

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 4 of 2006

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Vice Chairman

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Russell Keith, Committee Manager

Indira Rosenthal, Senior Committee Officer

Mel Keenan, Senior Committee Officer

Carly Sheen, Committee Officer

Melanie Carmeci, Assistant Committee Officer

Panel of Legal Advisers

The Committee retains a panel of legal advisers to provide advice on Bills as required.

Professor Phillip Bates

Professor Simon Bronitt

Dr Steven Churches

Dr Anne Cossins

Professor David Farrier

Mr John Garnsey QC

Associate Professor Luke McNamara

Ms Rachel Pepper

Mr Rohan Price

Ms Diane Skapinker

Ms Jennifer Stuckey-Clarke

Professor George Williams

Contact Details

Legislation Review Committee

Legislative Assembly

Parliament House

Macquarie Street

Sydney NSW 2000

Telephone

02 9230 3418

Facsimile

02 9230 3052

Email

legislation.review@parliament.nsw.gov.au

URL

www.parliament.nsw.gov.au/lrc/digests

FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations:

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

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament. Following a brief description of the Bill, the Committee considers each Bill against the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987* (see page iii).

Section B: Ministerial correspondence – Bills previously considered

This section contains the Committee's reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee's scrutiny criteria.

Part Two – Regulations

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the *Digest*. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the *Digest* drawing the regulation to the Parliament's "special attention". The criteria for the Committee's consideration of regulations is set out in s 9 of the *Legislation Review Act 1987* (see page iii).

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

Appendix 1: Index of Bills Reported on in 2005

This table lists the Bills reported on in the calendar year and the *Digests* in which any reports in relation to the Bill appear.

Appendix 2: Index of Ministerial Correspondence on Bills for 2005

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Bill and correspondence appear.

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

This table specifies the action the Committee has taken with respect to Bills that received comment in 2005 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

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

This table lists the recipient and date on which the Committee sent correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Regulation and correspondence appear.

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Courts Legislation Amendment Bill 2006

7. In the circumstances, the Committee does not consider that the revival of cases taken to have been dismissed unduly trespasses on personal rights and liberties.

2. Crimes Amendment (Organised Car and Boat Theft) Bill 2006

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

3. Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Bill 2006

Retrospectivity: Clause 2

15. The Committee will always be concerned to identify any retrospective effect of legislation which adversely impacts on any person.
16. The Committee notes that the Minister's explanation, in his second reading speech, for commencing the Bill from the day on which notice of motion was given of an intention to introduce the Bill.
17. The Committee is of the view that, having regard to the need to prevent any opportunistic acquisition demands, the retrospective application of these amendments is not an undue trespass on personal rights or liberties.

4. Motor Vehicle Repairs (Anti-steering) Bill 2006*

Retrospectivity: cl 2

5. The Committee notes that the Bill sets the commencement date for the Act to be 1 June 2006 and that, if the Act is passed after that date, it will thereby purport to commence the Act retrospectively.
6. The Committee refers to Parliament whether this potential for retrospective commencement of the Act unduly trespasses on personal rights and liberties.

Retrospectivity: cll 5 & 6

10. The Committee notes that the Bill appears to alter the terms of existing insurance policies and contracts between insurers and repairers to comply with the anti-steering provisions of clauses 5 and 6.
11. The Committee refers to Parliament the question as to whether the retrospective effect of the Bill unduly trespasses on personal rights and liberties.

Strict liability: cll 11, 12, 13 & 15

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| <p>15. The Committee is of the view that strict liability is a very serious matter and should:</p> <ul style="list-style-type: none">- be imposed only after careful consideration of all available options;- be subject to defences wherever possible where contravention appears reasonable; and- have only limited monetary penalties and no terms of imprisonment. <p>16. The Committee refers to Parliament whether the penalties up to \$165,000 and imprisonment for 12 months for the second or subsequent committing of strict liability offences under the Bill inappropriately trespasses on personal rights and liberties.</p> |
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5. Smoke-free Environment Amendment (Removal of Exemptions) Bill 2006*

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| <p>3. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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6. Workers Compensation Legislation Amendment Bill

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| <p>5. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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Part One – Bills

SECTION A: COMMENT ON BILLS

1. COURTS LEGISLATION AMENDMENT BILL 2006

Date Introduced:	28 March 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

Purpose and Description

1. The Bill makes a range of amendments to court-related legislation.

Background

2. It was noted in the second reading speech that the Bill is part of the Attorney General's regular legislative review and monitoring program, and aims to improve the efficiency and operation of the courts.¹

The Bill

3. The Bill makes provision for the following:
 - the *Civil Procedure Act 2005* is amended to provide that proceedings taken to have been dismissed under cl 18 of the *Civil Procedure Regulation 2005* before the repeal of that clause by the *Civil Procedure Amendment (Savings and Transitional) Regulation 2005* are taken to have never been dismissed [proposed new Part 3 of Sch 6];
 - the *Criminal Procedure Act 1986* is amended:
 - to provide that an accused person served with a court attendance notice is not required to attend court if a written plea of guilty or not guilty is lodged not later than 7 days prior to the first date on which the accused person is required to attend the court (rather than the 5 days currently required) [proposed new s 182(3)];
 - to prevent costs from being awarded to the prosecution in relation to an offence for which a penalty notice has been issued where the accused person has elected to have the matter dealt with by a court and has lodged a written plea of guilty within that 7-day period [proposed new s 215(1A)]; and
 - to provide for the Supreme Court, the Land and Environment Court and the Industrial Relations Commission of New South Wales to make orders for costs against a prosecutor and on adjournments (in relation to unreasonable conduct or delays) in summary criminal proceedings on

¹ Ms A P Megarrrity MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 28 March 2006.

the same basis as a Local Court in such proceedings [proposed new Div 4 Pt 5 of Ch 4];

- the *Crown Prosecutors Act 1986* and the *Public Defenders Act 1995* are amended to enable Crown Prosecutors and Public Defenders to exercise their functions on a part-time basis by arrangement with the Director of Public Prosecutions or the Senior Public Defender, as the case may be [proposed new s 4(3A) and s 6(2A) respectively];
- the *District Court Act 1973* is amended to confer a right of appeal to the Supreme Court against a judgment or order of the Judicial Registrar of the District Court [proposed amended s 127];²
- the *Judges' Pensions Act 1953* is amended to enable judges' pensions to be paid fortnightly instead of monthly [proposed amended s 10(1)(b)];
- the *Land and Environment Court Act 1979* is amended to enable Commissioners of the Land and Environment Court to make costs orders with the concurrence of any judge of the Court rather than just the Chief Judge [proposed amended s 69(8)];
- the *Local Courts Act 1982* is amended to alter the relevant age restriction from 72 years to 75 years in respect of the appointment of Magistrates for limited tenure or the reinstatement of Magistrates for additional terms of office [proposed amended s 13 and s 21]; and
- the *Public Trustee Act 1913* is amended to allow the Public Trustee to receive money paid into court in a Local Court, the District Court, the Supreme Court or the Dust Diseases Tribunal for investment in the Public Trustee's common fund [proposed amended s 36G].

Issues Considered by the Committee

Retrospectivity: Proposed new Part 3 of Sch 6 to the Act

4. The Bill amends the *Civil Procedure Act 2005* to provide that proceedings taken to have been dismissed under former cl 18 of the *Civil Procedure Regulation 2005* are taken to have never been so dismissed.
5. The Committee notes that this amendment may adversely impact on defendants who had had litigation against them dismissed.
6. The Committee notes, however, that not applying the Bill retrospectively could deny plaintiffs the opportunity to have their case heard because the matter was not progressed for 12 months due to circumstances that were not intended to be covered by the Regulation.

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| <p>7. In the circumstances, the Committee does not consider that the revival of cases taken to have been dismissed unduly trespasses on personal rights and liberties.</p> |
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The Committee makes no further comment on this Bill.

² Currently, the District Court may set aside or vary a judgment or order of the Judicial Registrar other than an interlocutory order.

2. CRIMES AMENDMENT (ORGANISED CAR AND BOAT THEFT) BILL 2006

Date Introduced: 28 March 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus MP
Portfolio: Attorney General

Purpose and Description

1. This Bill amends the *Crimes Act 1900* as follows:
 - (a) to create several new offences relating to theft of motor vehicles and vessels, including an offence of facilitating an organised car or boat rebirthing activity,
 - (b) to repeal and re-enact the offence of car stealing, so that it extends to vessels,
 - (c) to extend other existing offences relating to stolen motor vehicles or vehicle parts to stolen vessels or vessel parts,
 - (d) to make other consequential and ancillary amendments.

Background

2. In explaining the need for the Bill, the Parliamentary Secretary stated:

The bill amends the Crimes Act 1900 to create several new offences targeted at the practice of car and boat rebirthing.

...

Even though rebirthers may commit a range of existing offences, the law is not currently structured to deal effectively with the methods that rebirthing gangs use. The bill addresses the challenge of creating an offence that covers all behaviour that constitutes rebirthing. It imposes strict penalties for rebirthing and closes any loopholes in the criminal law that rebirthers might try to exploit.³

The Bill

3. The second reading speech stated:

The major innovation of the bill is to create an offence of knowingly facilitating an organised car or boat rebirthing activity, which carries a maximum penalty of 14 years imprisonment. In addition, the bill creates a number of other offences that target dishonest behaviour that forms a part of rebirthing activities. These new offences are related to interfering with identification information, for example compliance plates that are used in the registration of vehicles; dishonestly possessing vehicles or parts of vehicles when the identification information on that vehicle or part has been altered; and possessing unattached vehicle identification plates that are designed to be attached to a vehicle.

³ Ms Alison Megarrrity MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 28 March 2006.

These secondary offences still offer appropriately harsh penalties—five years or seven years imprisonment per offence—and it is expected that they may be used when a person is found engaging in dishonest behaviour with vehicle identification information but the police cannot prove that the person is involved in a rebirthing syndicate. The offences created by the bill generally apply to vessels also, reflecting the fact that vessels are a valuable means of transportation and are also the target of rebirthers.⁴

Issues Considered by the Committee

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| <p>4. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

⁴ Ms Alison Megarritty MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 28 March 2006.

3. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (RESERVED LAND ACQUISITION) BILL 2006

Date Introduced: 28 March 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Frank Sartor MP
Portfolio: Planning

Purpose and Description

1. The Bill changes the procedure by which a person whose land has been reserved for use exclusively for a public purpose by an environmental planning instrument under the *Environmental Planning and Assessment Act 1979* may require the land to be acquired by a public authority.
2. At present, land owners can choose to have their land acquired under the terms of the environmental planning instrument that reserves their land or in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. Under the amended provisions, the single procedure will be the owner-initiated acquisition request provisions of the *Land Acquisition (Just Terms Compensation) Act 1991*, which applies where an owner will suffer hardship if there is a delay in acquisition of land by the relevant public authority.

Background

3. In the second reading speech, the Minister stated that, in addition to the amendments made in the Bill to the manner in which a land owner may seek compulsory acquisition of land reserved for a public purpose, a process of review of such land would be undertaken to assess if it was still required. He stated:

Allied to this bill is a proposal for a new State environment planning policy [SEPP] for public reserved lands, to be enacted where sites are identified as no longer required for a public purpose. The purpose of the public reserved lands SEPP is to provide a way to give landowners certainty over the land use ability of their property, if it is no longer required for public acquisition. The SEPP would also incorporate a provision for scheduling additional sites as needed.

The recent changes to the *Environmental Planning and Assessment Act 1979* require all local councils to review their local environmental plans within a two-year to five-year period. As part of this process all public authorities with reserved land in a local environmental plan will be required to also review their need to retain land reserved for a public purpose. The new LEPs will include an acquisition clause reflecting the provisions of the Bill. When reviewing the zoning of land currently zoned for a public purpose and identified as no longer required for a public purpose, consideration will be given to rezoning the land having regard to the adjoining zones and reflecting the objectives of the LEP. In the period before changes are made to LEPs that currently

reserve land for a public purpose, these legislative amendments would prevail over any contrary acquisition clause provision in existing planning instruments.⁵

The Bill

Current Position

4. Currently, section 26(1)(c) of the *Environmental Planning and Assessment Act 1979* (*EP&A Act*) provides that an environmental planning instrument may make provision for reserving land for use for certain public purposes (such as open space, road and transport corridors and facilities such as schools and hospitals). Where an environmental planning instrument reserves land for such a purpose, it must also make provision for the acquisition of that land by a public authority (unless the land is owned by a public authority and held by that public authority for that purpose). A landowner who wishes to have their reserved land acquired by the authority may write to the authority asking for that land to be compulsorily acquired. In such case, the authority has no discretion and must acquire the land.
5. Under the *Land Acquisition (Just Terms Compensation) Act 1991* (*Land Acquisition Act*), an owner of land designated for acquisition for a public purpose under an environmental planning instrument pursuant to the *EP&A Act*, may require an authority of the State, by notice in writing given to that authority, to acquire that land under the *Land Acquisition Act*. However, to compel the authority to acquire the land, the owner must show that he or she will suffer hardship if there is any delay in the acquisition of the land (s. 23). If the authority is of the opinion that the owner would suffer hardship, it must acquire the land.
6. “Hardship” is defined in subsections 24(2) and (3) of the *Land Acquisition Act* as follows:
 - (2) An owner of land suffers hardship if:
 - (a) the owner is unable to sell the land, or is unable to sell the land at its market value, because of the designation of the land for acquisition for a public purpose, and
 - (b) it has become necessary for the owner to sell all or any part of the land without delay:
 - (i) for pressing personal, domestic or social reasons, or
 - (ii) in order to avoid the loss of (or a substantial reduction in) the owner’s income.
 - (3) However, if the owner of the land is a corporation to which this Division applies, the corporation does not suffer hardship unless it has become necessary for the corporation to sell all or any part of the land without delay:
 - (a) for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation, or
 - (b) in order to avoid the loss of (or a substantial reduction in the income of such an individual.

⁵ The Hon Frank Sartor MP, Minister for Planning, Second Reading Speech, Legislative Assembly Hansard, 28 March 2006.

7. Further, an authority is not required to acquire land if it gives prior notice to the owner of the land that the land is no longer designated by that authority for future acquisition or gives a written undertaking that it will use its best endeavours to remove the relevant reservations and a written notice that the land is no longer designated by that authority for future acquisition [s. 27 *Land Acquisition Act*].
8. The effect of these two Acts is to give an owner of land reserved for use for a public purpose by an environmental planning instrument a choice between compulsory acquisition under the environmental planning instrument made under the *EP&A Act* or, if they can show hardship, compulsory acquisition under the *Land Acquisition Act*.

Proposed amendments

9. The Bill amends the *EP&A Act* so that the only procedure available for the compulsory acquisition of land reserved for use exclusively for a public purpose is the owner-initiated acquisition request procedure in the *Land Acquisition Act* [proposed s. 27].
10. Under the proposed amendment, an environmental planning instrument is not to be construed as requiring an authority of the State to acquire land, except as required by the *Land Acquisition Act*. Accordingly, an authority of the State will not be required to acquire land unless it is of the opinion that the owner will suffer hardship if there is any delay in the acquisition of the land under that Act.
11. The Bill commences on the day on which notice was given in Parliament for leave to introduce this Bill (ie, 28 March 2006). In his second reading speech, the Minister stated that this is to “prevent opportunistic acquisition demands”.⁶

Issues Considered by the Committee

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

Retrospectivity: Clause 2

12. Clause 2 provides for the commencement of the proposed Act from the date on which notice was given in Parliament for leave to introduce the Bill for the Act rather than a date on or after Parliament has passed the Bill. This retrospective commencement means that a landowner cannot use the compulsory acquisition regime under the *EP&A Act* from that date.
13. The Senate Scrutiny of Bills Committee has stated that commencing legislation retrospectively in this way:

... carries with it the assumption that citizens should arrange their affairs in accordance with announcements made by the Executive rather than in accordance with the laws made by the Parliament. It treats the passage of the necessary retrospective legislation 'ratifying' the announcement as a pure formality.⁷

⁶ The Hon Frank Sartor MP, Minister for Planning, Second Reading Speech, Legislative Assembly Hansard, 28 March 2006.

⁷ Senate Scrutiny of Bills Committee, *Annual Report 1986-87*, at 12-13.

14. The Committee notes the Minister's statement in his second reading speech that the Bill is to commence on this day to prevent any "opportunistic acquisition demands".

15. **The Committee will always be concerned to identify any retrospective effect of legislation which adversely impacts on any person.**
16. **The Committee notes that the Minister's explanation, in his second reading speech, for commencing the Bill from the day on which notice of motion was given of an intention to introduce the Bill.**
17. **The Committee is of the view that, having regard to the need to prevent any opportunistic acquisition demands, the retrospective application of these amendments is not an undue trespass on personal rights or liberties.**

The Committee makes no further comment on this Bill.

4. MOTOR VEHICLE REPAIRS (ANTI-STEERING) BILL 2006*

Date Introduced: 30 March 2006
House Introduced: Legislative Assembly
Member Responsible: Mr Richard Torbay MP

Purpose and Description

1. The object of this Bill is to regulate the activities of insurers and repairers in relation to the repair of motor vehicles that are insured against accident damage.
2. In particular, the Bill
 - invalidates the use, in insurance policies, of provisions that:
 - require the use of particular parts or products in the repair of the insured's motor vehicle;
 - restrict the insured's choice of repairer; or
 - impose additional charges on an insured for choosing their own repairer;
 - invalidates the use, in agreements between insurers and repairers, of provisions that:
 - require the repairer to offer discounted prices for parts or products to be paid for by the insurer;⁸ or
 - entitle the insurer to direct that particular motor vehicles be repaired by that repairer;
 - creates certain offences in relation to insurers steering insured persons or third party claimants towards particular repairers or requiring a repairer to use particular parts;
 - imposes disclosure requirements on insurers and repairers; and
 - prohibits, from 1 September 2006, insurers from holding or acquiring an ownership interest in any motor vehicle repair business in NSW.

Issues Considered by the Committee

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

Retrospectivity: cl 2

3. Clause 2 provides that the Act commences on 1 June 2006.

⁸ Explanatory note for clause 6. However, it is not apparent that this is the effect of clause 6.

4. If the Act is passed after that date, the provision will purport to commence the Act before the date of assent.

5. The Committee notes that the Bill sets the commencement date for the Act to be 1 June 2006 and that, if the Act is passed after that date, it will thereby purport to commence the Act retrospectively.

6. The Committee refers to Parliament whether this potential for retrospective commencement of the Act unduly trespasses on personal rights and liberties.

Retrospectivity: cll 5 & 6

7. The Bill renders provisions of insurance policies void to the extent that they:
- specify the parts that may be used;
 - restrict the insured from choosing a repairer; or
 - impose any additional charge on the insured for opting to choose their own repairer [cl 5].
8. The Bill also renders void contracts between insurers and repairers to the extent that they entitle the insurer to direct an insured's vehicle to that repairer [cl 6].⁹
9. As a result, the Bill may alter the terms of policies and contracts that were lawful at the time they were made.

10. The Committee notes that the Bill appears to alter the terms of existing insurance policies and contracts between insurers and repairers to comply with the anti-steering provisions of clauses 5 and 6.

11. The Committee refers to Parliament the question as to whether the retrospective effect of the Bill unduly trespasses on personal rights and liberties.

Strict liability: cll 11, 12, 13 & 15

12. The Bill places a number of positive obligations on insurers and repairers with criminal penalties for failure to comply. These include:
- insurers must provide prescribed disclosure notices within 5 days of issuing or renewing a policy and when an insured makes a claim [cl 11];
 - insurers must provide prescribed disclosure notices to third party claimants [cl 12];
 - repairers must disclose to an insured or third party claimant information about the parts or products used in a repair [cl 13]; and
 - insurers must disclose in any disclosure notice an ownership interest in any motor vehicle repair business in NSW [cl 15(2)(a)].

⁹ According to the explanatory note, the cl 6 also renders void contracts that require the repairer to offer discounted prices for parts or products to be paid for by the insurer.

13. These offences appear to impose strict liability as they appear to impose liability for unintentional contravention, although the common law defence of reasonable mistake of fact may apply.
14. The penalties for these offences include:
- 50 penalty units (\$5,500) (in the case of a first offence) or 100 penalty units (\$11,000) or imprisonment for 12 months or both (in the case of a second or subsequent offence) [cl 11, 12,&13]; and
 - 1,000 penalty units (\$110,000) (in the case of a first offence) or 1,500 penalty units (\$165,000) or imprisonment for 12 months or both (in the case of a second or subsequent offence) [cl 15].

15. The Committee is of the view that strict liability is a very serious matter and should:

- **be imposed only after careful consideration of all available options;**
- **be subject to defences wherever possible where contravention appears reasonable; and**
- **have only limited monetary penalties and no terms of imprisonment.**

16. The Committee refers to Parliament whether the penalties up to \$165,000 and imprisonment for 12 months for the second or subsequent committing of strict liability offences under the Bill inappropriately trespasses on personal rights and liberties.

The Committee makes no further comment on this Bill.

5. SMOKE-FREE ENVIRONMENT AMENDMENT (REMOVAL OF EXEMPTIONS) BILL 2006*

Date Introduced: 9 March 2006
House Introduced: Legislative Council
Member Responsible: The Hon Dr Arthur Chesterfield MLC

Purpose and Description

1. At present under the *Smoke-free Environment Act 2000*, certain areas are exempt from the prohibition on smoking in enclosed public places. These exempt areas include casino private gaming areas and until 1 July 2007, certain parts of registered clubs and licensed premises under the *Liquor Act 1982*.
2. The object of this Bill is to remove this exemption so that smoking will be prohibited in all enclosed public places.

Issues Considered by the Committee

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| 3. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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The Committee makes no further comment on this Bill.

6. WORKERS COMPENSATION LEGISLATION AMENDMENT BILL

Date Introduced: 28 March 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon John Della Bosca MLC
Portfolio: Commerce

Purpose and Description

1. The Bill's purpose is to reform how employers' premiums are paid under the *Workers Compensation Act 1987* (the 1987 Act) and the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act).
2. This Bill:
 - introduces a new scheme for grouping employers for workers compensation premium assessment purposes. It amends the 1987 Act to provide for common arrangements in relation to workers compensation insurance for employers who are members of groups of related entity employers (similar to pay-roll tax employer grouping); and
 - amends the 1998 Act to provide that an employer who is not required to obtain and maintain a workers compensation insurance policy, or be licensed as a self-insurer, under State workers compensation laws because the employer is licensed under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth must pay a similar contribution to the WorkCover Authority Fund as is currently paid by insurers and self-insurers.
3. The Bill also:
 - amends the 1987 Act to provide that the excess amount that an employer must repay to a workers compensation insurer after a weekly compensation claim is paid to an injured worker is to be specified in the insurance premiums order that applies to the policy under which the claim is paid;
 - repeals uncommenced provisions of the *Workers Compensation Legislation Amendment Act 2002* relating to an earlier proposed scheme of assessing premiums for groups of related entity employers; and
 - amends the 1987 Act to enable savings and transitional regulations consequent on the enactment of the proposed Act to be made.

Background

4. The following background was given in the second reading speech:

In September 2002, two special advisers appointed by the Government, Ms Penny Le Couteur and Dr Neil Warren, issued a report on the degree of employer compliance with workers compensation and payroll tax obligations... These consultants

recommended that companies having common ownership and control should be grouped together for workers compensation purposes to reduce compliance costs and to prevent artificial splitting of activities and unfair reductions in premiums.

Schedule 2 to the Workers Compensation Legislation Amendment Act 2002 included provisions for grouping of employers for workers compensation purposes... However, the provisions proposed in 2002 were not commenced because discussion with employers prior to implementation revealed some possible problems in requiring grouped employers to be insured under a single policy. In addition, there were possible adverse impacts on some charities on small businesses that were exempt from payroll tax.

The issue of grouping of related businesses for workers compensation purposes was then considered in the New South Wales Workers Compensation Premium Review Discussion Paper issued in March 2005. As a result of extensive consultation arising from that discussion paper, the bill now introduces a revised proposal for grouping employers.¹⁰

Issues Considered by the Committee

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| <p>5. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

¹⁰ Ms Alison Megarrity MP, Member for Menai, Legislative Assembly *Hansard*, 28 March 2006.

Appendix 1: Index of Bills Reported on in 2006

	Digest Number
Air Transport Amendment Bill 2006	2
Careel Bay Protection Bill 2006*	2
Child Protection (International Measures) Bill 2006	2
Crimes and Courts Legislation Amendment Bill 2005	1
Crimes Amendment (Organised Car and Boat theft) Bill 2006	4
Crimes (Sentencing Procedure) Amendment (Gang Leaders) Bill 2006*	3
Courts Legislation Amendment Bill 2006	4
Environmental Planning and Assessment Amendment Bill 2006	2
Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Bill 2006	4
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	2
Firearms Amendment (Good Behaviour Bonds) Bill 2006*	2
Fisheries Management Amendment Bill 2006	2
Freedom of Information Amendment (Open Government-Disclosure of Contracts) Bill 2005	1
Industrial Relations Amendment Bill 2006	3
James Hardie (Civil Liability) Bill 2005	1
James Hardie (Civil Penalty Compensation Release) Bill 2005	1
James Hardie Former Subsidiaries (Winding up and Administration) Bill 2005	1
Land Tax Management Amendment (Tax Threshold) Bill 2006	2
Law Enforcement (Controlled Operations) Amendment Bill 2006	3
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	1
Motor Accidents Compensation Amendment Bill 2006	3
Motor Accidents (Lifetime Care and Support) Bill 2006	3
Motor Vehicle Repairs (Anti-steering) Bill 2006*	4
National Parks and Wildlife (Adjustment of Areas) Bill 2006	2
Police Amendment (Death and Disability) Bill 2005	1
Protection of the Environment Operations Amendment (Waste Reduction) Bill 2006	3
Public Sector Employment Legislation Amendment Bill 2006	3
Royal Rehabilitation Centre Sydney Site Protection Bill 2006*	3
Smoke-free Environment Amendment (Removal of Exemptions) Bill 2006*	4
Workers Compensation Legislation Amendment Bill 2006	4
Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill 2005	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply	Digest 2005	Digest 2006
Commission for Children and Young People Amendment Bill 2005	Minister for Community Services	25/11/05		15	
Companion Animals Amendment Bill 2005	Minister for Local Government	25/11/05	15/12/05		1
Confiscation of Proceeds of Crime Amendment Bill 2005	Attorney General	10/10/05	23/11/05	11	1
Crimes Amendment (Road Accidents) Bill 2005	Attorney General	10/10/05	12/12/05	11	1
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05		6	
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/05	12/01/06		2
State Revenue Legislation Amendment Bill 2005	Treasurer	20/06/05	03/01/05	8	1
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005	Attorney General	25/11/05		15	
Vocational Education and Training Bill 2005	Minister for Education and Training	04/11/05	28/11/05	13	1
Water Management Amendment Bill 2005	Minister for Natural Resources	25/11/05		15	

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2006

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Careel Bay Protection Bill 2006*	R				
Environmental Planning and Assessment Amendment Bill 2006	R				
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	N				
Fisheries Management Amendment Bill 2006	R				
Law Enforcement (Controlled Operations) Amendment Bill 2006	R				
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	R				
Motor Accidents (Lifetime Care and Support) Bill 2006	R, C		R, C	R	R
Motor Accidents Compensation Amendment Bill 2006	R, C		R, C		
Motor Vehicles Repairs (Anti-steering) Bill 2006	R				
Royal Rehabilitation Centre Sydney Site Protection Bill 2006*	R				

Key

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

Appendix 4: Index of correspondence on regulations reported on in 2006

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2006
Centennial Park and Moore Park Trust Regulation 2004	Minister for Tourism and Sport and Recreation	29/04/05	19/01/06	1
Companion Animals Amendment (Penalty Notices) Regulation 2005	Minister for Local Government	12/09/05	21/12/05	1
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005	Minister for Planning	12/09/05	24/12/06	3
Hunter Water (General) Regulation 2005	Minister for Utilities	04/11/05	09/01/06	1
Protection of the Environment Operations (Waste) Regulation 2005	Minister for the Environment	04/11/05	29/11/05	1
Stock Diseases (General) Amendment Regulation 2005	Minister for Primary Industries	12/09/05	07/02/06	1
Workers Compensation Amendment (Advertising) Regulation 2005	Minister for Commerce	12/09/05	28/11/05	1