on the charge of murdering his father, a Minister in the Norfolk Island Government, on Norfolk Island. The Norfolk Island Government has requested the NSW Government to accommodate Mr Buffet at Long Bay Hospital, a NSW correctional centre.
3. According to the Second Reading Speech, Norfolk Island's facilities are not suitable for Mr Buffet, given the expected duration of his remand and an assessment of his psychological condition.¹
4. This request cannot be met, however, because the transfer of persons in custody on remand between Norfolk Island and NSW is not provided for under NSW law or Norfolk Island law.
5. Sections 47 to 50 of the Act provide for a NSW correctional centre to accept into custody, detain and return to Norfolk Island a "prisoner" who is the subject of a warrant under the *Removal of Prisoners (Territories) Act 1923* of the Commonwealth ("Commonwealth Act"). The Act adopts the meaning of the term "prisoner" in the

¹ Ms Cherie Burton MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 22 September 2004.

Crimes (Administration Of Sentences) Amendment (Norfolk Island Prisoners) Bill 2004

Commonwealth Act, which excludes persons who may be in custody awaiting trial for an offence committed in a Territory.

6. On 1 October 2004, the Norfolk Island Government commenced the *Removal of Prisoners Bill 2004*. According to the NSW Bill's second reading speech, the object of that Act is to provide for the transfer and detention in NSW correctional centres of persons remanded into custody, as well as those sentenced to a term of imprisonment, under Norfolk Island law. The Norfolk Island Act is modelled on the ACT's *Removal of Prisoners Act 1968*.²

The Bill

7. The NSW Bill amends provisions in Division 5 of Part 2 of the Act, which relates to prisoners received from Norfolk Island. These amendments are to commence on the date of assent [cl 2].
8. Schedule 1 to the Bill sets out those amendments, which are premised on the commencement of the proposed Norfolk Island Act [cl 3]. These amendments include the substitution of definitions and references that relate to the Commonwealth Act with those that relate to the proposed Norfolk Island Act.
9. A "prisoner" is re-defined in section 47 as a "person who is liable to undergo imprisonment or other detention in custody under a law in force in Norfolk Island". This definition is intended to cover both persons sentenced to imprisonment under Norfolk Island and persons remanded in custody in relation to an offence under Norfolk Island law.
10. The Bill also provides for the amendments to "extend to any person who, immediately before the commencement of those amendments, is in custody for an offence under the law in force in Norfolk Island" [Schedule 1, cl 9].

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

² Ms Cherie Burton MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 21 September 2004.

2. HEALTH LEGISLATION FURTHER AMENDMENT BILL 2004

Date Introduced: 22 September 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Morris Iemma MP
Portfolio: Health

Purpose and Description

1. The objects of this Bill are as follows:
 - (a) to repeal the *Nursing Homes Act 1988* and the *Nursing Homes Regulation 1996*;
 - (b) to amend the *Dental Technicians Registration Act 1975* to increase certain penalties under that Act;
 - (c) to amend the *Health Services Act 1997* to enable the Health Administration Corporation (the Corporation) to provide health support services to public health organisations and to provide health support services and other services to other persons with the approval of the Minister;
 - (d) to amend the New South Wales *Institute of Psychiatry Act 1964* to remove the requirement for the New South Wales Institute of Psychiatry (the Institute) to obtain the Minister's approval to carry out certain functions outside New South Wales and to enable the Institute to employ certain staff members with the Minister's approval and to enable the Institute to delegate certain of its functions;
 - (e) to amend the *Optical Dispensers Act 1963* to include contact lenses that have no corrective power as optical appliances to which that Act applies;
 - (f) to amend the *Public Health Act 1991* to remove the need for the Minister's approval to use crematory equipment and to require the person who operates a nursing home to ensure that a registered nurse is on duty at the nursing home at all times and that a registered nurse is appointed as a director of nursing of the nursing home; and
 - (g) to amend a number of other Acts and instruments consequent on the repeal of the *Nursing Homes Act 1988*.

The Bill

Nursing Homes Act 1988 and the Nursing Homes Regulation 1996

2. Clause 3 repeals the *Nursing Homes Act 1988* and the *Nursing Homes Regulation 1996*.
3. In his second reading speech, the Minister said:

Health Legislation Further Amendment Bill 2004

The *Nursing Homes Act* predates the Commonwealth Government's *Aged Care Act 1997*, which establishes a comprehensive funding and regulatory regime for aged care facilities for both nursing homes and hostels. Therefore, nursing homes in New South Wales are currently regulated by both State and Commonwealth governments. This is in contrast to other States, where the Commonwealth alone regulates nursing homes.

As part of the Government's obligations under the competition principles agreement the Department of Health conducted a review of the *Nursing Homes Act*. That review concluded that as the Commonwealth's *Aged Care Act* provides a comprehensive regulatory and funding system for aged care, the *Nursing Homes Act* adds an additional and unnecessary layer of regulation to the aged care sector.

There has long been concern by nursing home operators that duplicate State Government regulation of nursing homes places additional barriers to the opening of new places by service providers.³

4. One aspect of the Act has been remade as an amendment to the *Public Health Act 1991* (see below). This provision requires that there be at least one registered nurse on duty at all times.

Dental Technicians Registration Act 1975

5. Schedule 1 amends the maximum penalties payable for breaches of this Act. The increase proposed is from 5 penalty units (\$550) to 50 penalty units (\$5,500). Penalties for breaches of the Regulation are increased from 2 penalty units (\$220) to 10 penalty units (\$1,100).
6. According to the Minister:

These amendments will bring the maximum penalties for breaches of the Act and the Regulation into line with the penalties that apply under other health professional registration Acts in New South Wales.⁴

Health Services Act 1997

7. In his second reading speech, the Minister said that the *Health Services Act* is amended "to establish a shared corporate services vehicle for the public health system." Accordingly, the Bill establishes the Public Health System Support Division of the Health Administration Corporation, a corporation established under the *Health Administration Act 1982*.
8. The amendments include provisions to facilitate the transfer of public health system staff engaged in corporate and health support service delivery to the Public Health System Support Division of the Health Administration Corporation, or the use of such staff by the Health Administration Corporation.⁵

³ The Hon Morris Iemma MP, Minister for Health, Second Reading Speech, Legislative Assembly *Hansard*, 23 September 2004.

⁴ The Hon Morris Iemma MP, Minister for Health, Second Reading Speech, Legislative Assembly *Hansard*, 23 September 2004.

⁵ Any employee of a public health organisation who is transferred to the Public Health System Support Division of the Health Administration Corporation will retain all existing entitlements and employment conditions.

9. The Bill inserts Part 1A into the Act, providing for the services to be provided by the Health Administration Corporation and for other matters of a machinery nature relating to the Corporation's functions.

10. A note to be inserted in the Act as an explanation of proposed Part 1A provides:

Part 1A enables the Health Administration Corporation (the Corporation) to provide health support services to public health organisations and, with the Minister's approval, to provide health support services or corporate or other services, by contract or agreement, to other persons. A Public Health System Support Division of the Corporation is established and the persons employed in that Division are employed in connection with public health organisations and the public hospitals that they control and are to carry out the Corporation's function of providing health support services to those organisations. The Corporation may delegate its functions under Part 1A to a person or an appointed body. The Director-General may transfer staff of a public health organisation to the Corporation for the purpose of exercising those functions and the Director-General may authorise the Corporation to make use of the services of any of the staff of a public health organisation. The Minister may require a public health organisation to acquire health support services from the Corporation or some other specified person.

11. Proposed section 126G provides that the Minister may order that public health organisation to acquire specified services from the Corporation. It also provides that certain conduct is specifically authorised by the Act for the purposes of the *Trade Practices Act 1974* (Cth) and the Competition Code of NSW. According to the Minister, this section:

[P]rovides that compliance with Ministerial directions concerning the provision and use of corporate and health support services under the new shared model does not expose public health organisations or the Health Administration Corporation to potential action under Part IV of the Commonwealth *Trade Practices Act*. Section 51 of the *Trade Practices Act* permits the statutory authorisation of conduct that might otherwise fall under Part IV, and there is precedent for its use in these circumstances in the form of section 1340 of the Victorian *Health Services Act 1988*.⁶

NSW Institute of Psychiatry Act 1964

12. Section 4(3) of the Act, which sets out the objects of this Act, is amended to remove the requirement for ministerial approval for the Institute to accept the invitation of, or to co-operate with, the Government or a Public Health Authority or other authority of the Commonwealth or of any State or Territory of the Commonwealth or of any country in implementing within the Commonwealth, State, Territory or country any of the objects for which the Institute is established.

13. Proposed section 20 will allow the Institute to employ its own staff, subject to the approval of the Minister. Proposed section 20A allows for the Institute to delegate its functions to its staff.

⁶ The Hon Morris Iemma MP, Minister for Health, Second Reading Speech, Legislative Assembly Hansard, 23 September 2004.

Optical Dispensers Act 1963

14. Amendments proposed to this Act would require that only “optical dispensers” be able to prescribe contact lenses, including coloured and novelty contact lenses that serve no corrective purpose. An “optical dispenser” must be licensed under the Act.
15. According to the Minister, this amendment is necessary to address serious concerns about the health risks associated with coloured and novelty contact lenses and the fact that, under the current Act, any person, irrespective of their training or expertise in eye care, may carry out the sale and dispensing of those contact lenses.
16. The maximum penalty for breach of this new provision is 10 penalty units (\$1,100).

Public Health Act 1991

17. The Bill makes a number of amendments to this Act, consequent on the repeal of the *Nursing Homes Act 1988*. Specifically, the current staffing requirements under the *Nursing Homes Act* have been carried over to this Act. For that purpose, a definition of “nursing home” is to be included in the *Public Health Act*.
18. The definition includes any facility that:
 - is currently licensed under the *Nursing Homes Act*;
 - was approved in principle for licensing;
 - is granted high-care residential places under the Commonwealth's *Aged Care Act* in the future; and
 - belongs to a class of facility prescribed by the regulations.
19. According to the Minister:

The inclusion of any facility that in the future is granted an allocation of high-care places is intended to ensure that there is a level playing field and that residents in a facility that would have been required to be licensed under the *Nursing Homes Act* will be guaranteed the same minimum staffing levels as those facilities that were, in fact, licensed.

The power to make regulations to include additional classes of facilities in the definition of “nursing home” will provide a mechanism to quickly respond to any changes in the way the Commonwealth allocates aged care places. This is particularly relevant, given the recent Commonwealth review of aged care funding.

Officers of the Department of Health have undertaken detailed consultation with peak aged care industries bodies and the New South Wales Nurses Association on these matters.

Issues Considered by the Committee

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

Issue: Clause 2 – Commencement by proclamation

20. The Bill commences on a day or days to be appointed by proclamation.

21. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on whatever day it chooses, or not to commence the Act, or part of the Act, at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to an inappropriate delegation of legislative power.
22. The Department of Health has advised the Committee that the Bill is to commence on proclamation because of the large number of Health Professional Boards and Associations affected by the amendments. Commencement is to be staggered to allow time to liaise with the Boards and Associations in the drafting of necessary regulations under their respective Acts.
23. The Department advised that they anticipate that all provisions of the Bill will be commenced by the beginning of 2005.

The Committee makes no further comment on this Bill.

3. PUBLIC LANDS PROTECTION BILL 2004*

Date Introduced: 16 September 2004

House Introduced: Legislative Assembly

Member: Ms Peta Seaton MP

Purpose and Description

1. The objects of this Bill are:
 - (a) to constitute the Public Land Protection Trust (the Trust);
 - (b) to establish a Register of significant public land (the Register);
 - (c) to ensure that significant public land remains in public ownership, that public access is maintained to that land and that any use of that land is consistent with the significance of the land; and
 - (d) to amend the *Education Act 1990* to protect the sites of closed government schools.

Background

2. In her second reading speech, Ms Seaton said:

Over time, as Sydney and other cities have grown, greater residential density has occurred, as has greater demand for open public space and public recreational opportunities. All these factors combine today to make many public lands owned by the State Government very valuable sites.⁷

3. It is intended that the Bill:

will create a single framework in which to deal with all [issues regarding the use of such public land] and through which the community can nominate significant public land for inclusion on the register [of significant public land].⁸

The Bill

4. The Bill establishes a Public Land Protection Trust, comprising 7 members with relevant expertise to be appointed by the Minister. The Bill also establishes a Register of Significant Public Land.
5. The principal functions of the Trust are to receive and consider proposals for inclusion of public land in the Register and to make recommendations to the Minister on such proposals [cl 7].
6. The Bill sets out the process by which the Trust is to receive proposals, notify the Minister and make its recommendations to the Minister.

⁷ Ms Peta Seaton MP, Second Reading Speech, *Legislative Assembly Hansard*, 16 September 2004.

⁸ Ms Peta Seaton MP, Second Reading Speech, *Legislative Assembly Hansard*, 16 September 2004.

7. The Bill provides that if the Trust recommends inclusion of public land on the Register it must include with its recommendation a proposal for the “key purposes for which the land may be used, being purposes that the Trust considers to be consistent with the significance of the land” [cl 8].
8. Inclusion of public land in the Register is made by ministerial order published in the Gazette. The Minister may make such an order on the recommendation of the Trust or on his or her own initiative [cl 9].

In the latter case, the Minister is required to seek the recommendation of the Trust before making the order.

If the Minister does not follow the Trust’s recommendations, he or she must give written reasons for his or her decision to the Trust. In addition, the Minister must make these reasons public.

9. The Bill prohibits the sale, transfer, lease, licence or other alienation, and any mortgage or other encumbrance, of the whole or any part, of any significant public land⁹ [cl 10].

However, the Governor may, by proclamation, transfer the whole or any part of such land to a statutory body representing the Crown that is subject to the control and direction of the Minister.

10. The Bill restricts development of significant public land and prescribes the development controls (eg environmental planning rules) that are to apply to development applications in relation to such land [cl 11].

Development is restricted to development for any purpose that is in accordance with the key purposes for which that land may be used. However, development for residential purposes is prohibited.

11. Clause 12 allows a lease or licence to be granted in respect of a building or land within significant public land, provided that the proposed use is in accordance with the key purposes for which that land may be used.

However, the Minister’s consent is required. That consent may only be given after the terms of the lease or licence have been subject to public scrutiny and comment.

The length of the lease, including any provision for a further lease or licence that may be granted, cannot exceed 10 years. However, as an exception to this rule, leases or licences exceeding 10 years can be granted if a notice has been tabled in each House of Parliament setting out the particulars of the lease or licence and:

- each House of Parliament has passed a resolution confirming the proposal; or
- neither House passes a resolution within the disallowance period (ie, 15 sitting days after the notice was tabled in that House).

⁹ “Significant public land” is defined in the Bill as land that is on the Register, and “includes all structures that are fixtures on that land” [proposed s 3].

12. Clause 16 protects existing interests in significant public land. It prevents anything done by or under the proposed Act from affecting any property interest or liability in or over significant public land that existed immediately before the land was included in the Register.
13. Schedule 4 amends the *Education Act 1990*. It provides that if a government school is closed, all the public land on which the school was located immediately before its closure (including any structures that are fixtures on the land) is taken to be significant public land and the key purposes for which that land may be used are taken to be educational purposes [proposed s 36B].

The site of a closed government school that is taken to be significant public land under proposed Part 6A of the Education Act is a protected school site.¹⁰

14. If, after consultation with the local community within which a protected school site is located, the Minister is satisfied that the local community supports the site (or part of the site) being sold or used for a purpose other than education purposes, the Minister may by order published in the Gazette, grant an exemption in relation to all or part of the site [proposed s 36C].

A protected school site ceases to be significant public land only if:

- (a) after consultation with the local community, the Minister for Education grants an exemption in relation to the site;
- (b) the Minister for Education establishes a government school on the site; or
- (c) a period of at least 20 years has passed since the closure of the government school that resulted in the site becoming a protected school site and at least 30% of the land within the protected school site is reserved or dedicated as public open space, or, in certain circumstances, for some other public purpose.

Nothing in the proposed Part prevents the Minister administering the *Public Lands Protection Act 2004* from inserting in the Register of significant public land, a description of land that is a protected school site, or part of such a site, or that is no longer a protected school site, or part of such a site [proposed s 36E].

Issues Considered by the Committee

15. The Committee did not identify any issues arising under s 8A(1)(b) of the *Legislation Review Act 1989*

The Committee makes no further comment on this Bill.

¹⁰ "Protected school site" is defined in proposed section 36A as a "site of a closed government school that is taken to be significant public land because of [proposed Part 6A]".

4. STATE RECORDS AMENDMENT BILL 2004

Date Introduced: 24 September 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Carr MP
Portfolio: The Arts

Purpose and Description

1. The Bill amends the *State Records Act 1998* (the Act) to:
 - provide that bodies that become State collecting institutions under the Act by being added by regulations will not be subject to the existing exclusion applicable to other State collecting institutions that disapplies various provisions of the Act to records that came into their collection before the commencement of the Act (but without affecting the blanket exclusion for private records held by State collecting institutions);
 - remove any doubt that the State Records Authority (the Authority) has power to provide certain services (including commercial services) outside New South Wales;
 - provide for guidelines as to what constitutes normal administrative practice in a public office (which are presently in Sch 1 to the Act) to be prescribed by the regulations;
 - explicitly state that there is a presumption in favour of public access to State records that are at least 30 years old and to require public offices¹¹ to have regard to that presumption when considering whether State records are to be open or closed to public access;
 - provide that State records that are at least 30 years old and not the subject of an access direction are to be made available for public access unless a closed to public access direction (a CPA direction) is given in relation to them within

¹¹ Public office means each of the following:

- (a) a department, office, commission, board, corporation, agency, service or instrumentality, exercising any function of any branch of the Government of the State;
- (b) a body (whether or not incorporated) established for a public purpose;
- (c) a council or county council under the *Local Government Act 1993*;
- (d) the Cabinet and the Executive Council;
- (e) the office and official establishment of the Governor;
- (f) a House of Parliament;
- (g) a court or tribunal;
- (h) a State collecting institution;
- (i) a Royal Commission or Commission of Inquiry;
- (j) a State owned corporation;
- (k) the holder of any office under the Crown; and
- (l) any body, office or institution that exercises any public functions and that is declared by the regulations to be a public office for the purposes of this Act (whether or not the body, office or institution is a public office under some other paragraph of the definition): s 3 of the *State Records Act 1998*.

- 14 days (rather than the current 1 month) after an application for an open to public access direction (an OPA direction) for the records is made;
- require public offices to provide reasons for giving CPA directions if such reasons are requested by the Authority or by a person whose application for an OPA direction has been refused;
- provide for Ministerial review of access directions;
- explicitly provide for public offices to authorise early public access to State records, so that the provision of access is covered by the provision of the Act that protects the State, access providers and certain other persons from certain liability when access is given to a record under the Act;
- provide that the name "State Records NSW" will have the same legal effect as the corporate name of the Authority; and
- extend from 6 months to 2 years the limitation period applicable to prosecutions for unauthorised abandonment, disposal, transfer, removal from the State, damage, alteration or neglect of State records.

Background

2. The Bill is the result of a comprehensive review of the Act conducted by the Authority earlier in 2004.¹²
3. According to the second reading speech, the review found strong support for the Act's objectives:

Stakeholders noted the importance of having sound, up-to-date public records legislation for the purpose of protecting the State's rich official archives, and ensuring efficient, accountable government in the digital age. There was general agreement that the Act's provisions have been effective in securing those objectives. In particular, submissions referred to improvements in records management across the New South Wales public sector since the commencement of the Act in 1998.¹³
4. The Review concluded that certain amendments were desirable in order to update the Act and improve its operation.
5. Section 52(3) of the Act provides for the Attorney General to issue guidelines to public offices with respect to the matters to be taken into account when considering whether records should be open or closed to public access. These guidelines, and Part 6 generally, apply both to records in the custody of a public office, and of the State Records Authority.
6. Agencies must consider the guidelines but the guidelines do not *limit* the grounds on which a public office can open or close records¹⁴ to public access under the Act [s 52(4)].

¹² Pursuant to s 82 of the *State Records Act 1998*.

¹³ Mr N J Newell MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 24 September 2004

¹⁴ "Record" means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means: s 3 of the *State Records Act 1998*.

7. The Attorney General's Guidelines note that:

[p]ublic access to the records of Government is a fundamental right in a democratic society. The State Records Act 1998 promotes the principles of accountability and access by requiring public sector offices to create records of their business and administrative transactions and ensuring that records of significant value are preserved. The underlying principle is that all relevant records of continuing value will be publicly available in due course.¹⁵

8. The Guidelines:

assume that each public authority will authorise a responsible officer to act as the decision maker and to formally make OPA or CPA directions after an assessment of the records has been made. Decision makers must consider [the Guidelines] before making an OPA or CPA direction.¹⁶

9. In addition, State Records NSW has produced *Procedures for Making Access Directions* in August 1999 to assist public offices in making directions under the Act, and has adopted a *Monitoring Framework* for all aspects of the Act for 2004-2008.

The Bill

10. The Act currently contains the following special provisions for State collecting institutions:

- private records in the collections of such institutions are *not* subject to the Act;
- other records that came into such collections *before* the commencement of the Act are excluded from the operation of the provisions of the Act concerned with records management, control of State records not currently in use and public access to State records [s 5].

11. A *State collecting institution* means:

- Art Gallery of New South Wales Trust;
- Australian Museum Trust;
- Historic Houses Trust of New South Wales;
- Trustees of the Museum of Applied Arts and Sciences;
- National Parks and Wildlife Service;
- Royal Botanic Gardens and Domain Trust;
- Library Council of New South Wales (in respect of the State Library of New South Wales);
- Sydney Opera House Trust;
- Zoological Parks Board; and

¹⁵ Legislation and Policy Division, NSW Attorney General's Department, *Access to State Records: Introduction*, www.lawlink.nsw.gov.au/lap.nsf/pages/asr_1.

¹⁶ Legislation and Policy Division, NSW Attorney General's Department, *Access to State Records: Guidelines*, www.lawlink.nsw.gov.au/lap.nsf/pages/asr_2.

State Records Amendment Bill 2004

- any public office that is prescribed by the regulations as a State collecting institution [s 3].
12. The Bill provides that the exclusion for records that came into their collection before the commencement of the Act does not apply to bodies that become State collecting institutions by being added by regulation to the definition of that term [proposed amended s 3 and s 5].

Record management

13. The Act currently gives the Authority the power to provide services in all areas of records management [s 19(1)]. These services can be provided on a commercial basis.

The Bill removes any doubt that those services can also be provided outside New South Wales [proposed s 19(3)(d)].

Guidelines for normal administrative practice

14. The Act currently provides that a person does not commit an offence of unauthorised abandonment, disposal, transfer, removal from the State, damage, alteration or neglect of a State record by doing anything in accordance with *normal administrative practice in a public office* within the meaning of s 22 [s 21(2)].¹⁷
15. Section 22 of the Act currently refers to Schedule 1 to the Act, which contains guidelines on some aspects of normal administrative practice. The guidelines do *not* limit what constitutes normal administrative practice.
16. The Bill provides for those guidelines to be prescribed by the regulations rather than be in Schedule 1 to the Act [amended s 22(3)].¹⁸

Public access to State records after 30 years

17. A State record is in the open access period if it is at least 30 years old.¹⁹ Public offices are currently required to give access directions for all of the records for which they are responsible that are over 30 years old [s 51(1)].²⁰

¹⁷ Something is considered to be done in accordance with normal administrative practice in a public office if it is done in accordance with the normal practices and procedures for the exercise of functions in the public office. However, something is *not* considered to be done in accordance with normal administrative practice if:

- (a) it is done corruptly or fraudulently, or is done for the purpose of concealing evidence of wrongdoing, or is done for any other improper purpose;
- (b) it is conduct or conduct of a kind declared by the regulations to be unacceptable for the purposes of Part 3 of the Act;
- (c) it is done in accordance with a practice or procedure declared by the regulations to be unacceptable for the purposes of Part 3; or
- (d) it is done in accordance with a practice or procedure that the Authority has notified the public office in writing is unacceptable for the purposes of Part 3: s 22 of the *State Records Act 1998*.

¹⁸ Schedule 1 [21] repeals the guidelines in Schedule 1 to the Act.

¹⁹ A State record is in the open access period if the record is at least 30 years old. A record is taken to be 30 years old when 30 years have elapsed since it came into existence or since the original record of which it is a copy came into existence: s 50 of the *State Records Act 1998*. However, the fact that a record is in the open access period does not automatically mean that it is open to public access under this Act. Generally the

18. An access direction must be either:
- a direction that records are open to public access (an OPA direction); or
 - a direction that records are closed to public access (a CPA direction).
19. If a State record is in the open access period and is *not* the subject of an access direction, any person can apply to the public office responsible for the record for an OPA direction for the record and thus for access to it [s 54].
20. The Bill expressly provides that there is a presumption that State records in the open access period should be open to public access [proposed s 51(1A)]. A public office is to have regard to this presumption when deciding what type of access direction to give [proposed s 52(1A)].
21. Section 52(1) provides that:
- An assessment by a public office as to whether records should be open or closed to public access under this Act should be made on the basis of the known or likely contents of series, groups or classes of records. The assessment should not be made on the basis of the contents of individual records unless the public office considers that such an assessment is warranted.²¹
22. State records that are at least 30 years old are to be made available for public access *unless* a CPA direction is given in relation to them within 14 days (rather than the current 1 month) after an application for an OPA direction for the records is made [amended s 54].²²

Public office may give earlier public access

23. The Bill provides for the public office responsible for a State record that is not in the open access period to authorise early public access to the record and to notify the Authority that it has authorised that early public access:
- The public office responsible for a State record that is not in the open access period can permit public access to the record under this Act by authorising the Authority to make the record available for public access. The record is then open to public access under this Act while the authorisation remains in force and accordingly any person is entitled to be given access to the record as provided by this Part [current s 57(1)].

record must be the subject of an open to public access direction (given by the public office responsible for the record) before it is open to public access.

²⁰ Access directions have been made by 68 public offices in New South Wales: *Register of Access Directions*, State Records NSW.

²¹ The Note to s 52 states that “[i]t is intended that existing Cabinet documents are to continue to be examined to determine whether they contain sensitive personal or commercial-in-confidence information, and that Cabinet documents that may contain any sensitive personal or commercial-in-confidence information will be marked to be returned to the Cabinet Office for assessment under this section”.

²² The Bill requires a public office that gives a CPA direction for a State record to give its reasons for giving the direction to the Authority on request or to any person who has had an application for an OPA direction refused and who requests those reasons [proposed s 55(6)]. Also, the State Records Authority may request the public office responsible for a State record that is the subject of an access direction to have the direction reviewed by the Minister responsible for that public office: proposed s 55A of the *State Records Act 1998*.

State Records Amendment Bill 2004

24. Section 57 does *not* authorise a public office to permit public access to a State record in breach of any duty or obligation (such as a duty of confidentiality) that the public office may have with respect to the record [s 57(4)].
25. The second reading speech noted that, in its current form, s 57:
- presumes...that the record in question is in the custody of the State Records Authority. This is not always the case. The record in question may in fact be in the custody of the public office or a regional repository. The wording of the current Act means that where a public office provides early access to a record in its own custody or in the custody of some other person, it is unclear whether the public office would be protected by the liability protections of the Act...Accordingly, the bill makes it explicit that where public offices provide appropriate early access to State records within their custody, they too are protected by the liability protections of the Act.²³
26. Accordingly, if access is given in accordance with the proposed amendment, the public office, its officers and certain other persons will be protected from liability for defamation, breach of confidence or any offence to the extent provided by s 62 of the Act, subject to s 57(4).

Limitation period on prosecutions for unauthorised disposal etc of records

27. Section 21 of the Act creates certain offences relating to the unauthorised abandonment, disposal, transfer, removal from the State, damage, alteration or neglect of a State record. As those offences are summary offences, there is a 6-month limitation period, ie, proceedings for an offence must be commenced no later than 6 months from the date the offence was alleged to have occurred [s 179 of the *Criminal Procedure Act 1986*].
28. The Bill provides for a 2-year limitation period for offences under s 21 and retains the 6-month period for all other offences against the Act and for offences against the regulations.
29. It was noted in the second reading speech:
- By their very nature...these offences often do not come to light within six months.²⁴

Issues Considered by the Committee

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

Proposed amended s 54 and s 57: Privacy

30. Public access to state records has the potential to infringe a person's right to privacy where those records contain personal information.
31. Under s 52 of the Act, a public office must have regard to the Attorney General's guidelines when considering whether records should be open to public access. The *Access to State Records Guidelines* as currently issued by the Attorney General note the following with respect to privacy:

²³ Mr N J Newell MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 24 September 2004.

²⁴ Mr N J Newell MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 24 September 2004.

Privacy is the right of individuals to exercise control over the circulation or availability of personal information about themselves. The *Privacy and Personal Information Protection Act 1998* gives legal recognition to the public interest in the protection of privacy.

Most of the personal information which is held in archival form after 30 years does not require the same level of protection as personal information which is still being used to make operational or commercial decisions about people.

Privacy is not an appropriate ground for protecting the interests or activities of a public office or its business clients but may apply to individual clients, employees, or other members of the public who are recorded by the public office.²⁵

32. The Attorney General's Guidelines also make specific reference to matters which may lead to a conclusion that public record ought to be closed. One example is *sensitive personal information*, which is:

information which is still capable of being used or disclosed in ways which adversely affect the individual concerned or whose disclosure amounts to an unreasonable disclosure of personal affairs. It usually relates to the content of the information but may also arise from the context in which the information occurs. For example the fact that a person's name is listed in a criminal investigation file may be as sensitive as the detailed contents of that file.

In most contexts, basic personal indicators such as name, address date or place of birth cease to be sensitive when they are no longer capable of being used to make decisions about individuals or where their publication would not adversely affect them.²⁶

33. As noted above, the Bill provides that State records that are at least 30 years old are to be made available for public access *unless* a CPA direction is given in relation to them, within 14 days (rather than the current 1 month) after an application for an OPA direction for the records is made [proposed amended s 54].

Consequently, should a public office not make an OPA direction within 14 days, the record will become public regardless of any personal information within the record.

34. The Committee has not taken evidence on whether 14 days is an adequate period for the consideration of an application.

35. The proposed amendment to s 54 of the State Records Act 1998 reduces from 30 days to 14 days the period within which a public office has to make a closed public access direction in relation to a record held by the public office which is more than 30 years old.
36. The Committee notes that failure to make a public access direction within such 14 days could result in the public release of personal information. Such a release of personal information may trespass on an individual's right to privacy.
37. The Committee also notes the strong public interest in public access to the records of Government.

²⁵ Legislation and Policy Division, NSW Attorney General's Department, *Access to State Records: Introduction*, www.lawlink.nsw.gov.au/lap.nsf/pages/asr_1.

²⁶ Legislation and Policy Division, NSW Attorney General's Department, *Access to State Records: Introduction*, www.lawlink.nsw.gov.au/lap.nsf/pages/asr_1.

38. The Committee refers to Parliament the question as to whether the automatic public access to a state record more than 30 years old if a public office has not made a public access determination within 14 days of an application for access trespasses unduly on personal rights and liberties.

Earlier public access

39. The Bill gives a public office an absolute discretion to authorise public access to a record less than 30 years old. The Attorney General's guidelines under s 52 of the Act are to be applied to the use of this discretion [proposed s 57(2A)]. There is no minimum age for a record to which this discretion applies.

40. A public office's discretion to make a record public does not appear to be bound by the privacy and information protection principles in the *Privacy and Personal Information and Protection Act 1998* or the health privacy principles in the *Health Records and Information Privacy Act 2002*. However, as noted above, s 57(4) of the Act provides that the section:

does not authorise a public office to permit public access to a State record in breach of any duty or obligation (such as a duty of confidentiality) that the public office may have with respect to the record.

41. The Attorney General's Guidelines note that:

the decision maker should still consider whether people have legitimate expectations of confidentiality arising out of other legislation which would be nullified by giving public access. Examples might include, the protection for spent convictions under the *Criminal Records Act 1991*, protection of HIV information under Part 3 Division 4 of the *Public Health Act 1991* or protection of the identity of complainants under the *Protected Disclosures Act 1994*.²⁷

42. The release of relatively recent records containing personal information in breach of the information protection principles or the health privacy principles may significantly trespass on a person's right to privacy.

43. The Committee notes that the Bill provides public offices with an absolute discretion to authorise public access to records less than 30 years old.

44. The Committee notes that a public office is to apply the Attorney General's guidelines under s 52 when exercising this discretion.

45. The Committee further notes that the Attorney General may amend the Guidelines under s 52 from time to time, and that such Guidelines are not disallowable by Parliament.

46. The Committee notes the strong public interest in public access to the records of Government.

²⁷ Legislation and Policy Division, NSW Attorney General's Department, *Access to State Records: Guidelines*, www.lawlink.nsw.gov.au/lap.nsf/pages/asr_1.

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|-----|--|
| 47. | The Committee has written to the Premier seeking his advice as to whether the duties and obligations which, under s 57(4), a public office is not authorised to breach in the exercise of its absolute discretion to authorise early public access to a record include the observance of the information protection principles or the health privacy principles. |
| 48. | The Committee has also sought clarification of the application of the Act to private records. |

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

Clause 2: Commencement

49. The Bill commences on a day or days to be appointed by proclamation.
50. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on whatever day it chooses, or not to commence the Act, or part of the Act, at all.
51. The Cabinet Office has advised the Committee that the Bill is to commence on proclamation in order to allow time for administrative procedures to be put in place. Several agencies require time to be made aware of the new system. A Regulation will also need to be drafted to give effect to the amendments.
52. The Cabinet Office has further advised that they hope to have the Bill commenced as soon as possible after assent.

The Committee makes no further comment on this Bill.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

5. CHILD PROTECTION (OFFENDER REGISTRATION) AMENDMENT BILL 2004

Date Introduced:	23 June 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Watkins MP
Portfolio:	Police

Background

1. The Committee reported on the *Child Protection (Offender Registration) Amendment Bill 2004* in Legislation Review Digest No 10 of 2004.
2. By letter dated 27 August 2004 the Committee wrote to the Minister for Police seeking his advice as to:
 - what restrictions are to be imposed on access to information held on the Child Protection Register; and
 - why the Bill's amendments to the *Child Protection (Offender Registration) Act 2000* are to commence on proclamation.

Minister's Reply

3. By letter dated 20 September 2004, the Minister responded to the Committee's concerns.

Access to information

4. The Minister advises that access to the Child Protection Register is limited to Registry staff and is provided to police as it relates to their operational responsibilities.
5. The Minister attached to his reply a copy of a Media Release of 2 May 2004 which stated that before any disclosure of information from the Register is made, a number of criteria must be met, including:
 - the offender must be assessed as having a high threat rating;
 - there must be an identified threat to an identifiable person or class of persons²⁸;

²⁸ This contrasts with the situation with respect to an order that a person must comply with reporting obligations, in that pursuant to proposed s 3D(2), it is *not* necessary that the court be able to identify a risk to particular children, or a particular class of children: proposed s 3D(3) of the *Child Protection (Offenders Registration) Act 2000*.

Child Protection (Offender Registration) Amendment Bill 2004

- there must be no other lawful action which police can take to avert the situation of potential harm;
- the risks associated with disclosure have been assessed, including the risk that the offender may act irrationally, abscond or go underground, or that disclosure results in vigilante activity;
- the information to be disclosed must have been assessed as reliable and accurate; and
- the information to be disclosed relates to the role and function of the recipient.

Proclamation

6. The Minister noted that the Act is to commence on proclamation due to the need to address implementation issues prior to commencement. These include:
- the updating of internal policies and procedures;
 - the creation of new registration forms; and
 - training for police in the new procedures.

Committee's Response

7. The Committee thanks the Minister for his reply.

The Committee makes no further comment on this Bill.

Child Protection (Offender Registration) Amendment Bill 2004



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

27 August 2004

File ref: LRC796/4082

The Hon John Watkins MP
Minister for Police
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Child Protection (Offender Registration) Amendment Bill 2004

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 10 of 2004*.

The Bill replaces the existing Register of Offenders with a Child Protection Register. The Committee notes that, with the exception of protected witnesses, the Bill provides for no general restriction on access to information on the Register.

The Committee notes that it is necessary to balance an offender's right to privacy with the community's reasonable expectations as to the safety of children.

The Committee seeks your advice as to what restrictions are to be imposed on access to information held on the Child Protection Register.

The Committee also notes that the Bill is to commence by proclamation.

The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on whatever day it chooses after assent, or not to commence the Act, or part of the Act, at all. While there may be good reasons why such discretion may be required, the Committee considers that, in some circumstances, it can give rise to an inappropriate delegation of legislative power.

The Committee seeks your advice as to why the Act is to commence on proclamation, rather than on assent.

Yours sincerely



BARRY COLLIER MP
CHAIRPERSON

Child Protection (Offender Registration) Amendment Bill 2004



Minister for Police

Mr Barry Collier, MP
Chairperson
Legislation Review Committee
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

RECEIVED

23 SEP 2004

LEGISLATION REVIEW
COMMITTEE

Dear Mr Collier,

Child Protection (Offender Registration) Amendment Bill 2004.

Thank you for your letter concerning the *Child Protection (Offender Registration) Amendment Bill 2004*. The Bill will, among other things, give effect to a national child protection scheme and provide for the better monitoring of child sex offenders and other serious offenders against children as they move among Australian and international jurisdictions.

Access to information held on the Register is limited to Registry staff and is provided to police as it relates to their operational responsibilities.

In May 2004, I announced changes to the NSW Police Child Protection Register Information Disclosure Policy to enable limited public disclosure of information by Police as a last resort to protect the community from a dangerous registered offender. I have attached a copy of the relevant press release for your information.

In relation to the commencement of the legislation, it is proposed that the Act commence on proclamation given the need to address implementation issues prior to commencement, including the updating of internal policies and procedures, creation of new registration forms and training to police in the new procedures. Changes to notification procedures will affect both NSW Police and other agencies.

I trust this information is of assistance.

Yours sincerely,

John Watkins MP
Minister for Police

M74704

20 SEP 2004

MINISTER FOR POLICE

John Watkins MP



M E D I A R E L E A S E

POLICE GIVEN NEW POWERS TO WARN ABOUT PAEDOPHILES

2 May 2004

For the first time in Australia, police officers will be permitted to disclose details about convicted paedophiles to at-risk sections of the community.

Minister for Police John Watkins said while NSW currently had the toughest child protection laws in Australia, the state would again bolster its armoury against sex offenders.

"If police have fears a paedophile is about to re-offend, then certain people need and deserve to know – it's as simple as that," Mr Watkins said.

"That's why the Government will give police the power to inform relevant people or bodies where children are at risk.

"Police will be able to disclose names, addresses, criminal histories, photographs or other details from the NSW Child Protection Register – as a last resort to protect the community from a dangerous registered offender."

Mr Watkins said new police protocols would allow the Commander (Child Protection and Sex Crimes Squad) or the Commander (State Crime Command) to authorise the release of information.

But he said before any disclosure was made, a number of criteria would need to be met, including:

- The offender must be assessed as having a high threat rating;
- There must be an identified threat to an identifiable person or class of persons;
- There must be no other lawful action which Police can take to avert the situation of potential harm;
- The risks associated with disclosure have been assessed, including the risk that the offender may act irrationally, abscond or go underground, or that disclosure results in vigilante activity;
- The information to be disclosed must have been assessed as reliable and accurate; and
- The information to be disclosed relates to the role and function of the recipient.

"Currently, police monitor the names, addresses, occupations, vehicle registration and other details of around 920 child sex offenders – who've been released after serving their sentences.

Child Protection (Offender Registration) Amendment Bill 2004

"Now, like in the UK, police will be permitted to reveal appropriate details to certain people in the community, if officers have genuine fears that local children could be at risk.

"This is not a system of full public disclosure," Mr Watkins said.

"Known in the US as 'Megan's Law', that system has been found to drive paedophiles into hiding and encourage vigilantes.

"But this new step in NSW will build on our offender registration files, with the release of selected information where appropriate."

Mr Watkins said today's announcement followed the Government's plan to introduce Child Protection Prohibition Orders, or CPPOs, this year – giving police additional powers to monitor and restrict the conduct and behaviour of offenders.

"CPPOs will ban convicted offenders from certain high-risk behaviour. If they breach the order, they'll face another two years in prison," the Minister said.

Examples of CPPOs that could be applied to paedophiles include, but are not limited to:

- Orders prohibiting them going to certain places;
- Orders prohibiting them from contacting certain people, or groups of people;
- Orders prohibiting them from certain types of employment;
- Orders against certain behaviour - type I (*for example, an offender may be prohibited from allowing anyone under 16 to enter their house, if previous offences involved luring children into the home*);
- Orders against certain behaviour – type II (*for example, an offender who has previously assaulted children whilst drunk may be banned from consuming alcohol*); and
- Orders against certain behaviour – type III (*An offender who has previously used the internet to contact children could be banned from accessing internet chat rooms*).

"The reality is, paedophilia is a high-risk recidivist offence," Mr Watkins said.

"Paedophiles have given up the right to move freely through our community, or move silently to anywhere they could pose a risk.

"These latest plans - including CPPOs, the controlled disclosure of Register details, and the adoption of a national register like the NSW system - will benefit our children for generations to come."

Contact: Josh Murray 0408 166 449

6. CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) ENFORCEMENT AMENDMENT (UNIFORM CLASSIFICATION) BILL 2004

Date Introduced: 16 September 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus MP
Portfolio: Attorney General

Background

1. The Committee reported on the *Classification (Publications, Films And Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004* in Legislation Review Digest No 12 of 2004.
2. By letter dated 21 September 2004 the Committee wrote to the Attorney General seeking his clarification as to the circumstances in which it is contemplated that Regulations under the amended *Classification (Publications, Films And Computer Games) Enforcement Act 1995* may make it an offence to indicate the equivalent former classification of a film or computer game.

Minister's Reply

3. On 28 September 2004 the Committee received the Attorney's reply.
4. The Attorney addressed the Committee's concerns as to the Regulation-making power referred to above as follows:

This is required to enable flexibility in the event that any new determined markings issued by the Commonwealth do not allow previously classified products to continue to use their old markings. A regulation would then be made negating cl 10(3), or parts thereof, to ensure consistency with the requirements of any new determined markings. There is currently no intention to make any regulations under cl 10(3)...

However, it is not clear that any new determined markings will be broad enough to ensure that people are not liable for prosecution under sections 15(3), 34(4) and 43(2) [of the *Classification (Publications, Films and Computer Games) Enforcement Act 1005* (NSW)] by using a 'marking' indicating or suggesting that a film or computer game 'has a different classification'. Clause 10(3) was therefore drafted to ensure that people were not prosecuted if, as expected, the new determined markings to be released by the Commonwealth allow previously classified products to continue to use their old markings. If the new determined markings do not allow this, contrary to what is currently proposed by the Commonwealth, cl 10(3) will be negated by the regulations to the extent required to ensure consistency with the determined markings.

Committee's Response

5. The Committee thanks the Attorney for his reply.

The Committee makes no further comment on this Bill.

Classification (Publications, Films And Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

21 September 2004

File ref: LRC970

The Hon R J Debus MP
Attorney General
Level 36 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Attorney

**Classification (Publications, Films And Computer Games) Enforcement Amendment
(Uniform Classification) Bill 2004**

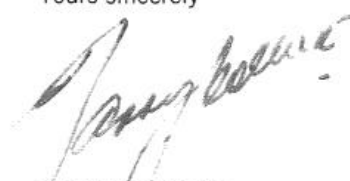
The Committee has considered this Bill under s 8A of the *Legislation Review Act 1987*.

The Bill provides that the display of a film or computer game with the equivalent former classification does not constitute an offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*.

However, the Bill provides that subsequent Regulations may make this an offence [proposed cl 10(2) of Sch 4].

The Committee seeks your clarification as to the circumstances in which it is contemplated that such Regulations may make it an offence to indicate the equivalent former classification of a film or computer game.

Yours sincerely



**BARRY COLLIER MP
CHAIRPERSON**

Classification (Publications, Films And Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004



ATTORNEY GENERAL

RECEIVED

28 SEP 2004

LEGISLATION REVIEW
COMMITTEE

Mr B Collier, MP
Chairperson
Legislation Review Committee
Parliament House
Macquarie St
Sydney NSW 2000

04/1622

Dear Mr Collier

Thank you for your letter of 21 September 2004 concerning Schedule 1[33] to the Classification (Publications, Films And Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004.

Schedule 1[33] contains transitional provisions. You are concerned that proposed cl 10(3), in Schedule 1[33], is a delegation of legislative powers and are seeking clarification as to the circumstances in which any Regulations may make it an offence to indicate the equivalent former classification of a film or computer game.

This is required to enable flexibility in the event that any new determined markings issued by the Commonwealth do not allow previously classified products to continue to use their old markings. A regulation would then be made negating cl 10(3), or parts thereof, to ensure consistency with the requirements of any new determined markings. There is currently no intention to make any regulations under cl 10(3).

Under the provisions of the Classification (Publications, Films and Computer Games) Enforcement Act ('the NSW Act'), films and computer games must carry 'determined markings' indicating their classification. The 'determined markings' are determined by the Commonwealth under section 8 of the Classification (Publications, Films and Computer Games) Act ('the Commonwealth Act').

The States and Territories have been informed by the Commonwealth that there will be new determined markings, intended to commence on the commencement of Schedule 1 to the Classification (Publications, Films and Computer Games) Amendment Act 2004 ('the Commonwealth amending Act'). It is currently proposed by the Commonwealth that the new determined markings will allow previously classified products to continue to use their previous determined markings. For instance, it will allow that films previously classified 'R' will not have to carry a new determined marking indicating that they are now classified 'R

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Classification (Publications, Films And Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004

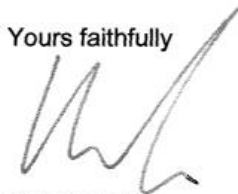
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18+', but they will instead be allowed to continue to carry a determined marking indicating a classification of 'R'.

The sections of the Classification (Publications, Films and Computer Games) Enforcement Act ('the NSW Act') that are affected by cl 10(3) are sections 15, 34 and 43. These sections contain provisions relating to the use of markings (both 'determined markings' and 'markings') indicating the classification that a film or computer game has. Presently they ensure that classified products indicate the classification a product has, in the form determined by the determined markings issued by the Commonwealth and that any other markings are not misleading or deceptive. The NSW Act uses the determined markings to dictate the requirements for the labelling of classifications on films and computer games in NSW.

However, it is not clear that any new determined markings will be broad enough to ensure that people are not liable for prosecution under sections 15(3), 34(4) and 43(2) by using a 'marking' indicating or suggesting that a film or computer game 'has a different classification'. Clause 10(3) was therefore drafted to ensure that people were not prosecuted if, as expected, the new determined markings to be released by the Commonwealth allow previously classified products to continue to use their old markings. If the new determined markings do not allow this, contrary to what is currently proposed by the Commonwealth, cl 10(3) will be negated by the regulations to the extent required to ensure consistency with the determined markings.

Yours faithfully



BOB DEBUS

7. THREATENED SPECIES LEGISLATION AMENDMENT BILL 2004

Date Introduced: 1 September 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus MP
Portfolio: Environment

Background

1. The Committee reported on the *Threatened Species Legislation Amendment Bill 2004* in Legislation Review Digest No 11 of 2004.
2. By letter dated 10 September 2004 the Committee wrote to the Minister for the Environment seeking his advice as to why there are no requirements in the legislation regarding the qualifications or attributes of person who may be appointed as "authorised persons" for the purposes of the Bill.

Minister's Reply

3. The Minister has replied to the Committee by way of letter dated 24 September 2004.
4. The Minister has responded as follows:

In light of the range of activities carried out by authorised officers and the range of skills required to carry out those functions, it is not possible to draft a description of the qualifications required for appointment apart from using very general terms such as "appropriately qualified" or "suitably qualified".

The practices adopted by the Director General of the Department of Environment and Conservation (DEC) in appointing authorised officers means that only properly qualified and appropriate persons will be given authorised officer powers.

Most authorised officers who are appointed under this provision will be employees of DEC. Authorised officers do not act independently of the DEC -reporting arrangements are in place so that the actions of authorised officers are reviewed and scrutinised by more senior officers.

The Director General understands the scope of the powers given to authorised officers and the need to ensure that only appropriate and suitably qualified persons are given those powers. Before a person is given authorised officer powers their Regional Manager must complete an internal document known as the "Capability Checklist". Some of the matters that are addressed on that list (which a person must satisfy before appointment) include legal skills in terms of collecting evidence, conducting interviews, site visits through to environmental knowledge and people skills. The Regional Manager needs to be satisfied that all matters on the checklist have been made out before recommending that a person is appointed as an authorised officer.

The appointment power is one that is currently found in the *Protection of the Environment Operations Act 1997* (POEO Act) and has been used for appointments of EPA authorised officers. Its adoption as proposed in the Bill will ensure a consistent agency approach.

Threatened Species Legislation Amendment Bill 2004

Onus of proof on landowner

5. The Minister has also responded to the concerns raised by the Committee in Digest No 11 of 2004 with respect to the reversal of the onus of proof contained in proposed s 159A of the *National Parks and Wildlife Act 1974*:

Under clause 159A of the Bill, where threatened species have been harmed or picked on a landholder's land, the landholder is taken to have committed the offence unless it is established that the offence was carried out by another person and the landholder did not cause or permit the other person to commit the offence.

This provision is modeled on section 257 of the POEO Act dealing with pollution offences. The provisions are justified because landholders generally have control of activities on their land.

Under clause 159A, the landholder will not be taken to have committed the offence if the landholder establishes that the activity was carried out by another person and the landholder did not permit or cause the other person to carry out the activity. It is important to note that the landholder has only to establish this defence on the balance of probabilities, not the higher standard of beyond reasonable doubt.

The section does not remove the other elements of the offences, which still need to be proved that there were plants and animals of the requisite type there and that they were adversely affected by human action.

Committee's Response

- | |
|---|
| 6. The Committee thanks the Minister for his reply. |
|---|

The Committee makes no further comment on this Bill.

Threatened Species Legislation Amendment Bill 2004



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

10 September 2004

File ref: LRC951

The Hon R J Debus MP
Minister for the Environment
Level 36 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Attorney

Threatened Species Legislation Amendment Bill 2004

The Committee has considered this Bill under s 8A of the *Legislation Review Act 1987*.

The Bill provides that the Director-General may appoint any person (including a class of persons) to be an authorised officer for the purposes of *national parks legislation* [proposed s 156B of the *National Parks and Wildlife Act 1974*].

Such an appointment provides an officer so authorised with extensive functions under national parks legislation, eg, the power to enter and search premises [Part 7.4 of the *Protection of the Environment Operations Act 1997*].

The Committee is of the view that such power should only be given to persons of appropriate responsibility and with sufficient accountability for their actions.

The Committee seeks your advice as to why there are no requirements regarding the qualifications or attributes of persons who may be appointed as authorised persons for the purposes of the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read "Barry Collier".

BARRY COLLIER MP
CHAIRPERSON



MINISTER FOR THE ENVIRONMENT

In reply please quote: MOF15019

Mr Barry Collier MP
Chairperson
Legislation Review Committee
PO Box 1026
MIRANDA NSW 1490

RECEIVED

30 SEP 2004

LEGISLATION REVIEW
COMMITTEE

Dear Mr Collier

24 SEP 2004

I refer to your recent correspondence and report on the *Threatened Species Legislation Amendment Bill 2004*. I understand that you seek advice as to why there are no requirements regarding the qualifications or attributes of persons who may be appointed as authorised persons and changes to the onus of proof under s 159A, to which I have provided responses below.

The Government believes that the reforms will significantly enhance the conservation and recovery of threatened species of native plants and animals, based on the experience gained with operation of the current legislation over the past nine years. It is also intended to address frustrations that have been expressed by participants in the assessment and decision-making processes provided under the current laws.

Our goal is to better equip the community to make informed and balanced decisions about future land-use, and to inspire and equip landholders, industry and the community to help restore and protect our unique biodiversity.

Appointment of authorised officers

In light of the range of activities carried out by authorised officers and the range of skills required to carry out those functions, it is not possible to draft a description of the qualifications required for appointment apart from using very general terms such as "appropriately qualified" or "suitably qualified".

The practices adopted by the Director General of the Department of Environment and Conservation (DEC) in appointing authorised officers means that only properly qualified and appropriate persons will be given authorised officer powers.

Most authorised officers who are appointed under this provision will be employees of DEC. Authorised officers do not act independently of the DEC - reporting arrangements are in place so that the actions of authorised officers are reviewed and scrutinised by more senior officers.

The Director General understands the scope of the powers given to authorised officers and the need to ensure that only appropriate and suitably qualified persons are given those powers. Before a person is given authorised officer powers their Regional Manager must complete an internal document known as the "Capability Checklist". Some of the matters that are addressed on that list (which a person must satisfy before appointment) include - legal skills in terms of collecting evidence, conducting interviews, site visits through to environmental knowledge and people skills. The Regional Manager needs to be satisfied that all matters on the checklist have been made out before recommending that a person is appointed as an authorised officer.

The appointment power is one that is currently found in the *Protection of the Environment Operations Act 1997* (POEO Act) and has been used for appointments of EPA authorised officers - its adoption as proposed in the Bill will ensure a consistent agency approach.

Offence provision - onus of proof on landowner

Under clause 159A of the Bill, where threatened species have been harmed or picked on a landholder's land, the landholder is taken to have committed the offence unless it is established that the offence was carried out by another person and the landholder did not cause or permit the other person to commit the offence.

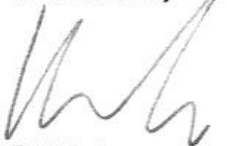
This provision is modeled on section 257 of the POEO Act dealing with pollution offences. The provisions are justified because landholders generally have control of activities on their land.

Under clause 159A, the landholder will not be taken to have committed the offence if the landholder establishes that the activity was carried out by another person and the landholder did not permit or cause the other person to carry out the activity. It is important to note that the landholder has only to establish this defence on the balance of probabilities, not the higher standard of beyond reasonable doubt.

The section does not remove the other elements of the offences, which still need to be proved - that there were plants and animals of the requisite type there and that they were adversely affected by human action.

Should you require further information, please contact Simon A Y Smith, Deputy Director General of the DEC, on 02 9995 6150.

Yours faithfully



Bob Debus

Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003	07/11/03	10369	05/03/04 30/04/04	01/04/04
Inclosed Lands Protection Regulation 2002	06/12/02	10370	29/05/03 12/09/03	29/08/03 11/03/04
Passenger Transport (Drug and Alcohol Testing) Regulation 2004	05/03/04	957	30/04/04	
Road Transport (General) Amendment (Impounding Fee) Regulation 2003	17/10/03	10045	13/02/04	15/06/04

SECTION B: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
<p>Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003</p> <ul style="list-style-type: none">• Letter dated 01/06/2004 to the Minister for Roads• Letter dated 17/09/2004 from the Minister for Roads <p>Previous correspondence on this Regulation is available in <i>Digests</i> 1 and 8 of 2004 and online.</p>	<p>29/08/2003 page 8610</p>

1. Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

1 June 2004

Our Ref:382
Your Ref:

The Hon Carl Scully MP
Minister for Roads
Level 36 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003

The Committee thanks you for your reply to its letter of 13 February 2004.

The Committee has considered your response and has resolved to write to you again in relation to clause 25B of this Regulation.

The Committee is of the view that when a regulation provides powers with the potential to erode personal rights, such as the right to privacy, the regulation should be drafted as narrowly as practicable to minimise the impact on those rights.

In your reply, you identified two categories of persons to whom it is intended the RTA be able to disclose personal information under clause 25B (Program Managers and interlock installers). You also identified some situations in which it might be appropriate or necessary for such persons to have access to that information.

In light this information, the Committee is of the view that the legislation could and should be amended to specify the people to whom the RTA can disclose personal information and the kind of situations in which such persons might have access to that information. In this way the negative impact on the right to privacy will be minimised and the interlock device program enhanced.

The Committee recommends that the Regulation be amended accordingly.

Yours sincerely



BARRY COLLIER MP
CHAIRPERSON

Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003

M04/4802



*Minister for Roads
Minister for Housing
Leader of the House*



17 SEP 2004

Mr Barry Collier MP
Chairperson
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Collier

I refer to your letter regarding Clause 25B of the *Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003*.

In keeping with your request, the NSW Roads and Traffic Authority (RTA) is exploring the option of amending the Regulation to narrow its scope by reference to the parties to which information is disclosed for administration of the Alcohol Interlock Program.

I will inform you of the outcome of the RTA's review.

Yours sincerely

A handwritten signature in cursive script, appearing to read "C. Scully".

CARL SCULLY MP
Minister for Roads

Appendix 1: Index of Bills Reported on in 2004

	Digest Number
Aboriginal Land Rights (Gandangara Estate) Bill 2004	12
Administrative Decisions Tribunal Amendment Bill 2004	11
Agricultural Livestock (Disease Control Funding) Amendment Bill 2004	10
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	2
Anti-Discrimination Amendment (Miscellaneous Provisions) Bill 2004	12
Appropriation Bill 2004	10
Appropriation (Budget Variations) Bill 2004	5
Appropriation (Parliament) Bill 2004	10
Appropriation (Special Offices) Bill 2004	10
Bail Amendment (Terrorism) Bill 2004	9
Botany Bay National Park (Helicopter Base Relocation) Bill 2004	5
Child Protection (Offenders Prohibition Orders) Bill 2004	9
Child Protection (Offender Registration) Bill 2004	10,13
Children (Detention Centres) Amendment Bill 2004	4
Civil Liability Amendment (Offender Damages) Bill 2004	5,7
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004	12,13
Commercial Agents and Private Inquiry Agents Bill 2004	9,10
Community Protection (Closure of Illegal Brothels) Bill 2003*	1
Compulsory Drug Treatment Correctional Centre Bill 2004	8
Constitutional Amendment (Pledge of Loyalty) Bill 2004*	7
Courts Legislation Amendment Bill 2004	7
Crimes Amendment (Child Neglect) Bill 2004	7
Crimes Legislation Amendment Bill 2004	3
Crimes Legislation Amendment (Terrorism) Bill 2004	10
Crimes (Administration of Sentences) Bill 2004	9
Crimes (Administration Of Sentences) Amendment (Norfolk Island Prisoners) Bill 2004	13
Crimes (Interstate Transfer of Community Based Sentences) Bill 2004	9
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003	1
Criminal Procedure (Sexual Offence Evidence) Bill 2004	8
Cross-Border Commission Bill 2004	3
Crown Lands Legislation Amendment (Budget) Bill 2004	10

	Digest Number
Crown Lands (Prevention of Sales) Bill 2004*	10
Education Amendment (Non-Government Schools Registration) Bill 2004	2
Electricity (Consumer Safety) Bill 2003	1,2
Fair Trading Amendment Bill 2004	4
Filming Approval Bill 2004	7,8
Fines Amendment Bill 2004	9
Fisheries Management Amendment Bill 2004	6
Food Legislation Amendment Bill 2004	3
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	2
Greyhound and Harness Racing Administration Bill 2004	7,9
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	6
Health Legislation Amendment Bill 2004	6
Health Legislation Further Amendment Bill 2004	13
Institute of Teachers Bill 2004	8
Legal Profession Amendment Bill 2004	9
Legal Profession Legislation Amendment (Advertising) Bill 2003	1
Liquor Amendment (Parliament House) Bill 2004	6
Liquor Amendment (Parliamentary Precincts) Bill 2004	8
Liquor Amendment (Racing Clubs) Bill 2004	9
Local Government Amendment (Council and Employee Security) Bill 2004	5
Local Government Amendment (Discipline) Bill 2004	9
Local Government Amendment (Mayoral Elections) Bill 2004	9
Lord Howe Island Amendment Bill 2003	10
Mine Health and Safety Bill 2004	8,9
Mining Amendment (Miscellaneous Provisions) Bill 2004	6,8
National Competition Policy Amendment (Commonwealth Financial Penalties) Bill 2004	2
National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004	7
National Competition Policy Liquor Amendment (Commonwealth Financial Penalties) Bill 2004	7
National Parks and Wildlife Amendment (Jenolan Caves Reserve Trust) Bill 2004	9
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	1
Parliamentary Electorates and Elections Amendment (Prohibition on Voting by Criminals) Bill 2004*	5
Partnership Amendment (Venture Capital Funds) Bill 2004	3

	Digest Number
Passenger Transport Amendment (Bus Reform) Bill 2004	8,9
Police Amendment (Crime Reduction and Reporting) Bill 2004	3
Police Amendment (Senior Executive Transfers) Bill 2004	9,10
Police Integrity Commission Amendment Bill 2004	12
Prevention of Cruelty to Animals (Tail Docking) Bill 2004	4,6
Professional Standards Amendment Bill 2004	11
Public Lands Protection Bill 2004*	13
Public Lotteries Legislation Amendment Bill 2004	2
Regional Development Bill 2004	7
Registered Clubs Legislation Amendment Bill 2004	11
Residential Tenancies (Public Housing) Bill 2004	9
Retail Leases Amendment Bill 2004	10
Retirement Villages Amendment Bill 2004	3
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	1
Road Transport (General) Amendment (Licence Suspension) Bill 2004	9
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	1,7
Rural Communities Impacts Bill 2004*	11
Snowy Mountains Cloud Seeding Trial Bill 2004	5
Save Orange Grove Bill 2004*	11
State Records Amendment Bill 2004	13
State Revenue Legislation Amendment Bill 2004	7
State Revenue Legislation Further Amendment Bill 2004	10
State Water Corporation Bill 2004	8
Statute Law (Miscellaneous Provisions) Bill 2004	9
Stock Diseases Amendment (Artificial Breeding) Bill 2004	6,8
Stock Diseases Amendment (False Information) Bill 2004	4,9
Stock Medicines Amendment Bill 2004	12
Strata Schemes Management Amendment Bill 2003	1,3
Superannuation Administration Amendment Bill 2003	1
Sustainable Energy Development Repeal Bill 2004	10
Sydney Opera House Trust Amendment Bill 2004	10
The Synod of Eastern Australia Property Amendment Bill 2004	2
Thoroughbred Racing Legislation Amendment Bill 2004	4,6
Threatened Species Legislation Amendment Bill 2004	11,13

	Digest Number
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	6
Wool, Hide and Skin Dealers Bill 2004	2
Workers Compensation Legislation Amendment Bill 2004	9

Appendix 2: Index of Ministerial Correspondence on Bills in 2004

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Child Protection (Offender Registration) Bill 2004	Minister for Police	27/08/04	20/09/04		10,13
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004	Attorney General	21/09/04	28/09/04		12,13
Civil Liability Amendment Bill 2003	Minister for Health	28/11/03	22/12/03	7	1
Civil Liability Amendment (Offender Damages) Bill 2004	Minister for Justice	26/03/04	13/04/04		5,7
Commercial Agents and Private Inquiry Agents Bill 2004	Minister for Police	18/06/04	29/07/04		9,10
Crimes Legislation Further Amendment Bill 2003	Attorney General	28/11/03	16/12/03	7	1
Electricity (Consumer Safety) Bill 2003	Minister for Fair Trading	13/02/04	18/02/04		1,2
Environmental Planning and Assessment (Development Consents) Bill 2003	Minister for Infrastructure and Planning	24/10/03	19/03/04	4	5
Environmental Planning and Assessment Amendment (Planning Agreements) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	28/11/03	19/03/04	7	5
Environmental Planning and Assessment (Quality of Construction) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	18/11/03	19/03/04	6	5
Filming Approval Bill 2004	Minister for the Environment	11/05/04	12/05/04		7,8
Greyhound and Harness Racing Administration Bill 2004	Minister for Gaming and Racing	11/05/04	31/05/04		7,9
Lord Howe Island Amendment Bill 2003	Attorney General/ Premier	13/02/04	Premier 13/07/04		1,10 ²⁹
Legal Profession Legislation Amendment (Advertising) Bill 2003	Attorney General	13/02/04	23/03/04		1,5
Mine Health and Safety Bill 2004	Minister for Mineral Resources	28/05/04	09/06/04		8,9
Mining Amendment (Miscellaneous Provisions) Bill 2004	Minister for Mineral Resources	30/04/04	17/05/04		6,8
Motor Accidents Legislation Amendment Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1

²⁹ Published under the title "Commencement of Acts."

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
National Parks and Wildlife Amendment (Kosciuszko National Park Roads) Bill 2003	Minister for the Environment	07/11/03	08/12/03	5	1
Partnership Amendment (Venture Capital Funds) Bill 2004	Attorney General	05/03/04	23/03/04		3,5
Passenger Transport Amendment (Bus Reform) Bill 2004	Minister for Transport Services	28/05/04 18/06/04	17/06/04		8,9
Police Amendment (Senior Executive Transfers) Bill 2004	Minister for Police	18/06/04	21/07/04		9,10
Police Legislation Amendment (Civil Liability) Bill 2003	Minister for Police	18/11/03	24/12/03	6	1
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004	Minister for Agriculture and Fisheries	16/03/04	05/04/04		4,6
Privacy and Personal Information Protection Amendment Bill 2003	Attorney General	24/10/03	25/02/04	4	3
Registered Clubs Amendment Bill 2003	Minister for Gaming and Racing	28/11/03	25/02/04	7	3
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	Minister for Roads	13/02/04	23/03/04		1,5
Road Transport (General) Amendment (Licence Suspension) Bill 2004	Minister for Roads	18/06/04			9
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	Minister for Roads	13/02/04	05/05/04		1,7
State Revenue Legislation Further Amendment Bill 2003	Treasurer	28/11/03	15/12/03	7	1
Stock Diseases Amendment (Artificial Breeding) Bill 2004	Minister for Agriculture and Fisheries	30/04/04	21/05/04		6,8
Stock Diseases Amendment (False Information) Bill 2004	Minister for Agriculture and Fisheries	16/03/04	28/05/04		4,9
Stock Medicines Amendment Bill 2004	Minister for Primary Industries	21/09/04			12
Strata Schemes Management Amendment Bill 2003	Minister for Fair Trading	13/02/04	27/02/04		1,3
Superannuation Administration Amendment Bill 2003	Treasurer	13/02/04	18/03/04		1,5
Thoroughbred Racing Legislation Amendment Bill 2004	Minister for Gaming Racing	16/03/04	07/04/04		4,6
Threatened Species Legislation Amendment Bill 2004	Minister for the Environment	27/08/04	24/09/04		11,13
Water Management Amendment Bill 2004	Minister for Natural Resources	28/05/04			8

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Workers Compensation Amendment (Insurance Reforms) Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2004

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Aboriginal Land Rights (Gandangara Estate) Bill 2004	N				
Administrative Decisions Tribunal Amendment Bill 2004				N	
Agricultural Livestock (Disease Control Funding) Amendment Bill 2004				N	
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	N				
Anti Discrimination Amendment (Miscellaneous Provisions) Bill 2004	N			N	
Bail Amendment (Terrorism) Act 2004	N				
Botany Bay National Park (Helicopter Base Relocation) Bill 2004				N	
Child Protection (Offenders Prohibition Orders) Bill 2004	N			C	
Child Protection (Offenders Registration) Bill 2004	N,C			C	
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004				C	
Civil Liability Amendment (Offender Damages) Bill 2004	R			C	
Commercial Agents and Private Inquiry Agents Bill 2004	R			C	
Community Protection (Closure of Illegal Brothels) Bill 2003	R				
Compulsory Drug Treatment Correctional Centre Bill 2004	N			N	
Courts Legislation Amendment Bill 2004				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Crimes Amendment (Child Neglect) Bill 2004				N	
Crimes Legislation Amendment (Terrorism) Bill 2004	N				
Crimes (Administration of Sentences) Bill 2004	N			N	
Crimes (Interstate Transfer of Community Based Sentences) Bill 2004				N	
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003				N	
Criminal Procedure (Sexual Offence Evidence) Bill 2004	N				
Crown Lands (Prevention of Sales) Bill 2004*	N, R				
Education Amendment (Non-Government Schools Registration) Bill 2004				N	
Electricity (Consumer Safety) Bill 2003	N, R				C
Fair Trading Amendment Bill 2004				N	
Filming Approval Bill 2004				C	
Fines Amendment Bill 2004				N	
Fisheries Management Amendment Bill 2004				N	
Food Legislation Amendment Bill 2004				N	
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	N			N	
Greyhound and Harness Racing Administration Bill 2004			R, C	N	
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	N		R		
Health Legislation Amendment Bill 2004	N			N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Health Legislation Further Amendment Bill 2004				N	
Institute of Teachers Bill 2004				N	
Legal Profession Legislation Amendment (Advertising) Bill 2003	C, R		C, R	N	
Liquor Amendment (Parliamentary Precincts) Bill 2004				N	
Local Government Amendment (Council and Employee Security) Bill 2004	N			N	
Local Government Amendment (Discipline) Bill 2004				N	
Mine Health and Safety Bill 2004	N, R	N	C	N, R	
Mining Amendment (Miscellaneous Provisions) Bill 2004	C, R			N	
National Parks and Wildlife Amendment (Jenolan Caves Reserve Trust) Bill 2004	N				
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	N				
Parliamentary Electorates and Elections Amendment (Prohibition on Voting Rights by Criminals) Bill 2004*	R				
Partnership Amendment (Venture Capital Funds) Bill 2004	C			C	
Passenger Transport Amendment (Bus Reform) Bill 2004	N, R		N, C, R	N	
Police Amendment (Senior Executive Transfers) Bill 2004				C	
Police Integrity Commission Amendment Bill 2004				N	
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004				C	
Professional Standards Amendment Bill 2004				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Public Lotteries Legislation Amendment Bill 2004				N	
Regional Development Bill 2004				N	
Registered Clubs Legislation Amendment Bill 2004	N				
Residential Tenancies (Public Housing) Bill 2004	N			N	
Retail Leases Amendment Bill 2004				N	
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	N, C				
Road Transport (General) Amendment (Licence Suspension) Bill 2004	N	C	R		
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003				C	
Save Orange Grove Bill 2004*	R				
Snowy Mountains Cloud Seeding Trial Bill 2004				N	
State Records Amendment Bill 2004	N,R,C			N	
State Revenue Legislation Further Amendment Bill 2004	N				
State Water Corporation Bill 2004				N	
Stock Diseases Amendment (Artificial Breeding) Bill 2004	C, R			N	N
Stock Diseases Amendment (False Information) Bill 2004	C			C	
Stock Medicines Amendment Bill 2004	N	R, C		N	
Strata Schemes Management Amendment Bill 2003				N,C	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Superannuation Administration Amendment Bill 2003	N			C	
Sydney Opera House Trust Amendment Bill 2004	N				
Thoroughbred Racing Legislation Amendment Bill 2004				C	
Threatened Species Legislation Amendment Bill 2004	N,R		N	N	R,C
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	R			N	
Wool, Hide and Skin Dealers Bill 2004				N	
Workers Compensation Legislation Amendment Bill 2004	N			N	

Key

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

Appendix 4: Index of correspondence on regulations reported on in 2004

Regulation	Minister/Correspondent	Letter sent	Reply	Digest Number
Children and Young Persons (Savings and Transitional) Amendment (Out-of-Home Care) Regulation 2003 & Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003	Minister for Community Services	13/02/04	21/04/04	1,7
Children's Services Regulation 2004	Minister for Community Services	10/09/04 16/09/04	14/09/04 16/09/04	12
Consultation on Regulations	Premier/Acting Premier	05/03/04	15/06/04	9
Crimes (Forensic Procedures) Amendment (DNA Database Systems) Regulation 2003	Attorney General	07/11/03	03/12/03	1
Determination of Regulatory Fee Increases	Premier	24/10/03	18/03/04	5
Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003	Minister Assisting the Minister for Infrastructure and Planning (Planning Administration)	05/03/04 30/04/04	01/04/04 01/06/04	6,9
Landlord and Tenant (Rental Bonds) Regulation 2003	Minister for Fair Trading	24/10/03 18/11/03 23/12/03	05/11/03 10/02/04	1
Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003	Minister for Commerce	26/03/04 30/04/04	15/04/04 05/05/04	6,7
Pawnbrokers and Second-hand Dealers Regulation 2003	Minister for Fair Trading	24/10/03 18/11/03 23/12/03	05/11/03 10/02/04	1
Radiation Control Regulation 2003	Minister for the Environment	24/10/03	23/01/04	1
Review of Regulations	Premier	18/12/03 27/08/04 01/09/04	12/07/04 20/08/04	11
Road Transport (General) Amendment (Impounding Fee) Regulation 2003	Minister for Roads	13/02/04	15/06/04	9
Road Transport (General) (Penalty Notice Offences) Amendment (Interlock Devices) Regulation 2003 and Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Privacy Commissioner	24/10/03 19/10/04	27/11/03	1
Road Transport (General) (Penalty Notice Offences) Amendment (Interlock Devices) Regulation 2003 and Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Minister for Roads	13/02/04 01/06/04 19/10/04	20/05/04 17/09/04	1,8