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Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 14 of 2005

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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 iv).

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 iv).

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. Children and Young Persons (Care and Protection) Amendment Bill 2005

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

2. Crimes Amendment (Animal Cruelty) Bill 2005

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

3. First State Superannuation Legislation Amendment (Conversion) Bill 2005

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

4. Governor General's Residence (Grant) Amendment Bill 2005

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

5. Greek Orthodox Archdiocese of Australia Consolidated Trust Amendment (Duties) Bill 2005

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

6. Infrastructure Implementation Corporation Bill 2005

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

7. Mental Health (Criminal Procedure) Amendment Bill 2005

Right to a fair trial: proposed s 11 of the Principal Act

8. The Committee notes that the Bill removes the right to have a fitness hearing held before a jury.
9. The Committee also notes that the NSW Law Reform Commission recommended that all fitness hearings be held before a judge alone as, among other things, judge alone hearings may be quicker, less formal and less confusing or stressful for the defendant.

10. The Committee refers to Parliament the question of whether removing the right to have a fitness hearing held before a jury trespasses unduly on the right to a fair trial.

8. Property, Stock and Business Agents Amendment Bill 2005

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

9. Residential Parks Amendment (Statutory Review) Bill 2005

Investigators' powers of entry: proposed new s 136B

7. The Committee will always be concerned to note where officials are granted powers of entry to property other than pursuant to a search warrant.
8. However, having regards to the limits on these powers, the aims of the Bill, and the Department of Fair Trading's role and responsibilities under the amended *Residential Parks Act 1998*, the Committee does not consider that the proposed section constitutes an undue trespass on the privacy rights of residential park owners or residents.

10. Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Bill 2005

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

11. Shops and Industries Amendment (Special Shop Closures) Bill 2005

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

12. State Emergency Service Amendment Bill 2005

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

13. Statute Law (Miscellaneous Provisions) Bill (No. 2) 2005

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

14. Technical and Further Education Commission Amendment (Staff) Bill 2005

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

SECTION B: Ministerial Correspondence — Bills Previously Considered

15. Security Industry Amendment Bill 2005

5. The Committee thanks the Minister for his response.
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Part One – Bills

SECTION A: COMMENT ON BILLS

1. CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT BILL 2005

Date Introduced:	8 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Reba Meagher MP
Portfolio:	Community Services

Purpose and Description

1. The Bill amends the *Children and Young Persons (Care and Protection) Act 1998* (the Act) as set out below.

Background

2. The following background was provided in the second reading speech:

The amendments are generally of a procedural nature and do not represent any significant policy change...

...[They] have been sought by community and other stakeholders and consulted on widely. They will enhance the operation of the Act for those practitioners, individuals and agencies who use the Act. More importantly, the amendments will further enable the Act to meet its primary objectives: the care and protection of, and provision of services to, children.¹

The Bill

3. The Bill makes the following changes:
 - (a) explicitly provides for the Children's Court to issue notices requiring the attendance of children and young persons and their parents before the Children's Court and subpoenas for the attendance of witnesses to give evidence and produce documents to the Court [proposed new s 96];
 - (b) enables the Children's Court to issue:
 - notices requiring the attendance before the Children's Court of persons who have, or have had, care responsibility for a child or young person, and requiring other persons to attend to give information concerning the whereabouts of children and young persons [proposed s 109A]; and
 - warrants for the arrest of children, young persons, parents and other persons who do not appear as required by such notices and witnesses who do not comply with such subpoenas [proposed s 109B];

¹ The Hon R P Meagher MP, Minister for Community Services, Legislative Assembly *Hansard*, 8 November 2005.

Children and Young Persons (Care and Protection) Amendment Bill 2005

- (c) enables the Children's Court, a Children's Registrar or other Registrar of the Children's Court, and certain authorised justices to:
 - grant bail to such persons [proposed s 109U]; and
 - issue warrants of commitment to correctional centres, detention centres and other places of security where bail is not dispensed with or granted [proposed new s 109K];
- (d) requires a care plan to be presented to the Children's Court and for the Court to be satisfied as to its terms before the Court makes an order giving an authorised carer sole parental responsibility for a child or young person under s 149 of the Act [proposed s 149AA];
- (e) provides for the prescription by regulation of medical treatments as *special medical treatments* for the purposes of s 175 of the Act [proposed new s 175(b)];²
- (f) repeals s 176 of the Act (special medical examinations);
- (g) makes it clear that community based and private children's services are exempt from the requirements of the *State Records Act 1998* [proposed new s 218A];
- (h) provides as a ground on which a search warrant in respect of the presence of a child or young person may be applied for, and issued, under s 233(1)(a) of the Act that a child or young person is at risk of serious harm [proposed amended s 233];
- (i) enables the regulations to exempt certain centre based children's services from the requirement that they be licensed and to regulate the services so exempted [proposed s 220(q)];
- (j) enable the regulations to apply, adopt or incorporate, wholly or in part and with or without modifications, any standard, rule, code, specification or other document prescribed or published by any person or body (whether of New South Wales or elsewhere) and as in force at a particular time or from time to time [proposed new s 264(3)]; and
- (k) clarifies certain provisions concerning the removal of children and young persons from, and search for children and young persons in, premises and places [proposed amended s 48].

² Under s 175 of the *Children and Young Persons (Care and Protection) Act 1998*, *special medical treatment* means:

- (a) any medical treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out, not being medical treatment:
 - (i) that is intended to remediate a life-threatening condition, and
 - (ii) from which permanent infertility, or the likelihood of permanent infertility, is an unwanted consequence;
- (b) any medical treatment that involves the administration of a long-acting injectable hormonal substance (such as medroxyprogesterone acetate in aqueous suspension) for the purpose of contraception or menstrual regulation;
- (c) any medical treatment in the nature of a vasectomy or tubal occlusion; or
- (d) any other medical treatment that is declared by the regulations to be special medical treatment for the purposes of this section.

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> |
|---|

The Committee makes no further comment on this Bill.

2. CRIMES AMENDMENT (ANIMAL CRUELTY) BILL 2005

Date Introduced: 9 November 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus MP
Portfolio: Attorney General

Purpose and Description

1. The Bill amends:
 - (a) the *Crimes Act 1900*:
 - to create a new serious animal cruelty offence, with a maximum penalty of 5 years imprisonment, where the offender intends to inflict severe pain on an animal and kills or causes serious injury or prolonged suffering to the animal; and
 - to create a new animal cruelty offence, with a maximum penalty of 5 years imprisonment, where the offender intentionally kills or seriously injures an animal knowing that it is being used for law enforcement purposes or in retaliation for such a use;
 - (b) the *Criminal Procedure Act 1986* to enable the new offences to be dealt with summarily unless the prosecutor otherwise elects; and
 - (c) the *Law Enforcement (Powers and Responsibilities) Act 2002* to enable a court that finds certain animal cruelty offences under the *Prevention of Cruelty to Animals Act 1979* to be proven to order that the offender submit to the taking of identification particulars (such as finger-prints) by police.

Background

2. The second reading speech stated that:

The amendments contained in this bill arise from the [multi-agency Animal Cruelty Task Force] report to the Government. Current animal cruelty offences are found in the Prevention to Cruelty to Animals Act 1979. The most serious of these offences carries a maximum penalty of two years imprisonment. The task force was concerned primarily with whether a new aggravated animal cruelty offence carrying a higher penalty should be created in the Crimes Act 1900.³

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

³ The Hon Sandra Nori MP, Legislative Assembly *Hansard*, 9 November 2005.

3. FIRST STATE SUPERANNUATION LEGISLATION AMENDMENT (CONVERSION) BILL 2005

Date Introduced:	8 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Della Bosca MLC
Portfolio:	Special Minister of State

Purpose and Description

1. The objects of this Bill are:
 - (a) to amend the *Superannuation Administration Act 1996* to enable the FSS Trustee Corporation (FTC) established by that Act to become a proprietary company limited by shares under the *Corporations Act 2001* of the Commonwealth;
 - (b) to amend the *First State Superannuation Act 1992* and the *Superannuation Administration Act 1996* to enable the First State Superannuation Scheme to become a superannuation scheme regulated under Commonwealth legislation;
 - (c) to amend the First State Superannuation Trust Deed to enable the Deed to be varied in order for the First State Superannuation Scheme to meet the requirements for regulation under Commonwealth legislation; and
 - (d) to make consequential amendments to certain Acts and regulations.

Background

2. The second reading speech stated that:

First State Superannuation [FSS] is an accumulation superannuation scheme. All New South Wales public sector employees recruited since 1992 are covered by the First State Superannuation Act 1992. However, they may choose to have their compulsory employer contributions paid into a complying superannuation scheme other than FSS. First State Superannuation has around 440,000 member accounts and about \$9 billion under administration. Currently, membership of FSS is restricted by a heads-of-government agreement with the Commonwealth to New South Wales public sector employees. This means that employees, such as, nurses, who move from public to private sector employment are forced to start with a new superannuation scheme...

The Trustee proposes to make membership of the fund truly portable while continuing to be a not-for-profit scheme.

By converting the FSS from a state regulated "exempt public sector scheme" to a scheme regulated by Commonwealth law, the trustee will have the option to offer continued membership to former public sector employees and become a "public offer fund" if it chooses. Of course, conversion of the fund is subject to approval by the Commonwealth licensing and regulatory authorities.

The process for the Trustee obtaining this approval is well in train. Subject to the passage of this bill, conversion of FSS Trustee Corporation [FTC] is anticipated to occur in early 2006...

First State Superannuation Legislation Amendment (Conversion) Bill 2005

The conversion of FSS has been the subject of discussion for several years between the trustee, Treasury, the Public Employment Office in the Premier's Department and Unions New South Wales, all of whom endorse the change.

... FSS will continue as a not-for-profit scheme. There is no adverse change for members.⁴

Issues Considered by the Committee

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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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The Committee makes no further comment on this Bill.

⁴ Mr Paul McLeay, Parliamentary Secretary, Legislative Assembly *Hansard*, 8 November 2005.

4. GOVERNOR GENERAL'S RESIDENCE (GRANT) AMENDMENT BILL 2005

Date Introduced:	8 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Morris Iemma MP
Portfolio:	Premier

Purpose and Description

1. The Bill amends the *Governor General's Residence (Grant) Act 1945* (the Act) to enable the Governor General's residence to be used for certain charitable, educational and other purposes.

Background

2. The second reading speech stated:

Currently, the use of Admiralty House is restricted by the Governor General's Residence (Grant) Act 1945 and the Crown Grant made pursuant to the Act. The Crown Grant provides that Admiralty House must be used exclusively as the Governor General's residence, and for no other purpose.

It provides that a breach of this condition will enable the New South Wales Governor to reclaim the land from the Commonwealth on behalf of the State of New South Wales. To relax these restrictions, the Governor General has proposed that the principal Act be amended to permit Admiralty House to be used primarily, rather than exclusively, as the Governor General's premises.

The bill implements the Governor General's proposal by enabling the Governor General to permit the use of the land for certain charitable, educational and other public purposes so long as it is primarily used as the Governor General's official residence in Sydney.⁵

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

⁵ Ms Alison Megarrity, Parliamentary Secretary, Legislative Assembly *Hansard*, 8 November 2005.

5. GREEK ORTHODOX ARCHDIOCESE OF AUSTRALIA CONSOLIDATED TRUST AMENDMENT (DUTIES) BILL 2005

Date Introduced:	8 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

Purpose and Description

1. This Bill amends the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994*. It provides that duty under the *Duties Act 1997* is not chargeable when property is conveyed to the Greek Orthodox Archdiocese of Australia Consolidated Trust from a person who holds that property on behalf of a Greek Orthodox parish or congregation.⁶

Background

2. The second reading speech stated:

The bill mak[es] it simpler and less costly for parishes to transfer their property into the consolidated trust...

Each time there is a transfer of property into the trust, the church must apply to the Commissioner of State Revenue for an ex gratia payment of the duty payable on the transaction. The commissioner has a discretionary power to make an act of grace payment of the duty, but the process for exercising this power is consuming and resource intensive...

By providing a statutory exemption from duty when property is transferred into the trust, the bill will remove the need for the church and the Office of State Revenue to go through th[is] time-consuming process... The bill does not make any changes to the operation of the consolidated trust. It does not require any parish or any person to transfer property to the consolidated trust. Transfers will continue to be purely voluntary.⁷

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

⁶ The constitution and functions of the Greek Orthodox Archdiocese of Australia Consolidated Trust and how property may be vested in it are set out in the *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994*. The Trust's functions include dealing with property as trustee for, or for the purposes of, the Greek Orthodox Church and the Archdiocese: *Greek Orthodox Archdiocese of Australia Consolidated Trust Act 1994*, s 10.

⁷ Ms Alison Megarrity, Parliamentary Secretary, Legislative Assembly *Hansard*, 8 November 2005.

6. INFRASTRUCTURE IMPLEMENTATION CORPORATION BILL 2005

Date Introduced:	9 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Morris Iemma MP
Portfolio:	Treasury

Purpose and Description

1. The object of this Bill is to constitute the Infrastructure Implementation Corporation (the IIC) which will have the function of carrying out major infrastructure projects as well as taking over the responsibility for the carrying out of major infrastructure projects undertaken by other public authorities. The functions of the IIC in relation to major infrastructure projects may only be exercised if authorised by an order of the Premier.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

7. MENTAL HEALTH (CRIMINAL PROCEDURE) AMENDMENT BILL 2005

Date Introduced:	8 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

Purpose and Description

1. The Bill amends the *Mental Health (Criminal Procedure) Act 1990* (the Principal Act) and the *Mental Health Act 1990* (MHA) as set out below.

Background

2. The following background was provided in the second reading speech:

The prevalence of mental illness in the New South Wales correctional system is substantial and indicative of the high incidence of defendants in court who have mental illness. These amendments simplify procedures, improve operational efficiency and update the law with respect to people suffering a mental illness, mental condition or intellectual disability. This bill is the result of the most exhaustive process of consultation and we have reached an uncommon degree of consensus.

The amendments are based on the Law Reform Commission Report 80, "People with an Intellectual Disability and the Criminal Justice System". The Interdepartmental Committee on the Mental Health Criminal Procedure Act 1990 and Cognate Legislation was established to consider the recommendations...All of the recommendations of the committee were unanimously agreed upon.⁸

The Bill

3. The Bill makes the following changes to the Principal Act:
 - removes the role of the Attorney General in relation to an inquiry held by the District Court or Supreme Court as to the fitness of a person to be tried for an offence, and in relation to directing the holding of a special hearing in respect of a person who is not fit to be tried for an offence [proposed amended s 8, s 10, s 20];
 - gives the Court, the Mental Health Review Tribunal (the Tribunal) and the Director of Public Prosecutions certain functions in relation to these matters [proposed amended s 16, s 17];
 - provides that a Judge alone, rather than a jury, is to determine the question of a person's fitness to be tried for an offence [proposed new s 11];

⁸ Ms A P Megarrity MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 8 November 2005.

- provides that a Judge alone is to determine a special hearing unless the defendant, the defendant's representative or the prosecutor elects to have the matter determined by a jury [proposed new s 21A];
 - extends the options available to a Magistrate when dealing with a person who was developmentally disabled or suffering from a mental illness or other mental condition at the time he or she committed an offence, but was not a "mentally ill" person within the meaning of the Act [proposed amended s 32];
 - requires a Magistrate and certain authorised officers to state reasons for certain decisions made in proceedings where it is alleged that the defendant is such a person, or a mentally ill person [proposed new s 32 (4A) and (4B)];
 - enables a person who, in accordance with an order of a Magistrate, assesses the mental condition of or provides treatment to such a defendant to report breaches of the order to certain officers of the Probation and Parole Service or the Department of Juvenile Justice (or another person or body prescribed by the Regulations) [proposed amended s 33]; and
 - removes s 34, which requires a Magistrate, on application of the defendant in proceedings, to disqualify himself or herself from continuing to hear the proceedings in certain circumstances.
4. The Bill amends the MHA:
- in connection with the amendments made to the Principal Act; and
 - to prevent the Tribunal from recommending the release of a person who is a forensic patient if the person has been transferred to hospital while serving a sentence of imprisonment and has not finished serving the sentence (or non-parole period for the sentence, if applicable) [proposed amended s 82]; and
 - to enable the Minister for Health (as the prescribed authority under the MHA) to take action when a person breaches a condition of an order of a court under s 39 of the Principal Act releasing a person from custody after a finding of not guilty by reason of mental illness [proposed amended s 93].

Issues Considered by the Committee

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

Right to a fair trial: proposed s 11 of the Principal Act

5. Proposed s 11 provides that a judge alone is to determine the question of a person's fitness to be tried for an offence.
6. It is arguable that the removal of the right to a hearing before a jury may impinge upon a defendant's right to a fair trial.
7. However, the NSW Law Reform Commission noted that fitness hearings involved primarily technical matters, and are therefore most suitable for a hearing by judge alone, particularly as they are not designed to be adversarial, and no decisions are

made about the person's criminal liability.⁹ The Commission also noted that judge alone hearings may be quicker, less formal and less confusing or stressful for the defendant, particularly if experts for both sides agree that the defendant is clearly unfit to be tried, and recommended that fitness hearings should always be heard by a judge alone.¹⁰

- 8. The Committee notes that the Bill removes the right to have a fitness hearing held before a jury.**
- 9. The Committee also notes that the NSW Law Reform Commission recommended that all fitness hearings be held before a judge alone as, among other things, judge alone hearings may be quicker, less formal and less confusing or stressful for the defendant.**
- 10. The Committee refers to Parliament the question of whether removing the right to have a fitness hearing held before a jury trespasses unduly on the right to a fair trial.**

The Committee makes no further comment on this Bill.

⁹ NSW Law Reform Commission Report 80 (1996) - *People with an Intellectual Disability and the Criminal Justice System*, <www.agd.nsw.gov.au/lrc.nsf/pages/R80CHP5>.

¹⁰ NSW Law Reform Commission Report 80 (1996) - *People with an Intellectual Disability and the Criminal Justice System*, <www.agd.nsw.gov.au/lrc.nsf/pages/R80CHP5>.

8. PROPERTY, STOCK AND BUSINESS AGENTS AMENDMENT BILL 2005

Date Introduced: 8 November 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Diane Beamer MP
Portfolio: Fair Trading

Purpose and Description

1. The Bill amends the *Property, Stock and Business Agents Act 2002* to make further provision with respect to licence disqualification, advertising, auction sales, trust accounts and penalties; and for other purposes.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

9. RESIDENTIAL PARKS AMENDMENT (STATUTORY REVIEW) BILL 2005

Date Introduced:	8 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Diane Beamer MP
Portfolio:	Fair Trading

Purpose and Description

1. The Bill amends the *Residential Parks Act 1998* (the Act) as a result of a review that has been completed under s 156 thereof. The amendments made deal with the following matters:
 - a statement of the objects of the Act;
 - the content of residential tenancy agreements;
 - the effect of unwritten residential tenancy agreements;
 - obligations as to advertising to be complied with by park owners;
 - disclosure of information to prospective and incoming residents;
 - payment of charges for gas, electricity and water;
 - the on-site sale of moveable dwellings;
 - orders by the Consumer, Trader and Tenancy Tribunal as to excessive rent increases;
 - access to residential parks by emergency and home care services;
 - termination of residential tenancy agreements because of a proposed change of use of land;
 - compensation for termination of residential tenancy agreements and relocation of residents;
 - the protection of residents who are absent for long periods while in care;
 - Park Liaison Committees and residents committees;
 - disputes concerning park rules;
 - the status of moveable dwellings in connection with the law as to fixtures;
 - the appointment and functions of investigators;
 - the appointment and functions of administrators, receivers and managers of residential parks; and
 - penalties for non-compliance with the Act.

Background

2. The following background is provided in the second reading speech:

Recent figures suggest that there may be up to 30,000 people residing in 900 or so parks around the State. Most who live in residential parks - which used to be known as caravan parks, mobile home villages and relocatable home estates - have unique housing arrangements in that they live in their own homes on rented parcels of land. Park residents live in what are effectively small self-contained communities, where the actions and attitudes of their fellow residents and the park manager can have a profound effect on their quality of life.

The special nature of these living arrangements calls for well-targeted laws, and that is what the Residential Parks Act, which began on 1 March 1999, provides...The bill arises as a result of the Government's broad consultation with stakeholders and a statutory five-year review of the Act's operation in practice. The Office of Fair Trading prepared and released a discussion paper for consultation purposes and over 260 submissions were received in response.¹¹

The Bill

3. The Bill's provisions fall into three main areas:

- changes strengthening the provisions dealing with the events which occur before a resident enters a park;
- modifications to the day-to-day relationship between the park owner and the resident during the tenancy; and
- changes to the mechanisms which apply when the tenancy comes to an end.¹²

Issues Considered by the Committee

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

Investigators' powers of entry: proposed new s 136B

4. Proposed s 136B allows an investigator¹³ entry to a residential park, without a search warrant, for the purposes of:

- ascertaining whether the provisions of the Act or the Regulations are being complied with or have been contravened;
- investigating a complaint made or intended to be made under the Act; or
- obtaining evidence, records or information in relation to a matter that constitutes or may constitute a contravention of the Act or the Regulations.

5. It also allows entry to be made during the night, provided that this is "reasonable" [proposed s 136B(2)], although the powers of entry do not extend to premises used for residential purposes [proposed s 136B(4)].

¹¹ The Hon D Beamer MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 8 November 2005.

¹² The Hon D Beamer MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 8 November 2005.

¹³ The Director-General may appoint any officer of the Department as an investigator for the purposes of the *Residential Parks Act 1998*: proposed s 136A(1).

Residential Parks Amendment (Statutory Review) Bill 2005

6. Although this provision may seem to impinge upon the privacy rights of residential park owners and residents, it is arguably the only effective way for investigators to fulfil their functions under the Act, and ensure the application of its legislative protections to park residents.¹⁴

7. **The Committee will always be concerned to note where officials are granted powers of entry to property other than pursuant to a search warrant.**
8. **However, having regards to the limits on these powers, the aims of the Bill, and the Department of Fair Trading's role and responsibilities under the amended *Residential Parks Act 1998*, the Committee does not consider that the proposed section constitutes an undue trespass on the privacy rights of residential park owners or residents.**

The Committee makes no further comment on this Bill.

¹⁴ The objects of the *Residential Parks Act 1998* are to:

- set out the respective rights and obligations of park owners and residents, including their rights and obligations under residential tenancy agreements,
- establish legislative protection for residents, and
- establish procedures for resolving disputes between park owners and residents: proposed s 4A.

10. RICE MARKETING AMENDMENT (PREVENTION OF NATIONAL COMPETITION POLICY PENALTIES) BILL 2005

Date Introduced:	9 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Ian Macdonald MLC
Portfolio:	Primary Industries

Purpose and Description

1. Under the *Marketing of Primary Products Act 1983*, most rice grown in New South Wales is vested in the Rice Marketing Board (the Board) for the purpose of its being marketed by the Board. Only authorised buyers may purchase rice that is not vested in the Board.
2. The Board has appointed Ricegrowers' Co-operative Ltd (trading as Sunrice) as the Board's agent to market the rice vested in the Board, and as an authorised buyer to purchase all other rice. There are no other authorised agents or buyers. National Competition Policy requires that other persons be entitled to be appointed as authorised buyers for the sale or supply of rice in Australia.
3. This Bill amends the principal Act to enable this to happen. Specifically, it enables any person to be appointed as an authorised buyer of rice, subject to a condition prohibiting the person from selling or supplying rice in the export market except with the Board's written approval.
4. The Bill also allows the Administrative Decisions Tribunal to review decisions of the Board in relation to an application for, or an appointment as, a buyer, other than a decision with respect to a condition prohibiting the person from selling or supplying rice in the export market except with the Board's written approval.

Background

5. In the second reading speech, the Hon Sandra Nori MP explained that the Bill arises out of National Competition Council's requirement that the NSW rice industry be de-regulated.¹⁵

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

¹⁵ The Hon Sandra Nori MP, Second Reading Speech, Legislative Assembly *Hansard*, 8 November 2005.

11. SHOPS AND INDUSTRIES AMENDMENT (SPECIAL SHOP CLOSURES) BILL 2005

Date Introduced:	8 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Della Bosca MLC
Portfolio:	Industrial Relations

Purpose and Description

1. This Bill amends the *Shops and Industries Act 1962* (the Act) to provide for retail shop closures on 25 and 26 December 2005 and 1 January 2006.

Background

2. The second reading speech stated that the Bill:

has a policy aim of enabling retail shop employees to celebrate the end-of-year festive days with their families and friends and so permit them to have a proper holiday respite. This family-friendly commitment to retail workers is suitably balanced in the bill's provisions, with scope provided also for the everyday consumer needs of holiday travellers in tourist areas to be satisfied.

The bill is based on precedent 1999 and 2004 legislation which this Parliament passed when there was a similar occurrence of weekend-occurring holidays.¹⁶

The Bill

3. The Bill provides for shops, other than scheduled shops¹⁷ and small shops¹⁸:
 - (a) to be kept closed on Sunday 25 December 2005 [proposed s 89E(1)];
 - (b) to be kept closed on Monday 26 December 2005 unless a shop is located in an already exempted holiday resort area such that it may open on that day¹⁹, and is staffed by persons who have freely elected to work on that day²⁰ [proposed s 89F(1) and (2)]; and
 - (c) to be kept closed on Sunday 1 January 2006 unless:
 - (i) a shop is staffed by persons who have freely elected to work on that day; and
 - (ii) the shop is located in:

¹⁶ Mr Paul McLeay, Parliamentary Secretary, Legislative Assembly *Hansard*, 8 November 2005.

¹⁷ Scheduled shops are shops listed in Schedule 3 of the *Shops and Industries Act 1962* and include, for example, chemists, cooked food shops, newsagencies and video shops.

¹⁸ Small shops are those with two or less shopkeepers that require not more than four persons to conduct the business of the shop on any one day: *Shops and Industries Act 1962*, s 78B.

¹⁹ *Shops and Industries Act 1962*, s 89B.

²⁰ The Bill provides that a person is "not taken to have freely elected to work... merely because that person is rostered to work on that day": proposed s 89F(3) and s 89G(6).

Shops and Industries Amendment (Special Shop Closures) Bill 2005

- an already exempted holiday resort area such that it may open on that day; or
 - the commercial business districts of the Cities of Sydney, Newcastle or Wollongong or the district of Cabramatta, and is subject to an existing exemption granted by the Director-General of the Department of Industrial Relations that would allow it to open on that day [proposed s 89G(1)-(4)].²¹
4. The Bill provides that these shop closures have effect despite any exemption granted under s 78A or s 89B or any exemption made by Ministerial order [proposed s 89E(2), s 89F(4) and s 89G(6)].²²
5. The new provisions inserted by the Bill are proposed for repeal at the beginning of 2 January 2006 [proposed s 89E(3), 89F(5) and s 89G(7)].

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

²¹ *Shops and Industries Act 1962*, s 78A.

²² *Shops and Industries Act 1962*, s 85(2).

12. STATE EMERGENCY SERVICE AMENDMENT BILL 2005

Date Introduced:	8 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Tony Kelly MLC
Portfolio:	Emergency Services

Purpose and Description

1. The Bill amends the *State Emergency Service Act 1989* (the Act) with respect to the organisation, functions and operation of the State Emergency Service (SES).

Background

2. The second reading speech stated:

The bill outlines a number of amendments to refine the principal Act to formalise arrangements already in place and to better reflect the service's organisational and operational structure and responsibilities.²³

The Bill

3. Key changes proposed in the Bill include:
 - (a) extending the functions of the SES to the protection of life and property in storms and floods [proposed Schedule 1[7], amended s 8]²⁴;
 - (b) removing civil defence²⁵ from the functions of the SES [proposed Schedule 1[5] and [9], repealed s 5 and amended s 8(c)]²⁶;
 - (c) acknowledging the volunteer status of SES members [proposed Schedule 1[6], amended s 7];

²³ Ms Alison Megarrity, Parliamentary Secretary, Legislative Assembly *Hansard*, 8 November 2005.

²⁴ "The primary function of the SES is to prepare, plan for and lead response operations to assist communities affected by floods and storms... It is important that this broad charter to protect life and property will now be explicitly acknowledged in the functions of the service, in much the same way as in the Fire Brigades Act and Rural Fires Act": Ms Alison Megarrity, Parliamentary Secretary, second reading speech, Legislative Assembly *Hansard*, 8 November 2005).

²⁵ Section 5 of the *State Emergency Service Act 1989* excludes actual military combat or preparations for military combat from any taking of civil defence measures authorised. Section 4 of the Act explicitly states that the Act does not authorise the taking of measures directed at bringing an industrial dispute to an end or controlling a riot or other civil disturbance.

²⁶ On this amendment, the second reading speech stated that the Bill "amends the Act to remove civil defence planning and operations as a sole SES requirement" as "civil defence planning is now regarded as a whole-of-government responsibility", in which the SES is "one of a number of State agencies that would participate": Ms Alison Megarrity, Parliamentary Secretary, Legislative Assembly *Hansard*, 8 November 2005.

- (d) recognising the SES Director-General's role as the state controller of the SES, thus establishing the Director-General as the head of the chain of command [Schedule 1[12], amended s 11];
- (e) replacing SES divisions with regions and allowing the SES Director-General to divide NSW into regions without the need to seek approval from the State Emergency Operations Controller [proposed Schedule 1[14], new s 14];
- (f) allowing the Director-General to make arrangements to assist States and Territories that do not have any SES units, such as Jervis Bay Territory and Norfolk Island [proposed Schedule 1[30], amended s 23];
- (g) permitting the Director-General to appoint more than one local controller for a local government area [proposed Schedule 1[17], amended s 17(1)] and to form an SES unit on his or her own initiative [proposed Schedule 1[22], amended s 18]; and
- (h) including more detailed provisions for the granting, suspension or withdrawal of membership of the SES [proposed Schedule 1[16]].

Issues Considered by the Committee

<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.

13. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2) 2005

Date Introduced: 9 November 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Morris Iemma MP
Portfolio: Premier

Purpose and Description

1. This Bill amends certain Acts and Regulations, including for the purpose of effecting statute law revision, repeals certain Acts, instruments and provisions thereof, and makes other provisions of a consequential or ancillary nature.

Background

2. The second reading speech stated that the Bill:
continues the well-established statute law revision program that is recognised by all honourable members as a cost-effective and efficient method for dealing with amendments of the kind included in the bill. The form of the bill is similar to that of previous bills in the statute law revision program. This year the bill includes an additional schedule to deal specifically with statute law revision amendments consequential on the enactment of the Legal Profession Act 2004.²⁷

The Bill

3. Schedule 1 makes amendments to 24 Acts and five Regulations.
4. Schedule 2 amends a number of Acts, Regulations and State Environmental Planning Policies to deal with matters of statutory law revision.
5. Schedule 3 replaces terminology used in various Acts with the terminology introduced by the *Legal Profession Act 2004* for the regulation of the legal profession.
6. Schedule 4 repeals a number of Acts.
7. Schedule 5 contains general savings, transitional and other provisions.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

²⁷ Ms Sandra Nori, Minister for Tourism and Sport and Recreation, Minister for Women, and Minister Assisting the Minister for State Development, Legislative Assembly *Hansard*, 9 November 2005.

14. TECHNICAL AND FURTHER EDUCATION COMMISSION AMENDMENT (STAFF) BILL 2005

Date Introduced:	8 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carmel Tebbutt MP
Portfolio:	Education and Training

Purpose and Description

1. The Bill amends the *Technical and Further Education Act 1990* to provide for the movement of administrative and support staff between the TAFE Commission and the Department of Education and Training.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

15. SECURITY INDUSTRY AMENDMENT BILL 2005

Date Introduced: 21 June 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Carl Scully MP
Portfolio: Police

Background

1. The Committee reported on this Bill in *Legislation Review Digest* No. 9 of 2005 on 12 September 2005 and wrote to the Minister on the same day for advice on the following matters:
 - (a) the reasons for including imprisonment as a penalty for offences without a fault element (ie, strict liability offences) in Schedule 1 [65];
 - (b) in relation to section 38C which makes it an (strict liability) offence for a person, for fee or reward, to roster or schedule the carrying on of any security activity by a licensee if that person is not eligible to hold a licence due to s 16 of the *Security Industry Act 1997*:
 - why the Act does not provide any mechanism by which a person could be alerted to the fact that they are prohibited from certain forms of employment based on their past offences (eg, a licensing regime);
 - why the offence is a strict liability offence and why the Act does not provide any defences, such as lack of knowledge;
 - the need to subject a person who has been found guilty but not convicted of an offence to the prohibition in s 38C;
 - the public interest justifications behind the Act potentially subjecting a person to a double punishment, especially a person who has not had a conviction recorded against them; and
 - the justification for the high penalty for this offence, including a term of imprisonment, especially given that there is no fault element for the offence and the offence applies to a person who has no recorded conviction; and
 - (c) the reasons for placing a legal burden, rather than an evidential burden, on defendants under s 39 contrary to the presumption of innocence.

The Minister's reply

2. In his reply received on 3 November 2005, the Minister of Police gave the following advice in response to the Committee's questions.

The *Report of the Review of the Security Industry Act 1997* and the *Security Industry Regulation 1998* recommended that the penalties be significantly increased for breaches of the Act as the existing penalties were not an adequate deterrent to criminal infiltration of the industry and did not reflect community expectations...

[T]he penalty increases are designed to further dissuade undesirable persons from engaging in activities designed to influence or control security operations. In the case of subcontracting (section 38A), it is intended that the penalties increase will help to stamp out unsafe practices that had been occurring as a result of the unchecked subcontracting...

The role of section 38C of the [Act] is to prevent persons who would be excluded from holding a security licence on the basis of their criminal record from circumventing those requirements and continuing to exert influence over security employees... This provision is designed to prevent a person with relevant criminal *convictions* from using their employment knowledge for criminal gain (emphasis added).

Section 39 of the [Act]... effectively requires employers to undertake the proper pre-employment checks...Pre-employment checks are not onerous...

The Committee's comments

3. The Minister has explained the policy reasons behind the penalty increases and the need for an employer to properly check on the background of future employees in the industry.
4. However, it is still not apparent to the Committee:
 - why section 38C applies to a person who has been found guilty but not convicted of an offence; and
 - why there is no mechanism, such as a licensing regime or an obligation for an employer to provide notice, to ensure that persons obtaining employment in rostering or scheduling security activity are informed they would be committing an offence if they fall under the terms of s 38C.

5. The Committee thanks the Minister for his response.



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

12 September 2005

Our Ref: LRC1329

The Hon Carl Scully MP
Minister for Police
Level 34, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Security Industry Amendment Act 2005

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Act. The Committee will be reporting its consideration of the Act in its *Legislation Review Digest No. 9 of 2005*.

Strict liability

Schedule 1 [65] of the Act provides for a maximum penalty of 100 penalty units (\$11,000) for an individual and imprisonment for six months for certain offences for which there is no statutory fault requirement and which may therefore be offences of strict liability.

The Committee has repeatedly expressed the view that providing for strict liability is a very serious matter and should:

- be imposed only after careful consideration of all other options;
- be subject to defences where contravention appears reasonable; and
- have only limited monetary penalties and not terms of imprisonment.

The Committee seeks your advice as to the reasons for including imprisonment as a penalty for offences without a fault element in Schedule 1 [65].

Criminalising rostering in certain circumstances

Section 38C of the Act provides that it is an offence for a person, for fee or reward, to roster or schedule the carrying on of any security activity by a licensee if that person is not eligible to hold a licence due to s 16 of the *Security Industry Act 1997* (1997 Act). This offence is one for which there is no fault element prescribed and thereby appears to impose strict liability.

This provision makes it a criminal offence for a person to conduct an innocent activity (rostering of licensees) if they have been found guilty of certain offences during the

relevant periods, regardless of whether a conviction is recorded. At the same time, the Act does not provide any requirement for such a person to be licensed or that such a person be notified that it is an offence to roster licensees in such circumstances. The Committee notes that this places a considerable onus of knowledge upon a person employed to roster or schedule licensees. The Committee also notes that this provision arguably places an additional penalty upon a person who has already received any punishment due for committing the relevant crime.

The Committee therefore seeks your advice as to:

- why the Act does not provide any mechanism by which a person could be alerted to the fact that they are prohibited from certain forms of employment based on their past offences (eg, a licensing regime);
- why the offence is a strict liability offence and why the Act does not provide any defences, such as lack of knowledge;
- the need to subject a person who has been found guilty but not convicted of an offence to the prohibition in s 38C;
- the public interest justifications behind the Act potentially subjecting a person to a double punishment, especially a person who has not had a conviction recorded against them; and
- the justification for the high penalty for this offence, including a term of imprisonment, especially given that there is no fault element for the offence and the offence applies to a person who has no recorded conviction.

Reversing the onus of proof in s 39

Prior to the Act's amendments, the 1997 Act provided that it was an offence for a master licensee to *knowingly* employ any person to carry on any security activity if that person is not the holder of a licence [s 39].

The Act removes the word "knowingly" from s 39, thereby placing the onus on the master licensee to check the licensing status of every employee. This amendment has two practical effects:

- it criminalises employing an unlicensed person to carry on a security activity in circumstances where the master licensee could reasonably have known that the person was not licensed; and
- it requires that the defendant prove their lack of knowledge, and the reasonableness of that lack of knowledge, to avoid liability for employing an unlicensed person.

The Committee notes that placing more than an evidential burden of proof has at times been held to unduly trespass upon the presumption of innocence, a fundamental human right recognised at common law and international law.

The Committee seeks your advice as to the reasons for placing a legal burden, rather than an evidential burden, on defendants under s 39.

Yours sincerely

A handwritten signature in black ink that reads "Peter Primrose". The signature is written in a cursive, flowing style.

Peter Primrose MLC
Chairman



NEW SOUTH WALES

Minister for Police
Leader of the House

RECEIVED

03 NOV 2005

LEGISLATION REVIEW
COMMITTEE

MT 3427

The Hon Peter Primrose MLC
Chairman
Legislative Review Committee
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Dear Mr Primrose

I refer to your letter regarding the Legislative Review Committee consideration of the *Security Industry Amendment Act 2005*.

I have considered your concerns and advise that:

- The *Report of the Review of the Security Industry Act 1997 and the Security Industry Regulation 1998* recommended that the penalties be significantly increased for breaches of the Act as the existing penalties were not an adequate deterrent to criminal infiltration of the industry and did not reflect community expectations. This position was endorsed by Cabinet and by Parliament when it passed the *Security Industry Amendment Act 2005*.

The access to firearms, defence installations and licensed premises that a security licence provides has, in the past, been an attractive reason for criminal infiltration of the industry. However, security industry reforms, including mandatory fingerprinting, have seen a dramatic culture shift and an increase in the professionalism of the security industry.

Notwithstanding the above, the penalty increases outlined in sections 38B and 38C of the *Security Industry Amendment Act 2005* are designed to further dissuade undesirable persons from engaging in activities designed to influence or control security operations. In the case of subcontracting (section 38A), it is intended that the penalties increases will help to stamp out unsafe practices that had been occurring as a result of the unchecked subcontracting, including

- Increased use of unlicensed security guards;
 - Poor training and assessment practices in order to allow a high number of guards to be processed quickly; and
 - Exploitation of members of the industry who are forced to work for less than award wages.
- The role of section 38C of the *Security Industry Amendment Act 2005* is to prevent persons who would be excluded from holding a security licence on the basis of their criminal record from circumventing those requirements and continuing to exert influence over security employees. The protection of

secure sites, cash and valuables is an intrinsic role of a security guard, and persons involved in the rostering and scheduling of security personnel are privy to details regarding the pick up and delivery of cash and valuables but also when sites may be unattended. This provision is designed to prevent a person with relevant criminal convictions from using their employment knowledge for criminal gain.

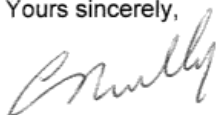
- Section 39 of the *Security Industry Act 1997* currently provides that a master licence holder must not knowingly employ an unlicensed person to undertake security activities. The *Report of the Review of the Security Industry Act 1997 and the Security Industry Regulation 1998* accepted the submission that should be up to the master licensee to demonstrate that he or she took reasonable steps to satisfy him or herself that the employee had a valid licence at the time of employment.

This section effectively requires employers to undertake the proper pre-employment checks, recognising the danger to public that the carrying on of an unauthorised security activity may entail, particularly with the heightened threat of terrorism and the attraction of the security industry to criminal infiltration.

Pre-employment checks are not onerous, and can be as simple as taking a copy of the operator's security industry licence at the time of employment. The security industry licence is issued by the Roads and Traffic Authority, on behalf of the Security Industry Registry and is in the same form as a drivers licence. A licence is not issued unless the person has satisfied not only the probity and other character requirements of the legislation but has undergone the appropriate training for the activities he or she is performing.

I trust that this information is of assistance.

Yours sincerely,



CARL SCULLY MP
MINISTER FOR POLICE

Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Centennial Park and Moore Park Trust Regulation 2004	27/08/04	6699	05/11/04 29/04/05	21/04/05
Companion Animals Amendment (Penalty Notices) Regulation 2005	19/08/05	4579	12/09/05	
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005	29/07/05	4033	12/09/05	
Hunter Water (General) Regulation 2005	01/09/05	6837	04/11/05	
Protection of the Environment Operations (Waste) Regulation 2005	26/08/05	5745	04/11/05	
Stock Diseases General (Amendment) Regulation 2005	30/06/05	3277	12/09/05	
Workers Compensation Amendment (Advertising) Regulation 2005	15/06/05	2288	12/09/05	

SECTION B: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
Adoption Amendment (Adoption Service Providers) Regulation 2005 <ul style="list-style-type: none"> • Letter dated 23/09/05 from the Committee to the Chief Executive Officer of Barnardos. • Letter dated 03/11/05 from the Chief Executive Officer of Barnardos to the Committee. 	13/05/05 page 1663
Occupational Health and Safety Amendment (Dangerous Goods) Regulation 2005 <ul style="list-style-type: none"> • Letter dated 18/10/05 from the Committee to the Minister for Commerce • Letter dated 11/11/05 from the Minister for Commerce to the Committee. 	01/09/05 page 6856

1. Adoption Amendment (Adoption Service Providers) Regulation 2005



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

23 September 2005

File ref: LRC1349

Ms Louise Voigt
Chief Executive Officer & Welfare Director
Barnados Australia
GPO Box 9996
Sydney NSW 2001

Dear Ms Voight

Right of entry provision in the Adoption Amendment (Adoption Service Providers) Regulation 2005

The Legislation Review Committee has recently considered the *Adoption Amendment (Adoption Service Providers) Regulation 2005*, which, among other things, specifies the conditions to be observed by accredited adoption service providers. The Committee reviews all regulations subject to disallowance in accordance with section 9 of the *Legislation Review Act 1987*.

The Committee resolved to invite comment from accredited adoption service providers on the new accreditation condition regarding entry to premises and inspection of records.

Clause 12 in Schedule 1 in the Regulation states that an accredited adoption service provider:

must allow the Director-General, and any public servant authorised by the Director-General in that regard:

- (a) to enter any premises from which it provides adoption services; and
- (b) to inspect such of its records as relate to the provision of adoption services,

and must provide the Director-General, and any such public servant, with such assistance as is reasonably necessary for the purposes of any such inspection.

The Committee's concern is that this clause appears to provide what amounts to a power of entry (albeit with administrative rather than criminal sanction) without explicit requirements regarding:

- the grounds for such entry;
- the need for identification;
- the types of premises to which entry may be requested, eg, no restriction on entering private residences; and

- the times at which entry may be requested.

The Committee also considers that powers to require entry to premises are generally not appropriate for a regulation and should only be provided by an Act of Parliament, given that the exercise of these powers significantly affect personal rights.

The Committee invites your written comment, if any, on the above clause. The Committee has also written to the Minister for Community Services seeking her advice as to what safeguards are in place to ensure that the entry and inspection of any premises at which an adoption service is being provided does not trespass unduly on the personal rights and liberties.

If you have any questions regarding the above, please contact Mr Russell Keith, Committee Manager, on 9230 3050 or by the fax or email listed on the previous page of this letter.

Yours sincerely



Peter Primrose MLC
Chairman



3 November 2005

Mr Peter Primrose MLC
Legislative Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000



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A Company Limited
by Guarantee
ABN 18 068 557 906
Registered Charity No.
CFN 13840
CHAIR
Angela Crammond
**CEO & DIRECTOR
OF WELFARE**
Louise Voigt
BOARD OF DIRECTORS
Margaret Dowling
John Fitzpatrick
Anthony Forrest
Crispen Hull
Dianne Jagelman
William King
Susan Kirby
Alan Neilson
Ross Peden
Shirley Ronge
Cienn Stewart
Gabrielle Trainor
Geoffrey Willmott

Dear Mr Primrose,

Re: Right of entry provision in the Adoption Amendment (Adoption Service Providers) Regulation 2005

Thank you for the opportunity to make comment with regard to the above amendment.

Barnardos believes that the Director-General, or other authorised person, should have the right of access to the premises and records of an accredited adoption service provider. Such entry should be arranged with the service provider, with information being provided about the grounds for entry and the date and time when this would occur. Barnardos agrees that there is a need for identification by those persons who act for the Director-General. We would therefore support an amendment to the Regulations to include these requirements.

The Regulations state that entry is to "any premises from which it (the accredited adoption service provider) provides adoption services", which we believe sufficiently describes and restricts the premises to which entry may be requested.

Barnardos is an accredited provider of out-of-home care and has never experienced any abuse of power by the Department of Community Services or the Office of the Children's Guardian in respect to their right to enter our premises and inspect our records. We believe that this experience will extend under the provisions of the Adoption Act and Regulations.

I hope that this is of assistance. Please contact me on the above number if you have any further questions.

Yours sincerely,

A handwritten signature in cursive script that reads "Louise Voigt".

LOUISE VOIGT
CEO & Director Welfare

2. Occupational Health and Safety Amendment (Dangerous Goods) Regulation 2005



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

18 October 2005

Our Ref: LRC1501

The Hon John Della Bosca MLC
Minister for Commerce
Level 30, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Occupational Health & Safety Amendment (Dangerous Goods) Regulation 2005

The Committee has considered the above Regulation pursuant to s 9 of the *Legislation Review Act 1987* and, for the purposes of s 9(1A) of that Act, resolved to review and report to Parliament on this Regulation.

The Committee also resolved to seek your advice on clause 174ZR, which compels a person to give certain information to WorkCover.

The Committee notes that the legislation is silent on whether such a person can refuse to provide information requested under clause 174ZR on the ground that to do so might tend to incriminate them. The legislation is also silent on whether any self-incriminating information they do provide under clause 174ZR can be used against them in criminal or civil proceedings.

The Committee notes that legislation cannot modify the right against self-incrimination except by express words or necessary implication. The Committee seeks your advice as to:

- (a) whether it is intended that clause 174ZR compel a person to give self-incriminating answers; and if so:
- (b) whether information an occupier is compelled to give under clause 174ZR can be used in criminal or civil proceedings, and if so, what safeguards exist to protect the occupier from an undue trespass on their right not to be compelled to give self-incriminating information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Allan Shearan'.

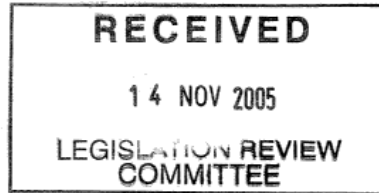
Allan Shearan MP
Chairman



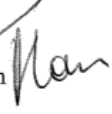
Special Minister of State
Minister for Commerce
Minister for Industrial Relations
Minister for Ageing
Minister for Disability Services
Assistant Treasurer
Vice President of the Executive Council

Ref: WC01486/05
A35716

Mr Alan Shearan MP
Chairman
Legislation Review Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000



11 NOV 2005

Dear Mr Shearan 

I refer to your letter regarding the *Occupational Health and Safety Amendment (Dangerous Goods) Regulation 2005*.

The inclusion of clause 174ZR in the Regulation, which allows WorkCover to request further information from an occupier following a serious incident involving dangerous goods, is not intended to override the common law right against self incrimination.

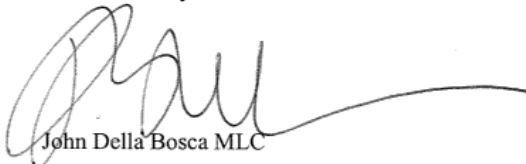
Clause 174ZR reflects clause 44 of the *National Standard for Storage and Handling of Workplace Dangerous Goods*. The objective of the National Standard is to protect the health and safety of persons and prevent damage to property and the environment. Clause 44 of the National Standard is specifically aimed at establishing the cause or effect of an incident with this objective in mind.

Clause 174ZR was included in the Regulation as part of the Government's commitment to adopt the National Standard, that was declared by the National Occupational Health and Safety Commission and endorsed by all states at a meeting of the Workplace Relations Minister's Council.

It is envisaged that this requirement will assist both WorkCover and occupiers in understanding the causes of such incidents thereby allowing for a greater focus on prevention.

The Committee may also wish to note that where an incident occurs and WorkCover conducts an investigation under Part 5 of the *Occupational Health and Safety Act 2000*, section 65 of that Act continues to provide specific protection against self-incrimination.

Yours sincerely


John Della Bosca MLC

Level 30 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000, Australia
Tel: (02) 9228-4777 Fax: (02) 9228-4392 E-Mail: office@smos.nsw.gov.au

Appendix 1: Index of Bills Reported on in 2005

	Digest Number
Anti-Discrimination Amendment (Equality in Education and Employment) Bill 2005*	12
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Appropriation Bill 2005	7
Appropriation (Budget Variations) Bill 2005	6
Appropriation (Parliament) Bill 2005	7
Appropriation (Special Offices) Bill 2005	7
Brigalow and Nandewar Community Conservation Area Bill 2005	7
Building Legislation Amendment (Smoke Alarms) Bill 2005	9
Building Professionals Bill 2005	7
Children and Young Persons (Care and Protection) Amendment Bill 2005	14
Civil Liability Amendment (Food Donations) Bill 2004	1
Civil Liability Amendment (Offender Damages) Bill 2005	2, 3
Civil Liability Amendment (Offender Damages Trust Fund) Bill 2005	10
Civil Procedure Bill 2005	5
Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005*	3
Coal Acquisition Amendment (Fair Compensation) Bill 2005	5
Confiscation of Proceeds of Crime Amendment Bill 2005	11
Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Bill 2005	13
Courts Legislation Amendment Bill 2005	7
Court Security Bill 2005	2
Crimes Amendment (Animal Cruelty) Bill 2005	14
Crimes Amendment (Grievous Bodily Harm) Bill 2005	3
Crimes Amendment (Protection of Innocent Accused) Bill 2005*	10
Crimes Amendment (Road Accidents) Bill 2005	11
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	6
Criminal Appeal Amendment (Jury Verdicts) Bill 2004*	3
Criminal Assets Recovery Amendment Bill 2005	7
Criminal Procedure Amendment (Evidence) Bill 2005	3
Criminal Procedure Further Amendment (Evidence) Bill 2005	4
Criminal Procedure (Prosecutions) Bill 2005	11

	Digest Number
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Crown Lands Legislation Amendment Bill 2005	7
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Drug Misuse and Trafficking Amendment Bill 2005	8
Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005	6
Duties Amendment (Abolition of Bob Carr's Vendor Duty) Bill 2005*	9
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Electricity Supply Amendment Bill 2005	2, 5
Energy Administration Amendment (Water and Energy Savings) Bill 2005	5
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004	1
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005	7
Fair Trading Amendment (Responsible Credit) Bill 2005*	6
Farm Debt Mediation Amendment (Water Access Licences) Bill 2005	13
Fire Brigades Amendment (Community Fire Units) Bill 2005	7
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Fiscal Responsibility Bill 2005	7
Fisheries Management Amendment (Catch History) Bill 2005*	6
Gambling (Two-up) Amendment Bill 2005	7
Game and Feral Animal Control Amendment Bill 2005	5
Gaming Machines Amendment Bill 2005	8
Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2005	12
Governor General's Residence (Grant) Amendment Bill 2005	14
Greek Orthodox Archdiocese of Australia Consolidated Trust Amendment (Duties) Bill 2005	14
Health Legislation Amendment Bill 2005	12
Independent Commission Against Corruption Amendment Bill 2005	2, 3
Infrastructure Implementation Corporation Bill 2005	14
James Hardie Former Subsidiaries (Special Provisions) Bill 2005	9
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	1
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Local Government Amendment Bill 2005	8
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	Digest Number
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Mental Health (Criminal Procedure) Amendment Bill 2005	14
National Park Estate (Reservations) Bill 2005	7
National Parks and Wildlife (Adjustment of Areas) Bill 2005	3
National Parks and Wildlife Amendment (Jenolan Caves Reserves) Bill 2005	11
National Parks and Wildlife (Further Adjustment of Areas) Bill 2005	9
Occupational Health and Safety Amendment (Workplace Deaths) Bill 2005	7
Parliamentary Electorates and Elections Amendment (Voting Age) Bill 2005*	9
Passenger Transport Amendment (Maintenance of Bus Services) Bill 2005	8
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Public Sector Employment and Management Amendment (Extended Leave) Bill 2005	12
Residential Parks Amendment (Statutory Review) Bill 2005	14
Residential Tenancies Amendment (Social Housing) Bill 2005	12
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Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Bill 2005	14
Road Transport (General) Bill 2004	1, 4
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	1, 4, 7
Royal Blind Society (Merger) Bill 2005	13
Rural Workers Accommodation Amendment Bill 2005	7

	Digest Number
Security Industry Amendment Bill 2005	9
Security Interests in Goods Bill 2005	10
Sheriff Bill 2005	2
Shops and Industries Amendment (Special Shop Closures) Bill 2005	14
Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2005*	9
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	1
Sporting Venues (Offenders Banning Orders) Bill 2005	10
Standard Time Amendment (Co-ordinated Universal Time) Bill 2005	2
Standard Time Amendment (Daylight Saving) Bill 2005	10
State Emergency and Rescue Management Amendment Bill 2005	11
State Emergency Service Amendment Bill 2005	14
State Revenue Legislation Amendment Bill 2005	8
State Revenue Legislation Amendment (Budget Measures) Bill 2005	7
Statute Law Miscellaneous Provisions Bill 2005	8
Statute Law (Miscellaneous Provisions) Bill (No. 2) 2005	14
Surveying Amendment Bill 2005	7
Sydney 2009 World Masters Games Organising Committee Bill 2005	7
Sydney University Settlement Incorporation Amendment Bill 2005*	7
Technical and Further Education Commission Amendment (Staff) Bill 2005	14
Terrorism Legislation Amendment (Warrants) Bill 2005	8
Transport Administration Amendment (Transport Levy For Major Events) Bill 2005	2
Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005*	2
Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Bill 2005	7
Vocational Education and Training Bill 2005	13
Water Efficiency Labelling and Standards (New South Wales) Bill 2005	3
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Appendix 2: Index of Ministerial Correspondence on Bills for 2005

Bill	Minister/Member	Letter sent	Reply	Digest 2004	Digest 2005
Building Professionals Bill 2005	Minister for Infrastructure and Planning (Planning Administration)	03/06/05	22/06/05		7, 9
Child Protection (Offender Prohibition Orders) Bill 2004	Minister for Police	18/06/04	12/09/05	6	10
Civil Liability Amendment (Offender Damages) Bill 2005	Minister for Justice	01/03/05	08/03/05		2, 3, 5
Confiscation of Proceeds of Crime Amendment Bill 2005	Attorney General	10/10/05			11
Crime Amendment (Road Accidents) Bill 2005	Attorney General	10/10/05			11
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05			6
Criminal Procedure Further Amendment (Evidence) Bill 2005	Attorney General	01/05/05	21/06/05		4, 9
Electricity Supply Amendment Bill 2005	Minister for Energy and Utilities	01/03/05	30/03/05		2, 5
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005	Minister for Infrastructure and Planning	03/06/05	24/06/05		7, 9
Gaming Machines Amendment Bill 2005	Minister for Gaming and Racing	20/06/05	20/09/05		8, 11
Independent Commission Against Corruption Amendment Bill 2005	Premier	01/03/05	02/03/05		2, 3
Legal Profession Amendment Bill 2005					8
Legal Profession Bill 2004	Attorney General	17/02/05	07/04/05		1, 5
Licensing And Registration (Uniform Procedures) Amendment (Photo ID) Bill 2004	Minister for Commerce	03/12/04	09/12/04	17	1
Local Government Amendment Bill 2005	Minister for Local Government	20/06/05	05/09/05		8, 9
Marine Safety Amendment (Random Breath Testing) Bill 2004	Minister for Ports	17/02/05			1
Photo Card Bill 2004	Minister for Roads	17/02/05	30/06/05		1, 9
Prisoners (Interstate Transfer) Amendment Bill 2005	Minister for Justice	01/04/05	18/04/05		4, 5
Road Transport (General) Bill 2004	Minister for Roads	17/02/05 01/04/05	14/03/05 19/07/05 23/09/05		1, 4, 10, 11

Bill	Minister/Member	Letter sent	Reply	Digest 2004	Digest 2005
Road Transport (General) Amendment (Licence Suspension) Bill 2004	Minister for Roads	18/06/04	01/12/04	9	1, 5
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	Minister for Roads	17/02/05 01/04/05	14/03/05 23/05/05		1, 4, 7
Security Industry Amendment Bill 2005	Minister for Police	12/09/05	28/10/05		9, 14
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/04		15	
State Emergency and Rescue Management Amendment Bill 2005	Minister for Emergency Services	10/10/05	13/10/05		11, 12
State Revenue Legislation Amendment Bill 2005	Treasurer	20/06/05			8
Vocational Education and Training Bill 2005	Minister for Education and Training	04/11/05			13

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

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Anti-Discrimination Amendment (Religious Tolerance) Bill 2005*	N				
Building Professionals Bill 2005	N, C				
Civil Liability Amendment (Food Donations) Bill 2004	N			N	
Civil Liability Amendment (Offender Damages) Bill 2005	N, C				
Civil Liability Amendment (Offender Damages Trust Fund) Bill 2005	N				
Civil Procedure Bill 2005	N			N	
Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005*	R				
Confiscation of Proceeds of Crime Amendment Bill 2005	R, C				
Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Bill 2005	R				
Court Security Bill 2005				N	
Crimes Amendment (Protection of Innocent Accused) Bill 2005*	R				
Crimes Amendment (Road Accidents) Bill 2005	R, C				
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	R, C		R		
Criminal Appeal Amendment (Jury Verdicts) Bill 2004*	R				
Criminal Assets Recovery Amendment Bill 2005	R				
Criminal Procedure Amendment (Evidence) Bill 2005	N				
Criminal Procedure Further Amendment (Evidence) Bill 2005	C			N	
Criminal Procedure (Prosecutions) Bill 2005	N				

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Drug Misuse and Trafficking Amendment Bill 2005				N	
Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005				N	
Electricity Supply Amendment Bill 2005				C	
Energy Administration Amendment (Water and Energy Savings) Bill 2005				R, N	
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004			N	N	N
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005	N, R	C	N, C		R, C
Gaming Machines Amendment Bill 2005	C				
Independent Commission Against Corruption Amendment Bill 2005				C	
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	R			N	
Legal Profession Amendment Bill 2005	N			R	
Legal Profession Bill 2004	N,C			N	
Local Government Amendment Bill 2005	C, R				
Luna Park Site Amendment (Noise Control) Bill 2005	R				
Marine Safety Amendment (Random Breath Testing) Bill 2004				C	
Mental Health (Criminal Procedure) Amendment Bill 2005	R				
National Parks and Wildlife (Adjustment of Areas) Bill 2005				N	
Parliamentary Electorates and Elections Amendment (Voting Age) Bill 2005*	R				
Passenger Transport Amendment (Maintenance of Bus Services) Bill 2005	R	R	R	R	
Photo Card Bill 2004				C	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	N				
Prisoners (Interstate Transfer) Amendment Bill 2005				C	
Protection of Agricultural Production (Right to Farm) Bill 2005*	R				
Protection of the Environment Operations Amendment Bill 2005	R				
Residential Parks Amendment (Statutory Review) Bill 2005	N				
Retail Leases Amendment Bill 2005	N, R			N	
Road Transport (General) Bill 2004	N	C		C	
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	N			C	
Rural Workers Accommodation Amendment Bill 2005	R				
Security Industry Amendment Bill 2005	C, R				
Sheriff Bill 2005				N	
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	R, N				
State Emergency and Rescue Management Amendment Bill 2005	C				
State Revenue Legislation Amendment Bill 2005	N, C, R				
State Revenue Legislation Amendment (Budget Measures) Bill 2005	N				
Surveying Amendment Bill 2005	N				
Terrorism Legislation Amendment (Warrants) Bill 2005	R				
Vocational Education and Training Bill 2005	C, R			C, R	
Water Efficiency Labelling and Standards (New South Wales) Bill 2005	N			N	N

Key

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

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

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2005
Adoption Amendment (Adoption Service Providers) Regulation 2005	Minister for Community Services Barnardos	12/09/05 23/09/05	26/09/05 03/11/05	13, 14
Architects Regulation 2004	Minister for Commerce	21/09/04	30/11/04	1
Centennial and Moore Park Trust Regulation 2004	Minister for Tourism and Sport and Recreation	05/11/04 29/04/05	21/04/05	5
Environmental Planning and Assessment Amendment (ARTC Rail Infrastructure) Regulation 2004	Minister for Infrastructure and Planning	26/10/04 17/02/05	01/02/05	1
Forestry Regulation 2004	Minister for Primary Industries	26/10/04 17/02/05	18/01/05	1
Hunter-Central Rivers Catchment Management Authority Regulation 2005	Minister for Natural Resources	20/06/05	04/09/05	10
Institute of Teachers Regulation 2005	Minister for Education and Training	01/04/05 03/06/05	26/05/05	7
Legal Profession Amendment (Advertising) Regulation 2005	Attorney General	12/09/05	17/10/05	13
Mental Health Amendment (Transfer of Queensland Civil Patients) Regulation 2005	Minister for Health	29/04/05 26/10/05	11/07/05	9
Occupational Health and Safety Amendment (Dangerous Goods) Regulation 2005	Minister for Commerce	18/10/05	11/11/05	14
Occupational Health and Safety Amendment (Transitional) Regulation 2004	Minister for Commerce	01/04/05 23/05/05	17/05/05	6
Passenger Transport (Drug and Alcohol Testing) Regulation 2004	Minister for Transport Services	30/04/04 01/03/05	17/02/05	2
Protection of the Environment Operations (Luna Park) Regulation 2005	Minister for the Environment	29/04/05	10/08/05	9
Road Transport (General) Amendment (Driver Licence Appeals) Regulation 2005	Minister for Roads	01/04/05	12/07/05	9
Stock Diseases (General) Regulation 2004	Minister for Primary Industries	05/11/04	16/12/04	1
Sydney Olympic Park Amendment Regulation 2004	Minister for Sport and Recreation	05/11/04	03/12/04	1

Appendix 5: Notice of Discussion Paper on the Right to Silence

The Legislation Review Committee is seeking comment in relation to the principles it should apply when considering bills that trespass on the right to silence. The Committee will then use these comments when suggesting standards and principles to which the Parliament should have regard when considering bills that trespass on this fundamental right.

The Committee has prepared a Discussion Paper raising a number of questions. This Discussion Paper is available online at www.parliament.nsw.gov.au under "Inquiries receiving Submissions". Copies are also available from the Committee's Secretariat.

Tel: (02) 9230 3418 or 9230 2899

Fax: (02) 9230 3052

Legislation.Review@parliament.nsw.gov.au

Submissions responding to the Discussion Paper should be sent to:

Chairman
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
Sydney NSW 2000

Alternatively, submissions can be made on-line by following the links at www.parliament.nsw.gov.au

The closing date for submissions is **30 November 2005**.