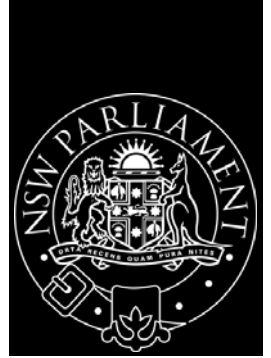


PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 5 of 2007

2 November 2007

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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.

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 2007

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 2007

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 2007

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 2007

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. Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2007

Issue: Clause 2 (1) - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

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| 11. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power. |
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2. Crimes (Forensic Procedures) Amendment Bill 2007

Right to personal physical integrity: Schedule 1[3] and [4]

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| 12. The Committee notes that extending the offences to which a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab may be ordered by a police officer or magistrate trespasses on a suspect's right to personal physical integrity. |
| 13. However, given the various safeguards included and the public interest in obtaining relevant evidence where there are reasonable grounds to believe that the suspect has committed an offence, the Committee concludes that the Bill does not unduly trespass on personal rights and liberties. |

Commencement by proclamation: Clause 2

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| 15. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power. |
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3. Jury Amendment Bill 2007

Commencement by proclamation: Clause 2

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| 14. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power. |
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4. Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Bill 2007

Commencement by proclamation: Clause 2

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| <p>13. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.</p> |
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5. Transport Administration Amendment (Countrylink Pensioner Booking Fee Abolition) Bill 2007*

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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. CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) ENFORCEMENT AMENDMENT BILL 2007

Date Introduced: 26 October 2007
House Introduced: Legislative Assembly
Minister Responsible: The Hon David Campbell MP
Portfolio: Police

Purpose and Description

1. This Bill amends the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* on the enactment of amendments to the corresponding Commonwealth Act, and to make further provision for the giving of exemptions from the State Act; and for other purposes.

Background

2. This Bill reflects the National Classification Scheme. The scheme is a cooperative arrangement between the Commonwealth, States and Territories under the 1996 intergovernmental agreement. NSW participates in this scheme. The Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* establishes the framework for the classification decisions with regard to the sale and public exhibition of films, computer games and some publications. The scheme is based on the principle that the Commonwealth, State and Territory censorship Ministers jointly agree with the classification policy and the criteria used by the boards in their decision making.
3. The States and Territories have enacted their own enforcement legislation that provides for the enforcement of classification decisions such as the setting of monetary penalties and offence provisions. The Commonwealth Parliament passed amendments to the Commonwealth Act earlier this year. The amendments include:
 - integrating the Office of Film and Literature Classification into the Commonwealth Attorney-General's Department;
 - giving the convenor of the Review Board separate statutory powers to manage the administrative functions of the Review Board, which are separate from the Classification Board;
 - clarifying the packaging of more than one previously classified film onto one storage device as not requiring a fresh classification of the compiled films;

Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2007

- clarifying the addition of navigation aids, subtitles or similar material to an already classified film as not requiring the film to be reclassified;
 - enabling persons authorised by the Director of the Classification Board to make recommendations to the Classification Board about the classification of additional content released with already classified films, such as out-takes;
 - conferring responsibility for determining markings and their display on the Commonwealth Minister after consultation with participating Ministers;
 - allowing the Director of the Classification Board to exempt an organisation in relation to computer games such that an exemption can be given under State enforcement Acts, to an approved organisation with regard to their activities and functions relating to film and computer games.
4. The entire Commonwealth Act will commence by 15 March 2008, with the Commonwealth amending legislation being commenced in stages in order to allow the States and Territories to amend their legislation to accommodate the changes to the Commonwealth Act.
 5. Consequential amendments to the NSW Act are included in this Bill. This Bill amends the definition of 'approved form' to take into account that the Commonwealth Act now provides for the Commonwealth Minister and not the Director of the Classification Board to approve a form for notice about classifications. The notice is the means by which the markings for each type of classification giving information about the classification and the manner in which the markings are to be displayed.
 6. The definition of 'film' will be amended to allow for the addition of descriptions or translations and navigation functions to an already classified film without requiring reclassification. This amendment is a response to new technologies to ensure that regulatory burden to the industry is not increased.
 7. Amendments will ensure that the sale of an unclassified film is not breached by a compilation of several classified films onto a single device. Adding subtitles, captions, dubbing and audio descriptions to an already classified film will also not amount to a modification of the classified film that would require the film to be reclassified again. The amendments will also provide a mechanism for the exemption for organisations that carry on activities of an educational, cultural or artistic nature approved by the Director of the Classification Board with contemporary moving image exhibitions.

The Bill

8. The object of this Bill is to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (the *State Act*) so as to make:
 - (a) consequential amendments arising from the enactment of the *Classification (Publications, Films and Computer Games) Amendment Act 2007* of the Commonwealth, and
 - (b) other amendments, including amendments relating to the giving of exemptions from the State Act for approved organisations carrying out educational, cultural or artistic activities.

9. Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision giving effect to the amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* set out in Schedules 1 and 2.

Clause 4 provides for the repeal of the proposed Act after all the amendments have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments consequential on enactment of *Classification (Publications, Films and Computer Games) Amendment Act 2007* of the Commonwealth

Schedule 1 makes amendments consequential on the enactment of the *Classification (Publications, Films and Computer Games) Amendment Act 2007* of the Commonwealth (*the Commonwealth amending Act*). State legislation provides complementary administrative and enforcement mechanisms for the classification of publications, films and computer games under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth (*the Commonwealth Act*).

Schedule 1 [1] amends section 4 to substitute the definition of *approved form* as a consequence of the insertion of section 8A into the Commonwealth Act by the Commonwealth amending Act, which empowers the Commonwealth Minister (and not the Director of the Classification Board) to approve a form for a notice about classifications.

Schedule 1 [2] amends section 4 to insert a definition of *Convenor* (meaning the Convenor of the Classification Review Board), consistently with the Commonwealth Act. The definition is used in provisions inserted by the Commonwealth amending Act and by the proposed Act.

Schedule 1 [3] inserts a new section 5A, in the same terms as section 14A inserted in the Commonwealth Act by the Commonwealth amending Act. The new section 14A of the Commonwealth Act clarifies that, when several previously classified films are brought together for distribution in a single device (eg a DVD), the product does not require classification simply because of the fact of compilation. Similarly, new section 5A of the State Act ensures that a single device that consists of several previously classified films is not caught by the prohibition in section 6 of the sale or public exhibition of unclassified films.

Schedule 1 [4] amends section 7 (which prohibits the sale or public exhibition of a classified film if it is sold or exhibited under a different title from that under which it was classified or with alterations or additions to the form in which it was classified) so that the section is not contravened by the sale or public exhibition of a film:

- under a title different from that under which it was classified if it is contained on one device (eg a DVD) that consists only of 2 or more classified films, or
- with modifications referred to in section 21 (2) of the Commonwealth Act as amended by the Commonwealth amending Act (including the addition or removal of navigation functions, or the addition or removal of material providing a description or translation of audio or visual content that would not cause a higher classification to be given).

The amendment made by Schedule 1 [4] complements that made by Schedule 1 [3], in that new section 5A will ensure that a compilation on a single device (eg a DVD) is not “unclassified” for the purposes of section 6, whereas new section 7 (2) (a) will ensure that such a compilation will not be subject to the prohibition in section 7 (1).

Schedule 1 [5] amends section 42 to remove a reference to the Director of the Classification Board, consistently with amendments to section 8 of the Commonwealth Act by the Commonwealth amending Act, which substitutes the Commonwealth Minister for the Director as the authority to exercise the function of determining markings for classifications.

Schedule 1 [6] amends section 48B to replace a reference to the Director of the Classification Board with a reference to the Convenor of the Classification Review Board, consistently with amendments to section 44A of the Commonwealth Act by the Commonwealth amending Act. Both sections relate to the power to require a copy of a publication, film or computer game to be made available for a review by the Classification Review Board of a classification decision.

Schedule 1 [7] amends section 58 to add a reference to the Convenor of the Classification Review Board, consistently with amendments to section 87 of the Commonwealth Act by the Commonwealth amending Act. Both sections relate to the giving of evidentiary certificates.

Schedule 2 Other amendments

Schedule 2 [1] and [2] omit the note to section 4, which sets out definitions contained in the Commonwealth Act, and references in section 4 to the note. The note was included when the Bill for the State Act was originally introduced but becomes out of date when definitions in the Commonwealth Act are amended.

Schedule 2 [3] amends section 48 to allow the Director to call in a copy of advertisements used or intended to be used for unclassified as well as classified films (consistently with the calling in of a copy of advertisements for computer games).

Schedule 2 [4] replaces section 51, which deals with the power of the Director of the Classification Board to grant exemptions from provisions of the State Act. The principal change is to provide for the exemption (subject to any ministerial directions or guidelines) of organisations that carry on activities of an educational, cultural or artistic nature. The opportunity has been taken to reorder the provisions of the section.

Schedule 2 [5] and [6] amend Schedule 1 to the State Act to enable regulations of a savings or transitional nature to be made in connection with the proposed Act and to enact specific savings provisions in connection with the substitution of section 51 dealing with exemptions.

Issues Considered by the Committee

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

Issue: Clause 2 (1) - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

10. The Committee notes that the proposed Act, except as provided by subsection (2), is to commence on a day to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

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| <p>11. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.</p> |
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The Committee makes no further comment on this Bill.

2. CRIMES (FORENSIC PROCEDURES) AMENDMENT BILL 2007

Date Introduced: 24 October 2007
House Introduced: Legislative Assembly
Minister Responsible: Hon David Campbell MP
Portfolio: Minister for Police

Purpose and Description

1. The Bill proposes to amend the *Crimes (Forensic Procedures) Act 2000* to:
 - extend the circumstances in which a person suspected of a crime may be requested or required to undergo a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab; and
 - make it clear that a forensic procedure may be ordered in relation to a suspect for the purpose of obtaining evidence tending to confirm or disprove that the suspect has committed an offence only if there are reasonable grounds to believe that the suspect has committed that offence.

Background

2. According to the Agreement in Principle speech:

The amendments implement a 2007 Government election commitment to expand the range of offences in respect of which DNA samples may be taken without a person's consent. Currently, police can only take DNA samples from people accused of indictable offences like murder, sexual assault and robbery unless they consent to the forensic procedure. The changes will expand this to include all offences, including non-indictable offences such as loitering by convicted child sex offenders and minor drug offences.¹

The Bill

3. Section 11 of the *Crimes (Forensic Procedures) Act 2000* currently provides that a police officer may only ask a suspect to undergo a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab in relation to a *prescribed* offence where there are reasonable grounds to believe that the procedure might produce evidence confirming or disproving the commission of the offence.
4. Schedule 1[1] and [2] propose to amend s 11 so that a police officer may request consent to a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab in relation to any offence.

¹ B J Collier MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 24 October 2007.

5. The Bill proposes to amend sections 20 and 24 of the Act so that the carrying out of a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab may be ordered by a senior police officer or magistrate in relation to any offence, not just a prescribed offence: schedule 1[3] and [4].
6. Schedule 1[5] amends s 88 of the Act to provide for the destruction of forensic material after 12 months if proceedings for an offence in respect of the act or omission in relation to which the forensic material was taken have not been instituted against the suspect or have been discontinued.

Issues Considered by the Committee

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

Right to personal physical integrity: Schedule 1[3] and [4]

7. The Bill proposes to amend sections 20 and 24 of the *Crimes (Forensic Procedures) Act 2000* to make further provision regarding the circumstances in which a senior police officer or magistrate may order the carrying out of a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab. No longer must such orders be limited to circumstances involving prescribed offences.
8. This trespasses on the suspect's right to personal physical integrity.
9. However, a number of safeguards are included. A senior police officer may not order a non-intimate forensic procedure unless satisfied (schedule 1[3]):
 - a. that the suspect is under arrest;
 - b. that there are reasonable ground to believe that the suspect has committed an offence;
 - c. that there are reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect has committed the offence;
 - d. that the suspect is neither a child nor an incapable person; and
 - e. that the carrying out of such a procedure is justified in the circumstances.
10. A Magistrate may not order a non-intimate forensic procedure unless:
 - a. there are reasonable grounds to believe that the suspect has committed an offence; and
 - b. there are reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect has committed the offence.

11. Section 88 of the Act also provides for the destruction of forensic material after 12 months if proceedings have not been instituted against the suspect or have been discontinued.

12. The Committee notes that extending the offences to which a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab may be ordered by a police officer or magistrate trespasses on a suspect's right to personal physical integrity.

13. However, given the various safeguards included and the public interest in obtaining relevant evidence where there are reasonable grounds to believe that the suspect has committed an offence, the Committee concludes that the Bill does not unduly trespass on personal rights and liberties.

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

Commencement by proclamation: Clause 2

14. Clause 2 of the Bill specifies that it is to commence on proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

15. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.

The Committee makes no further comment on this Bill.

3. JURY AMENDMENT BILL 2007

Date Introduced: 24 October 2007
House Introduced: Legislative Assembly
Minister Responsible: Hon David Campbell MP
Portfolio: Minister for Police

Purpose and Description

1. The purpose of the Jury Amendment Bill 2007 is to amend the *Jury Act 1977*:
 - a. to enable up to three additional jurors to be selected for certain criminal trials in the Supreme Court or District Court; and
 - b. to ensure that only 12 members of a jury that is expanded with additional jurors may retire to consider the jury's verdict.

Background

2. The current requirement for a jury in criminal proceedings in the Supreme Court or District Court is that it consists of 12 jurors. If during the course of the trial, any member of the jury dies or is discharged because of illness or other reason, the jury is considered to be properly constituted if:
 - there are not less than 10 members;
 - there are less than 10 members, but all parties consent in writing to continue; or
 - there are less than 10 but at least 8 members and the trial has been in progress for 2 months.
3. There is accordingly the possibility that a trial may have to be aborted if more than two jurors have either died and/or been discharged and one party is not willing to continue with the trial.
4. The NSW Law Reform Commission recommended in its 1986 report *Criminal Procedure: The Jury in a Criminal Trial* that judges be given the power to empanel up to three additional jurors where the trial is expected to take more than three months.² It also recommended that, in such a case, the number of peremptory challenges available to the Crown and each accused person be increased by one.³

² NSW Law Reform Commission, *Criminal Procedure: The Jury in a Criminal Trial*, Report 48, 1986, Recommendation 81.

³ NSW Law Reform Commission, *Criminal Procedure: The Jury in a Criminal Trial*, Report 48, 1986, Recommendation 84.

5. Various provisions apply in the other Australian States and Territories regarding reserve, additional and supplementary jurors, and expanded juries.⁴
6. According to the Agreement in Principle speech, the Bill aims to:

reduce the risk of long criminal trials being aborted and so reduce the trauma felt by victims of crime and their families. Delays arising from aborted trials can cause considerable distress to victims and may reduce the likelihood of a successful prosecution, particularly in cases where witnesses become unavailable. The bill improves the criminal justice system and could result in substantial savings of taxpayers' dollars by avoiding aborted trials and the resulting retrials.⁵

The Bill

7. Section 19 of the *Jury Act 1977* currently provides that the jury in criminal proceedings in the Supreme or District Courts is to consist of 12 persons.
8. The Bill proposes to amend s 19 so that a jury in criminal proceedings may also consist of up to three additional jurors if so ordered by the Court: schedule 1[1].
9. The Court may make such an order if satisfied that:
 - a. the trial of the proceedings is of a kind prescribed by the regulations (until the regulations prescribe otherwise, a trial likely to last more than three months is to be taken as so prescribed);
 - b. the selection of the additional jurors is an appropriate means of ensuring that there will be sufficient jurors remaining on the jury when the jury is required to consider its verdict; and
 - c. appropriate facilities to accommodate the additional jurors are available.
10. The Bill proposes to amend s 42 of the Act to provide each person prosecuted and the Crown with an additional peremptory challenge without restriction where the jury consists of more than 12 jurors. This is in addition to the three peremptory challenges without restriction that currently apply in criminal proceedings.
11. When a jury of more than 12 persons is required to retire to consider its verdict, 12 persons are to be selected by ballot (or 11 if a foreperson has been chosen) to constitute the verdict jury: proposed s 55G.
12. The verdict jury is to constitute the jury for the trial until its conclusion unless the court gives a direction under proposed s 55G(5).

⁴ Section 34 *Jury Act 1995* (Qld); s 6A *Juries Act 1927* (SA); s 37 *Juries Act 2003* (Tas); s 41 *Juries Act 2000* (Vic); s18 *Juries Act 1957* (WA); s 31A *Juries Act 1967* (ACT); and s 37A *Juries Act 1962* (NT).

⁵ B J Collier MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 24 October 2007.

Issues Considered by the Committee

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

Commencement by proclamation: Clause 2

13. Clause 2 of the Bill specifies that it is to commence on proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

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| <p>14. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.</p> |
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The Committee makes no further comment on this Bill.

4. ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) AMENDMENT (NOVICE DRIVERS) BILL 2007

Date Introduced: 24 October 2007
House Introduced: Legislative Assembly
Minister Responsible: The Hon Reba Meagher MP
Portfolio: Health

Purpose and Description

1. This Bill amends the *Road Transport (Safety and Traffic Management) Act 1999* to extend the requirement for a zero prescribed concentration of alcohol to visiting overseas or interstate novice drivers; and for other purposes.

Background

2. This aims to ensure all visiting interstate and overseas learner and provisional drivers are subject to the same zero alcohol limits that apply to NSW novice drivers.
3. Under the current NSW legislation, learner and provisional licence holders are prohibited to drive after consuming alcohol. However, a legal blood alcohol limit of less than 0.05 is allowed for a visiting provisional driver when driving in NSW, even if that driver may be subject to a legal blood alcohol limit of zero when they are driving in their own jurisdiction.
4. An example of this is for Victorian probationary licence holders, they have to comply with a zero alcohol limit when driving in Victoria but a 0.05 alcohol limit when driving in NSW. This may also be the case for holders of a learner or provisional licence issued overseas.
5. The member for Tweed recently introduced the Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2007. However, that bill did not cover all novice licences issued by other jurisdictions that are equivalent to a provisional licence, such as, the probationary licences issued by Victoria and Western Australia, nor those equivalent provisional and learner licences issued overseas. It also did not include consequential amendments relating to the legal alcohol limits of drivers supervising learner drivers.
6. Prior to a zero alcohol limit in NSW, there was a legal limit of 0.02 for special category drivers such as learners and provisional licence holders. In 2004, the NSW Government introduced legislation to reduce the legal limit to zero for such licence holders. Visiting novice drivers from other jurisdictions were not included in those provisions because at the time, there were inconsistent applications of legal blood alcohol levels that existed across jurisdictions. Since then, other jurisdictions have or are in the process of, introducing a zero alcohol limit for their novice drivers.

Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Bill 2007

7. ACT and Western Australia currently apply a 0.02 alcohol limit to novice drivers. However, the Western Australian Government is proposing to move to a zero alcohol limit later this year. The current NSW law treats the holder of a learner licence with zero alcohol limit irrespective of which Australian jurisdiction the licence was issued from. This Bill aims to be consistent by also including overseas learners and provisional licence holders when driving in NSW.
8. This Bill also extends certain offences relating to alcohol and other drug use directed at the holders of a NSW full driver licence who are supervising drivers with an Australian learner licence, to now also be directed at visiting drivers with an interstate or overseas full driver licence, as well as to the supervision of visiting drivers with an overseas learner licence.

The Bill

9. The object of this Bill is to amend the *Road Transport (Safety and Traffic Management) Act 1999* (the *Principal Act*):
 - (a) to extend the requirement for a zero prescribed concentration of alcohol (*PCA*) for drivers holding an Australian learner licence or a New South Wales provisional licence to visiting drivers holding an overseas learner licence or an interstate or overseas provisional licence (or equivalent), and
 - (b) to extend certain offences relating to alcohol and other drug use, that are currently directed at the holders of a New South Wales full driver licence who are supervising drivers holding an Australian learner licence, to visiting drivers holding an interstate or overseas full driver licence and to the supervision of visiting drivers holding an overseas learner licence (or equivalent), and
 - (c) to make other minor, consequential and ancillary amendments.

10. Outline of provisions

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

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

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

11. Schedule 1 Amendments

Extension of requirement for zero prescribed concentration of alcohol

The Principal Act prohibits the holders of learner licences issued in Australia and the holders of provisional licences issued in New South Wales from driving with any percentage of alcohol in their blood.

Schedule 1 [2] (which inserts the definitions of ***learner licence*** and ***provisional licence***) **and [8]** make amendments to extend the requirement for a zero PCA to visiting drivers holding an overseas learner (or equivalent) licence or an interstate or overseas provisional (or equivalent) licence.

Schedule 1 [8] also makes amendments consequential on those referred to above, as do **Schedule 1 [4], [15] and [16]**.

Extension of offences relating to alcohol and other drug use by supervisors of learner drivers

The Principal Act prohibits the holders of New South Wales driver licences (other than learner or provisional licence holders) from supervising drivers holding an Australian learner licence, while under the influence of alcohol or other drugs. (Specifically, the offences prohibit special category supervisors with the special range PCA in their blood, or supervisors with the low, mid or high range PCA in their blood, or under the influence of alcohol or drugs, or with prescribed illicit drugs or morphine or cocaine in their oral fluid, blood or urine, from supervising drivers holding an Australian learner licence.)

Schedule 1 [2] (which inserts the definitions of **driver licence**, **learner licence** and **provisional licence**) and **[9]** make amendments to extend the offences to visiting drivers holding an interstate or overseas driver licence (other than a learner or provisional or equivalent licence) and to the supervision of visiting drivers holding an overseas learner (or equivalent) licence. **Schedule 1 [14]–[16]** make consequential amendments. **Schedule 1 [5]** makes a consequential amendment and simplifies and consolidates existing categories of **special category drivers** for the purposes of the Principal Act.

Other minor, consequential and ancillary amendments

Schedule 1 [1] and [7] make amendments to effect a minor restructuring of Divisions in Part 2 of the Principal Act (making Division 1 a preliminary division dealing with interpretation and inserting a new Division 1AA containing offences involving prescribed concentrations of alcohol). **Schedule 1 [3], [10] and [11]** make consequential amendments.

Schedule 1 [6] inserts a new section 8A into proposed Division 1, which contains the various categories of prescribed concentrations of alcohol (currently located throughout the Dictionary) to which the offences in the proposed Division 1AA relate. **Schedule 1 [16]** makes a consequential amendment.

Schedule 1 [12] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [13] inserts a transitional provision into the Principal Act. The effect of this provision is that legal proceedings for offences committed before the commencement of the proposed amendments will continue to be determined under the law as it stood before that commencement.

Schedule 1 [17] omits an otiose provision concerning references to the holder of a driver licence in Part 2 of the Principal Act.

Issues Considered by the Committee

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

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

12. The Committee notes that the proposed Act is to commence on a day to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

- | |
|---|
| <p>13. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.</p> |
|---|

The Committee makes no further comment on this Bill.

5. TRANSPORT ADMINISTRATION AMENDMENT (COUNTRYLINK PENSIONER BOOKING FEE ABOLITION) BILL 2007*

Date Introduced: 25 October 2007
House Introduced: Legislative Assembly
Member Responsible: Gladys Berejiklian MP

Purpose and Description

1. The purpose of the Bill is to abolish booking fees on the use of pensioner travel vouchers and passes on CountryLink rail services.

Background

2. According to the Agreement in Principle speech, a pensioner booking fee tax of \$10 or 15% of the full adult fare for the equivalent journey (whichever is greater) was introduced in March 2006.⁶ The tax applies when senior citizens use free pensioner travel vouchers on CountryLink services.

The Bill

3. The Bill proposes to insert s 85A into the *Transport Administration Act 1988* to prohibit RailCorp charging any pensioner booking fee for travel on a railway service provided by CountryLink.
4. A pensioner booking fee is defined as a fee, however described, charged for or in relation to a NSW/ACT pensioner booking a railway service provided by CountryLink for travel using:
 - (a) what would otherwise be a free travel pass;
 - (b) a concessional travel pass; or
 - (c) a pensioner travel voucher.

Issues Considered by the Committee

- | |
|---|
| 5. 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 G Berejiklian MP, Legislative Assembly *Hansard*, 25 October 2007.

Appendix 1: Index of Bills Reported on in 2007

	Digest Number
Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007*	2
Animals (Regulation of Sale) Bill 2007*	4
Anti-Discrimination Amendment (Breastfeeding) Bill 2007	3
Anti-Discrimination Amendment (Offender Compensation) Bill 2007	1
APEC Meeting (Police Powers) Bill 2007	1
Appropriation Bill 2007; Appropriation (Parliament) Bill 2007; Appropriation (Special Offices) Bill 2007; Payroll Tax Bill 2007; State Revenue and Other Legislation Amendment (Budget) Bill 2007	1
Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007	2
Bail Amendment Bill 2007	4
Biofuel (Ethanol Content) Bill 2007	2
Births, Deaths and Marriages Registration Amendment Bill 2007	1
Brothels Legislation Amendment Bill 2007	2
Channel 7 Former Epping Site Protection Bill 2007*	3
Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007	1
Children (Criminal Proceedings) Amendment (Publication of Names) Bill 2007	2
Christian Israelite Church Property Trust Bill 2007	3
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2007	5
Climate Futures Bill 2007*	2
Commission for Children and Young People Amendment (Parliamentary Joint Committee) Bill 2007	1
Constitution Amendment (Speaker) Bill 2007	2
Courts Legislation Amendment Bill 2007	4
Crimes (Administration of Sentences) Amendment (Assistance in Foreign Criminal Matters) Bill 2007	2
Crimes Amendment Bill 2007	3
Crimes (Forensic Procedures) Amendment Bill 2007	5
Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007	1
Crimes (Sentencing Procedure) Amendment Bill 2007	4
Criminal Legislation Amendment Bill 2007	4
Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007	2
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	1
Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Bill 2007	4
Drug and Alcohol Treatment Bill 2007	1

	Digest Number
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2007	1
Educational Support for Dyslexic Children Bill 2007*	2
Electricity Supply Amendment (Offences) Bill 2007	2
Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007	2
Evidence Amendment Bill 2007	4
Fair Trading Amendment (Funeral Goods and Services) Bill 2007	1
Food Amendment Bill 2007	4
Government Publicity Control Bill 2007*	2
Government Schools (Infrastructure Register) Bill 2007*	2
Guardianship Amendment Bill 2007	1
Housing Amendment (Community Housing Providers) Bill 2007	3
Human Cloning and Other Prohibited Practices Amendment Bill 2007	1
Industrial and Other Legislation Amendment (APEC Public Holiday) Bill 2007	1
Judicial Officers Amendment Bill 2007	1
Jury Amendment Bill 2007	5
Law Enforcement (Powers and Responsibilities) Amendment Bill 2007	4
Liquor Amendment (Small Bars and Restaurants) Bill 2007*	3
Liquor Amendment (Special Events Hotel Trading) Bill 2007	3
Mental Health Bill 2007	1
Motor Dealers Amendment Bill	2
National Parks and Wildlife Amendment (Leasing and Licensing) Bill 2007	2
Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007*	2
Partnership Amendment (Venture Capital) Bill 2007	3
Police Superannuation Legislation Amendment Bill 2007	1
Private Health Facilities Bill 2007	1
Professional Standards Amendment (Mutual Recognition) Bill 2007	1
Protection of the Environment Operations Amendment (Waste) Bill 2007	2
Renewable Energy (New South Wales) Bill	2
Road Transport (General) Amendment (Written-off Vehicles) Bill 2007	4
Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Bill 2007	5
Roads Amendment (Lane Cove Tunnel Filtration) Bill 2007*	4
Royal Rehabilitation Centre Sydney Site Protection Bill 2007*	2
Rural Communities Impacts Bill 2007*	1
Security Industry Amendment (Patron Protection) Bill 2007*	2

	Digest Number
Senator's Elections Amendment Bill 2007	1
Standard Time Amendment (Daylight Saving) Bill 2007	2
Statute Law (Miscellaneous Provisions) Bill 2007	1
Summary Offences Amendment (Spray Paint Cans) Bill 2007	4
Superannuation Legislation Amendment Bill 2007	2
Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill 2007	1
Tow Truck Industry Amendment Bill 2007	4
Trade Measurement Legislation Amendment Bill 2007	3
Transport Administration Amendment (Countrylink Pensioner Booking Fee Abolition) Bill 2007*	5
Transport Administration Amendment (Portfolio Minister) Bill 2007	1
Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2007*	2
University of Technology (Kuring-gai Campus) Bill 2007*	2
War Memorial Legislation Amendment (Increased Penalties) Bill 2007	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2006	Digest 2007
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07			1
Children (Detention Centres) Bill 2006	Minister for Juvenile Justice	02/06/06	27/06/06	8, 9	
Commission for Children and Young People Amendment Bill 2005	Minister for Community Services	25/11/05	25/08/06	10	
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	1	
Correctional Services Legislation Amendment Bill 2006	Minister for Justice	02/06/06		8	
Crimes Amendment (Road Accidents) Bill 2005	Attorney General	10/10/05	12/12/05	1	
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 & Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006	Premier	26/09/06	17/10/06	13,15	
Crimes Legislation Amendment (Gangs) Bill 2006	Minister for Police	05/09/06		10	
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05	19/04/06	5	
Crimes (Serious Sex Offenders) Bill 2006	Minister for Justice	28/04/06		5	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07			1
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07			1
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	Attorney General	02/06/06	02/08/06	8,9	
Education Legislation Amendment Bill 2006	Minister for Education and Training	10/11/06		16	
Education Legislation Amendment (Staff) Bill 2006	Minister for Education and Training	09/05/06	23/05/06	6,8	
Fair Trading Amendment Bill 2006	Minister for Fair Trading	02/06/06	07/06/06	8,12	
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07			1
Local Government Amendment (Waste Removal Orders) Bill 2006	Minister for Local Government		09/06/06	8,9	

Bill	Minister/Member	Letter sent	Reply received	Digest 2006	Digest 2007
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07			1
Motor Accidents Compensation Amendment Bill 2006 and Motor Accidents (Lifetime Care and Support) Bill 2006	Minister for Commerce	24/03/06	26/04/06	3,5	
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	1	
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07		1,2
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005	Attorney General	25/11/05	16/05/06	7	
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07			1
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006	Minister for Gaming and Racing	09/05/06	24/05/06	6,8	
Transport Administration Amendment (Public Transport Ticketing Corporation) Bill 2005	Minister for Transport	25/11/05 28/04/06	05/04/06	5	
Vocational Education and Training Bill 2005	Minister for Education and Training	04/11/05	28/11/05	1	
Water Management Amendment Bill 2005	Minister for Natural Resources	25/11/05	05/09/06	11	

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2007

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentar y scrutiny
Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007*	N, R				
Anti-Discrimination Amendment (Offender Compensation) Bill 2007	N, R				
APEC Meeting (Police Powers) Bill 2007	N, R, C		N,R		
Bail Amendment Bill 2007	N, R			N, R	
Biofuel (Ethanol Content) Bill 2007	N, R			N, R	
Brothels Legislation Amendment Bill 2007	N, R		N, R	N, R	
Channel 7 Former Epping Site Protection Bill 2007*	N, R				
Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007	N				
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2007				N, R	
Climate Futures Bill 2007*	N, R				
Crimes Amendment Bill 2007				N, R	
Crimes (Forensic Procedures) Amendment Bill 2007	N			R	
Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007	N, R				
Crimes (Sentencing Procedure) Amendment Bill 2007	N			N, R	
Criminal Legislation Amendment Bill 2007	N, R			N, R	
Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007	N			N, R	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	N			N, C	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentar y scrutiny
Drug and Alcohol Treatment Bill 2007	R, N, C			N, R	
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2007			N		
Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007				N	
Evidence Amendment Bill 2007				N	
Food Amendment Bill 2007	N			C	
Guardianship Amendment Bill 2007	N, C, R		N	N, C	
Housing Amendment (Community Housing Providers) Bill 2007				N, R	
Human Cloning and Other Prohibited Practices Amendment Bill 2007	N, R				
Jury Amendment Bill 2007				R	
Law Enforcement (Powers and Responsibilities) Amendment Bill 2007				N, R	
Mental Health Bill	N, R, C	N, C	N, C	N, R	
Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007*	N				
Renewable Energy (New South Wales) Bill	N			N	
Road Transport (General) Amendment (Written-off Vehicles) Bill 2007	N			N, R	
Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Bill 2007				R	
Security Industry Amendment (Patron Protection) Bill 2007*	N				
Statute Law (Miscellaneous Provisions) Bill 2007	N			N, C	
Summary Offences Amendment (Spray Paint Cans) Bill 2007	N				

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentar y scrutiny
Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill 2007	N, R, C			N, C, R	
Tow Truck Industry Amendment Bill 2007				N, R	
University of Technology (Kuring-gai Campus) Bill 2007*	N, R			N, R	
War Memorial Legislation Amendment (Increased Penalties) Bill 2007	N, 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 2007

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2006
Environmental Planning and Assessment Amendment (Designated Development) Regulation 2007	Minister for Planning	03/07/07	10/09/07	2, 3