

PARLIAMENT OF NEW SOUTH WALES



# **Legislation Review Committee**

## LEGISLATION REVIEW DIGEST

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No 12 of 2005

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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 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. Anti-Discrimination Amendment (Equality in Education and Employment) Bill 2005\*

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

#### 2. Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2005

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

#### 3. Health Legislation Amendment Bill 2005

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

#### 4. Pay-Roll Tax Amendment (Supporting Jobs and Small Business) Bill 2005\*

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

#### 5. Public Sector Employment & Management Amendment (Extended Leave) Bill 2005

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

#### 6. Residential Tenancies Amendment (Social Housing) Bill 2005

5. 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

#### 7. State Emergency and Rescue Management Amendment Bill 2005

3. The Committee thanks the Minister for his response.



## Part One – Bills

### SECTION A: COMMENT ON BILLS

# 1. ANTI-DISCRIMINATION AMENDMENT (EQUALITY IN EDUCATION AND EMPLOYMENT) BILL 2005\*

Date Introduced:	13 October 2005
House Introduced:	Legislative Council
Member Responsible:	The Hon Lee Rhiannon MLC

### Purpose and Description

1. The Bill amends the *Anti-Discrimination Act 1977* (the Act) to remove the exemptions that allow private educational authorities to discriminate in education and employment on certain grounds or that allows employers who employ no more than 5 persons to discriminate in employment on certain grounds.

### Background

2. The second reading speech stated:

The Anti-Discrimination Act 1977... contains some loopholes that allow legal discrimination to continue. The bill seeks to remove those loopholes...

[This bill] does not impinge upon religious freedom, and it does not limit the free exercise of religion... The bill does not seek to interfere in the internal affairs or churches or religious organisations. There is a clear and obvious distinction between religious organisations on the one hand, and schools, charities or business operated by religious organisations on the other...

The bill also seeks to remove the arbitrary distinction between businesses that employ five or fewer staff and those that employ six or more. There is no logical or credible basis for this distinction.<sup>1</sup>

### The Bill

3. The Bill removes certain existing exemptions in the Act, so as to prohibit:
  - *private educational authorities*<sup>2</sup> from discrimination in *education*<sup>3</sup> on the grounds of sex, transgender status, marital status, disability, homosexuality or age [Schedule 1(3), (5), (7), (9), (12) and (13)]<sup>4</sup>;

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<sup>1</sup> The Hon Lee Rhiannon MLC, Legislative Council *Hansard*, 13 October 2005.

<sup>2</sup> Section 4 of the *Anti-Discrimination Act 1977* defines a **private educational authority** to mean a person or body administering a school, college, university or other institution at which education or training is provided, not being:

Anti-Discrimination Amendment (Equality in Education and Employment) Bill 2005\*

- private educational authorities from discrimination in *employment*<sup>5</sup> against certain applicants and employees on the ground of sex, transgender status, marital status, disability<sup>6</sup> and homosexuality [Schedule 1(2), (4), (6), (8) and (11)]; and
  - persons employing 5 or fewer employees from discrimination in employment on the ground of sex, transgender status, marital status, disability, an employee's responsibilities as a carer or homosexuality [proposed Schedule 1(2), (4), (6), (8),(10) and (11)].<sup>7</sup>
4. The Bill also limits an existing exemption in relation to the conduct of religious bodies.<sup>8</sup> It provides that the exemption does not relate to the provision of social, charitable or welfare services to the public, or to the provision of primary, secondary or tertiary education by religious bodies [Schedule 1(14) and (15)]. This would make discrimination on any of the grounds in the Act unlawful if carried out by a religious body in relation to the provision of education or the provision of social, charitable or welfare services to the public.

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(a) a school, college, university or other institution established under the *Education Reform Act 1990*, the *Technical and Further Education Commission Act 1990* or an Act of incorporation of a university, or

(b) an agricultural college administered by the Minister for Agriculture.

<sup>3</sup> The grounds of discrimination prohibited in the *Anti-Discrimination Act 1977* in the educational context relate to the admission of persons, their access to the benefits provided by an educational authority, and the basis for their expulsion or a denial of access to any benefit.

<sup>4</sup> In the second reading speech, it is stated that removing the exemption for discrimination on the ground of sex in private educational authorities "applies only in co-educational schools. Paragraph (b) of section 31A(3), which protects single sex educational institutions from the provisions of this Act, would remain": The Hon Lee Rhiannon MLC, Legislative Council *Hansard*, 13 October 2005.

<sup>5</sup> Section 4 of the *Anti-Discrimination Act 1977* defines **employment** to include work under a contract for services. The grounds of discrimination prohibited in the Act relate to applying for employment, undertaking employment and leaving employment. There are exemptions in the Act in relation to employment, including employment for the purposes of a private household (s 25(3)(a)) and where differentiation by sex is a genuine occupational qualification for a job (s 31).

<sup>6</sup> Section 49D(4) of the *Anti-Discrimination Act 1977* provides for discrimination on the basis of disability, if taking into account all relevant factors, the person would be unable to carry out the inherent requirements of the particular employment or would, in order to carry out those requirements, require services or facilities the provision of which would impose an unjustifiable hardship on the employer. The second reading speech states that this "exemption would be available to small businesses and private educational authorities. They would not be required to suffer unjustifiable financial hardship or to employ a person in a role that the person cannot fulfil": The Hon Lee Rhiannon MLC, Legislative Council *Hansard*, 13 October 2005.

<sup>7</sup> The Bill does not affect the capacity for exemptions to be made either to redress past disadvantage or discrimination experienced by a particular group on any of the grounds covered by the *Anti-Discrimination Act 1977* (s 126) or when employers or service providers wish to run a special needs program or activity that would be discriminatory on the grounds of sex, transgender status, marital status, disability, homosexuality or responsibilities as a carer (s 126A).

<sup>8</sup> Section 56 of the *Anti-Discrimination Act 1977* provides that nothing in the Act applies to:

- the ordination or appointment of priests, ministers of religion or members of any religious order;
- the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- the appointment of any other person in any capacity by a body established to propagate religion; or
- any other act or practice of a body established to propagate religion that conforms to the doctrine of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

## Issues Considered by the Committee

5. 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.*

## 2. GENE TECHNOLOGY (GM CROP MORATORIUM) AMENDMENT (POSTPONEMENT OF EXPIRY) BILL 2005

Date Introduced: 13 October 2005  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Ian Macdonald MLC  
Portfolio: Primary Industries

### Purpose and Description

1. The *Gene Technology (GM Crop Moratorium) Act 2003* provides a moratorium on the cultivation of specific genetically modified crops in NSW. This Bill postpones the expiry of the Act by 2 years, from 3 March 2006 to 3 March 2008.

### Background

2. The second reading speech stated:

The three-year duration of the Act was originally considered appropriate. It was thought that that period would allow sufficient information to be collected on the potential impact of genetically modified crops...

However, at this point the lack of segregation trials means that there has been no practical demonstration of the capacity to segregate GM and non-GM products across the supply chain to different market standards...

Extending the duration of the Act will provide more time to collect necessary data, as well as time to reconcile any outstanding uncertainties relating to marketing GM and non-GM products. The proposed amendment also provides further consistency with gene technology moratorium legislation in other States in accordance with the intergovernmental agreement.<sup>9</sup>

### 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.*

<sup>9</sup> Mr Graham West MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 12 October 2005.

### 3. HEALTH LEGISLATION AMENDMENT BILL 2005

Date Introduced:	12 October 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Health

#### Purpose and Description

1. The Bill amends health-related legislation, as set out below.

#### The Bill

2. The following summarises the background to, and substance of, the Bill's amendments.

##### *Health Administration Act 1982*

3. The *Health Legislation Amendment (Complaints) Act 2004* was intended to amend the *Health Administration Act 1982* to establish a new statutory privilege for the proceedings of root cause analysis to cover all NSW public hospitals and the NSW Ambulance Service. However, the Ambulance Service did not fall into any of the categories covered by the latter Act, and the amendment rectifies this [proposed amended s 20L].<sup>10</sup>

##### *Human Tissue Act 1983*

4. The proposed amendments to the *Human Tissue Act 1983* cover the following:
  - clarifying that a reference to a “parent” includes a reference to the Minister administering the *Children and Young Persons (Care and Protection) Act 1988* (currently the Minister for Community Services), if the Minister has sole parental responsibility for the child [proposed amended s 4(2)(a)];
  - allowing technicians (“authorised persons”), in addition to medical practitioners, to remove musculoskeletal tissue from a deceased person for the purpose of the transplantation of that tissue [proposed amended s 27(1A)];
  - providing for the removal of regenerative tissue from the body of a child who is not capable of understanding the nature and effect of such removal and the intended effect of its proposed transplantation in certain circumstances where the risk to the child is minimal and the sibling of the child is likely to die or suffer serious and irreversible damage to his or her health unless the tissue is used in his or her treatment [proposed s 11A];<sup>11</sup>
  - providing that the medical practitioners who may certify death prior to the removal of tissue from a deceased person's body must *not* be involved in the

<sup>10</sup> Mr G J West MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 12 October 2005.

<sup>11</sup> The Department of Health's clinical ethics advisory panel is of the view that certification by an independent specialist will ensure that there is an independent assessment and source of advice available to the parents: Mr G J West MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 12 October 2005.

removal of tissue from the deceased person's body for the purposes of its transplantation, nor be responsible for the primary care of the intended recipient of the tissue;<sup>12</sup> and

- providing that the Act does not prevent the use of small samples of lawfully-removed tissue for carrying out analyses or tests that are part of a program to ensure, or improve, the quality of services carried out at a hospital, a forensic institution, a laboratory, an educational or research institution, or by a supplier of blood or blood products, or that are necessary for the delivery of services carried out at or by these bodies or for the accreditation under any Act of these bodies [proposed s 34(1)(b3)].

### ***Podiatrists Act 2003***

5. The *Podiatrists Act 2003* is amended to subject podiatrists to the same standards and requirements to prevent infection that apply to other registered health professionals [proposed new s 132(n)].

### ***Poisons and Therapeutic Goods Act 1966***

6. The *Poisons and Therapeutic Goods Act 1966* is amended to allow the Director-General of the Department of Health a discretion in relation to whether to specify a maximum quantity of drug, and a set time period, may be prescribed in any specific case [proposed new s 28 and s 29].
7. This is aimed at circumstances in which prescribers may need greater flexibility, eg, in the management of severe pain in terminal patients.<sup>13</sup>
8. The Bill also amends the *Poisons and Therapeutic Goods Regulation 2002* to specify the types of drugs of addiction that may be prescribed for continuous therapeutic use only with the authority of the Director-General [proposed new cl 121 and cl 121A of Sch 5].

### ***Public Health Act 1991***

9. On the request of the Nurses Association, the *Public Health Act 1991* is amended so that registered nurses may undertake surgical debridement of feet in certain circumstances, rather than the current less direct authority conferred by a defence to prosecution [proposed amended s 10AH].<sup>14</sup>

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<sup>12</sup> This amendment is designed to avoid any concerns of a perceived conflict of interest that may arise if a medical practitioner who is responsible for the care of the recipient were also to certify death of the donor, and arose out of public consultation undertaken as part of a review of the *Human Tissue Act 1983*: Mr G J West MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 12 October 2005.

<sup>13</sup> Mr G J West MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 12 October 2005.

<sup>14</sup> Mr G J West MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 12 October 2005.

## Issues Considered by the Committee

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|--|
| <p>10. 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. PAY-ROLL TAX AMENDMENT (SUPPORTING JOBS AND SMALL BUSINESS) BILL 2005\*

Date Introduced: 22 September 2005  
House Introduced: Legislative Assembly  
Member Responsible: Ms P L Seaton MP

### Purpose and Description

1. The object of this Bill is to amend the *Pay-roll Tax Act 1971* to increase the tax free threshold for pay-roll tax from \$600,000 to \$850,000, with the increase to take effect from 1 July 2007.

### 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.*



## 5. PUBLIC SECTOR EMPLOYMENT & MANAGEMENT AMENDMENT (EXTENDED LEAVE) BILL 2005

Date Introduced:	13 October 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Morris Iemma MP
Portfolio:	Premier

### Purpose and Description

1. This Bill amends the *Public Sector Employment and Management Act 2002* and other Acts and Regulations to alter the extended leave entitlements of certain NSW State Government employees. The Bill brings forward eligibility to extended leave after seven years, allows extended leave entitlements to be taken at double pay, and provides that public holidays occurring during an extended leave period will not be deducted from an employer's entitlement.<sup>15</sup>
2. The Bill also repeals the *Transferred Officers Extended Leave 1961* and associated regulation, replacing these instruments with simplified provisions regarding the recognition of former government service for the purpose of determining extended leave entitlements.

### Background

3. The second reading speech stated:

[T]he bill will provide public service employees with earlier access to extended leave entitlements and enable these entitlements to be used at a faster rate. The bill will also provide a new regime to update and clarify the recognition of service provisions in the Transferred Officers Extended Leave Act...

In preparing the bill, the Government consulted with key stakeholders, including Unions NSW, the Public Service Association of New South Wales, the NSW Teachers Federation, NSW Health, the NSW Department of Education and Training and NSW Police. The Government is satisfied that the bill is an appropriate reflection of the settlement with the Public Service Association of New South Wales and the intention of the joint working party, which conducted the review of the Transferred Officers Extended Leave Act.<sup>16</sup>

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<sup>15</sup> Currently, Schedule 3 to the *Public Sector Employment and Management Act 2002* provides for an entitlement to extended leave after service for 10 years, to be taken on full pay or half pay. It also provides that the amount of extended leave taken is to be reduced by the length of any public holiday occurring within the leave period.

<sup>16</sup> Mr Graham West, Parliamentary Secretary, Legislative Assembly *Hansard*, 12 October 2005.

## 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.*

## 6. RESIDENTIAL TENANCIES AMENDMENT (SOCIAL HOUSING) BILL 2005

Date Introduced:	12 October 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Cherie Burton MP
Portfolio:	Housing

### Purpose and Description

1. The Bill amends the *Residential Tenancies Act 1987* to make further provision with respect to social housing tenancies.

### Background

2. In her second reading speech, the Minister stated:

The [Bill] provides the legislative foundations to implement the Government Plan for Reshaping Public Housing announced by the then Premier on 27 April 2005...<sup>17</sup>

### The Bill

3. The Bill amends the *Residential Tenancies Act 1987* in connection with social housing tenancy agreements. These amendments include:
  - requiring a tenant under a **social housing tenancy agreement**<sup>18</sup> to pay to the landlord water usage charges determined in accordance with publicly available Ministerial guidelines [schedule 1[5]];
  - allowing a social housing tenant whose rent rebate is cancelled, to apply to the Consumer, Trader and Tenancy Tribunal for an order declaring that the rent they must pay for premises they already occupy is excessive [schedule 1[7]] and enabling the Tribunal to order that rent is not to be exceeded by a specified amount if it determines that the rent is excessive [schedule 1[11]];
  - enabling a landlord under a social housing tenancy agreement, the fixed term of which has ended, to declare that the agreement is subject to a further fixed term from a date specified in a notice given to the tenant [Schedule 1[3]];

<sup>17</sup> The Hon Cherie Burton MP, Minister for Housing, Legislative Assembly *Hansard*, 12 October 2005. The *Reshaping Public Housing* policy is available on the internet at: <http://www.housing.nsw.gov.au>.

<sup>18</sup> **Social housing premises** means residential premises let by a social housing provider under a residential tenancy agreement (otherwise than in the circumstances, if any, prescribed by the regulations). A **social housing provider** is defined as:

- the New South Wales Land and Housing Corporation,
- the New South Wales Department of Housing,
- the Office of Community Housing of the Department of Housing,
- the Aboriginal Housing Office,
- an organisation for the time being registered with the Office of Community Housing, or under Part 5 of the *Aboriginal Housing Act 1998*, or
- an organisation prescribed by the regulations.

Residential Tenancies Amendment (Social Housing) Bill 2005

- adding 2 additional grounds for terminating a social housing tenancy agreement<sup>19</sup> [Schedule 1[12]]:
    - if the landlord determines that the tenant is no longer eligible to reside in such premises [proposed s 63B]; or
    - if the landlord offers the tenant a new tenancy agreement in respect of alternative social housing premises [proposed s 63F];
  - removing an exemption applying to housing let by the New South Wales Land and Housing Corporation or the Aboriginal Housing Office from a requirement for advance notice to be given of rent increases [Schedule 1[24]]; and
  - enabling rent payable under a fixed term social housing tenancy agreement to be increased during the currency of the fixed term [Schedule 1[25]].
4. The Bill amends the *Aboriginal Housing Act 1998* and the *Housing Act 2001* to insert additional objects into those Acts.

### Issues Considered by the Committee

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

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<sup>19</sup> Existing internal review processes and external review by the Housing Advisory Committee apply to decisions to terminate a lease on these two new grounds.

## SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

### 7. STATE EMERGENCY AND RESCUE MANAGEMENT AMENDMENT BILL 2005

Date Introduced:	22 September 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Tony Kelly MLC
Portfolio:	Emergency Services

#### Background

1. The Committee reported on this Bill in *Legislation Review Digest* No. 11 of 2005 on 10 October 2005 and wrote to the Minister on the same day regarding the reversal of onus of proof issue raised by proposed s 63B(2) of the Bill.
2. The Committee sought advice from the Minister on the need to place a legal burden of proof on a defendant to establish certain defences to the new offences established in the section, rather than leaving the burden of proof with the prosecution or placing only the evidential burden of proof on the defendant.

#### The Minister's reply

2. On 13 October 2005, the Minister replied as follows:

In any proceedings under Section 63B it will be the defendant who has the knowledge as to the purpose of his or her conduct. Accordingly, it would be very difficult for the prosecution to prove beyond reasonable doubt that there was no reasonable excuse to the offence. While it would be possible to place the evidential burden of proof on the defendant, the Section 63B offences are based on the existing offences under Section 203 of the Police Act 1990, which take a similar approach.

#### The Committee's conclusion

3. **The Committee thanks the Minister for his response.**



PARLIAMENT OF NEW SOUTH WALES  
LEGISLATION REVIEW COMMITTEE

---

10 October 2005

Our Ref: LRC1531

The Hon Tony Kelly MLC  
Minister for Emergency Services  
Level 34, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Minister

**State Emergency and Rescue Management Amendment Bill 2005**

At its meeting of 10 October 2005, the Legislation Review Committee considered the above Bill pursuant to its responsibilities under s 8A of the *Legislation Review Act 1987*.

The Committee resolved to write to you regarding proposed s 63B(3) of the Bill. This provision specifies the defences to the proposed new offences of impersonation of an emergency services organisation officer.

Proposed s 63B(3) requires a person to **establish** that their conduct was for the purposes of a public entertainment, or was done with a reasonable excuse, to avail themselves of a defence to a proposed s 63B offence. This appears to place a **legal burden** of proof on the defendant, that is, the defendant must prove the mitigating circumstances on the balance of probabilities to avoid liability.

Reversing the onus of proof may, in some circumstances, be contrary to the presumption of innocence. The Committee generally considers that a reasonable limit for a reversal of the onus of proof is to place no more than an **evidential burden** of proof on a defendant.

The Committee seeks your advice on the need to place a legal burden of proof on a defendant in relation to the matters to be established in s 63B(3) rather than leaving the burden of proof with the prosecution or placing the evidential burden on the defendant.

Yours sincerely

A handwritten signature in cursive script that reads 'Peter Primrose'.

Peter Primrose MLC  
Chairman

## State Emergency and Rescue Management Amendment Bill 2005



The Hon Tony Kelly MLC  
Minister for Justice  
Minister for Juvenile Justice  
Minister for Emergency Services  
Minister for Lands  
Minister for Rural Affairs  
Leader of the House - Legislative Council

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



13 OCT 2005

Dear Mr Primrose

I refer to your letter of 10 October 2005 concerning the State Emergency and Rescue Management Amendment Bill 2005 and in particular Section 63 B(3) of the Bill which specifies the defences to the proposed new offences of impersonation of an emergency services organisation officer.

I note that the report prepared for the Legislation Review Committee on the Bill cites "A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers" as stating that "*A matter should be included in a defence, thereby placing the onus on the defendant only where the matter is peculiarly within the knowledge of the defendant, and is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.....*"

In any proceedings under Section 63 B it will be the defendant who has the knowledge as to the purpose of his or her conduct. Accordingly, it would be very difficult for the prosecution to prove beyond reasonable doubt that there was no reasonable excuse to the offence. While it would be possible to place the evidential burden of proof on the defendant, the Section 63 B offences are based on the existing offences under Sections 203 of the Police Act 1990, which take a similar approach.

For example, Section 203 of the Police Act 1990 includes offences in relation to the wearing or possession etc of police uniforms by others. Section 203 (5) provides that a person is not guilty of an offence under that section if: the act or omission constituting the offence is authorised by the regulation or by licence granted to the person by the Commissioner, or the person establishes that the person otherwise had the permission of the Commissioner for the act or omission, or the person establishes that the person had a reasonable excuse for the act or omission.

In contrast to the proposed offences under Section 63B, Section 204 of the Police Act (impersonation of a Police Officer) does not provide for any defence. Nor does the existing Clause 40 of the Rural Fires Regulation 2002, in relation to the unauthorised use of apparel, emblems and insignia.

Yours sincerely



Tony Kelly  
**Minister for Emergency Services**



## Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Adoption Amendment (Adoption Service Providers) Regulation 2005	01/07/05	3312	12/09/05	26/09/05
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	
Legal Profession Amendment (Advertising) Regulation 2005	15/06/05	2279	12/09/05	
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	



# Appendix 1: Index of Bills Reported on in 2005

	Digest Number
Anti-Discrimination Amendment (Equality in Education and Employment) Bill 2005*	12
Anti-Discrimination Amendment (Religious Tolerance) Bill 2005*	10
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
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
Courts Legislation Amendment Bill 2005	7
Court Security Bill 2005	2
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
Crown Lands Amendment (Access to Property) Bill 2005*	4
Crown Lands Legislation Amendment Bill 2005	7
Defamation Bill 2005	10
Drug Misuse and Trafficking Amendment Bill 2005	8

	Digest Number
Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005	6
Duties Amendment (Abolition of Bob Carr's Vendor Duty) Bill 2005*	9
Duties Amendment (Abolition of Vendor Duty) Bill 2005	10
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
Fire Brigades Amendment (Community Fire Units) Bill 2005	7
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
Health Legislation Amendment Bill 2005	12
Independent Commission Against Corruption Amendment Bill 2005	2, 3
James Hardie Former Subsidiaries (Special Provisions) Bill 2005	9
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	1
Legal Profession Amendment Bill 2005	8
Legal Profession Bill 2004	1, 5
Legislation Review Amendment (Family Impact) Bill 2005*	9
Local Government Amendment Bill 2005	8
Local Government Amendment (Stormwater) Bill 2005	10
Local Government and Valuation of Land Amendment (Water Rights) Bill 2005	9
Marine Safety Amendment (Random Breath Testing) Bill 2004	1
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

	Digest Number
Pawnbrokers and Second-hand Dealers Amendment Bill 2005	8
Pay-roll Tax Amendment (Supporting Jobs and Small Business) Bill 2005*	12
Petroleum (Submerged Lands) Amendment (Permits and Leases) Bill 2005	7
Photo Card Bill 2004	1
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	2
Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill 2005	7
Prisoners (Interstate Transfer) Amendment Bill 2005	4, 5
Property Legislation Amendment Bill 2005	10
Protection of Agricultural Production (Right to Farm) Bill 2005*	4
Protection of the Environment Operations Amendment Bill 2005	10
Public Sector Employment and Management Amendment (Ethanol Blended Fuel) Bill 2005*	11
Public Sector Employment and Management Amendment (Extended Leave) Bill 2005	12
Residential Tenancies Amendment (Social Housing) Bill 2005	12
Road Transport (General) Bill 2004	1, 4
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	1, 4, 7
Rural Workers Accommodation Amendment Bill 2005	7
Security Industry Amendment Bill 2005	9
Security Interests in Goods Bill 2005	10
Sheriff Bill 2005	2
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 Revenue Legislation Amendment Bill 2005	8
State Revenue Legislation Amendment (Budget Measures) Bill 2005	7
Statute Law Miscellaneous Provisions Bill 2005	8
Surveying Amendment Bill 2005	7
Sydney 2009 World Masters Games Organising Committee Bill 2005	7
Sydney University Settlement Incorporation Amendment Bill 2005*	7
Terrorism Legislation Amendment (Warrants) Bill 2005	8
Transport Administration Amendment (Transport Levy For Major Events) Bill 2005	2

	Digest Number
Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005*	2
Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Bill 2005	7
Water Efficiency Labelling and Standards (New South Wales) Bill 2005	3
Workplace Surveillance Bill 2005	6

## 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

<b>Bill</b>	<b>Minister/Member</b>	<b>Letter sent</b>	<b>Reply</b>	<b>Digest 2004</b>	<b>Digest 2005</b>
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			9
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



## 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				
Crimes Amendment (Road Accidents) Bill 2005	R, C				
Court Security Bill 2005				N	
Crimes Amendment (Protection of Innocent Accused) Bill 2005*	R				
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				
Drug Misuse and Trafficking Amendment Bill 2005				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
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				
Marine Safety Amendment (Random Breath Testing) Bill 2004				C	
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	
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				

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Protection of the Environment Operations Amendment Bill 2005	R				
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				
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

<b>Regulation</b>	<b>Minister/Correspondent</b>	<b>Letter sent</b>	<b>Reply</b>	<b>Digest 2005</b>
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
Mental Health Amendment (Transfer of Queensland Civil Patients) Regulation 2005	Minister for Health	29/04/05	11/07/05	9
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](http://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](http://www.parliament.nsw.gov.au)

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