

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 8 of 2009

15 June 2009

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Assembly. Legislation Review Committee.

Legislation Review Digest, Legislation Review Committee, Parliament NSW Legislative Assembly. [Sydney, NSW] : The Committee, 2009, 92 p; 30cm

Chair: Mr Allan Shearan MP

15 June 2009

ISSN 1448-6954

1. Legislation Review Committee—New South Wales

2. Legislation Review Digest No. 8 of 2009

I Title.

II Series: New South Wales. Parliament. Legislative Assembly. Legislation Review Committee Digest; No. 8 of 2009

[Table of Contents](#)

Membership & Staff.....	ii
Functions of the Legislation Review Committee.....	3
Guide to the <i>Legislation Review Digest</i>	4
Summary of Conclusions	6
Part One – Bills	11
SECTION A: Comment on Bills.....	11
1. Coroners Bill 2009	11
2. Courts and Other Legislation Amendment Bill 2009	22
3. Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009.....	29
4. Game And Feral Animal Control Amendment Bill 2009*.....	33
5. NSW Lotteries (Authorised Transaction) Bill 2009.....	41
6. NSW Trustee and guardian Bill 2009	49
7. Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009.....	58
8. Residential Tenancies Amendment (mortgagee reposessions) Bill 2009	65
9. Rookwood Necropolis Repeal Bill 2009.....	67
10. Rural Lands Protection Amendment Bill 2009	70
11. State Emergency and Rescue Management Amendment Bill 2009	74
SECTION B: Ministerial Correspondence	77
1. Parking Space Levy Bill 2009	77
2. Tow Truck Industry Regulation 2008	81
Appendix 1: Index of Bills Reported on in 2009	84
Appendix 2: Index of Ministerial Correspondence on Bills	87
Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2009	88
Appendix 4: Index of correspondence on regulations	90

* Denotes Private Member's Bill

MEMBERSHIP & STAFF

Chair	Allan Shearan MP, Member for Londonderry
Deputy	Paul Pearce MP, Member for Coogee
Members	Amanda Fazio MLC Robert Furolo MP, Member for Lakemba Sylvia Hale MLC Judy Hopwood MP, Member for Hornsby Robyn Parker MLC Russell Turner MP, Member for Orange
Staff	Catherine Watson, Committee Manager Carrie Chan, Senior Committee Officer Victoria Maigre, Committee Officer Millie Yeoh, Assistant Committee Officer
Panel of Legal Advisers The Committee retains a panel of legal advisers to provide advice on Bills as required.	
Contact Details	Legislation Review Committee Legislative Assembly Parliament House Macquarie Street Sydney NSW 2000
Telephone	02 9230 3308
Facsimile	02 9230 3052
Email	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc/digests

FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations:

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

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament. Following a brief description of the Bill, the Committee considers each Bill against the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987* (see page 3).

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 3).

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 2009

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 2009

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 2009

This table specifies the action the Committee has taken with respect to Bills that received comment in 2008 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 2009

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. Coroners Bill 2009

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

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

2. Courts and Other Legislation Amendment Bill 2009

Schedule 1.2 Right to Privacy

16. The Committee does not consider that Schedule 1.2 unduly trespasses on personal rights to privacy when weighed with the public benefits in conducting informed research in the area of discrimination. It also notes that the secrecy provisions of the Act will be extended to people who have been provided with information by the board for research purposes.

Schedule 1.5 Freedom of Association

26. The Committee is concerned that new s 17A (3A) (b) may deny an offender his/her right to live in their home, their right to visit or live with close family, their right to work and their right to worship which are recognised under a number of International Covenants. The Committee refers the matter to Parliament as to whether this is an undue trespass on rights and liberties.

31. The Committee is always concerned with restrictions on freedom of association which is a fundamental right established by Article 22 (1) of the *International Covenant on Civil and Political Rights*. The Committee has most recently commented on this in relation to the *Crimes (Criminal Organisations Control) Bill 2009* which appeared in Legislation Review Digest 5 of 2009. The Committee is concerned that restricting access to close family is extremely onerous to offenders who may have few other ties to the community. The Committee refers the matter to Parliament as to whether this is an undue trespass on rights and liberties.

3. Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009

Issue: Schedule 1 [7] – proposed Section 98A – Amendment of *Electricity Supply Act 1995* – Compensation not payable – Denial of Compensation:

8. The effect of this proposed section 98A is to ensure that compensation is not payable by or on behalf of the State to retail suppliers, market consumers and certain other persons who supply or consume electricity. The Committee is of the view that that the right to seek damages or compensation is an important personal right and that these rights should not be removed or restricted by legislation unless there is a compelling public interest in doing so. Therefore, the Committee asks Parliament to consider whether there is a compelling public interest in this instance to remove the right to seek compensation by legislation.

4. Game And Feral Animal Control Amendment Bill 2009*

Issue: Schedule 1 [8] – Membership and procedure of Game Council – Right of Access and Representation:

25. The Committee is concerned that the proposed amendment of Schedule 1 [8] aims to remove the direct representation of a person appointed on the nomination of the Aboriginal Land Council on the Game Council by replacing that membership with the Minister administering the *Aboriginal Land Rights Act 1983*. This may appear to be disproportionate to the number of other community or stakeholders' representations on the Game Council who are not represented by their responsible Ministers, such as, direct nominations of the State Management Council of Livestock Health and Pest Authorities and, of the Australian Veterinary Association, as well as, the 8 persons who are appointed on the nomination of hunting organisations.
26. The Committee is concerned with Schedule 1 [8], that the removal of the requirement for a person to be appointed on the nomination of the New South Wales Aboriginal Land Council on the Game Council, who would be a nominated representative of the community, could potentially disadvantage Aboriginal communities by affecting their access to and representation on the Game Council as the Aboriginal Land Council represents a peak body to protect the interests of its members and the broader Aboriginal communities that range in their diversity from modern to traditional in their beliefs and practices, with regard to land. This may lead to unintended but potential undue trespass on rights and liberties of Aboriginal communities with regard to Aboriginal land. Accordingly, the Committee refers this to Parliament.

Issue: Schedule 1 [21] – Power to detain and search vehicles or vessels – Privacy and Property:

28. The Committee notes the power requiring a vehicle to stop, without being accompanied by a police officer, in order to stop, then detain and search the vehicle or vessel, could be a significant trespass on rights of privacy and property. The Committee further notes that this power can be exercised by inspectors appointed by the Game Council which includes a broad range of people such as a statutory officer, a public servant, a member of staff of the Game Council and a person belonging to a class of persons prescribed by regulations.

29. By having regard to the aims of section 44, where the power to search the vehicle or vessel without a warrant, by civilian inspectors ranging from staff of the Game Council, statutory officers, public servants of public or local authorities through to a class of persons prescribed by regulations, the Committee refers to Parliament whether the proposed amendment by Schedule 1 [21] to omit section 44 (3) of the requirement for an inspector to be accompanied by a police officer when exercising the power under the section to stop a vehicle, may unduly trespass on personal rights and liberties.

5. NSW Lotteries (Authorised Transaction) Bill 2009

Issue: Clause 15 (Part 3) – Contracts for sale of land – Compensation:

22. Given the extension of Crown immunity and immunity afforded to the State, Minister and public authority of the State, the Committee is concerned that under clause 15 of Part 3, the rights and remedies of purchasers who may suffer as a result of the exercise of a right conferred under the Bill in relation to the sale of land, may constitute as a potential undue trespass on the purchasers' rights to obtain remedies or relief and compensation that could have been otherwise available under section 52A of the *Conveyancing Act 1919*. Accordingly, the Committee refers this to Parliament.

Issue: Clause 22 (Part 4) – Protection of contractual and other obligations – Clause 23 (Part 4) – Compensation not payable:

25. Given the extension of Crown immunity and immunity afforded to the State, Minister and public authority of the State, the Committee is concerned that under clause 22 and clause 23 of Part 4, the rights and remedies of parties who may suffer as a result of the exercise of a right conferred under the Bill, may constitute as a potential undue trespass on a party's right to obtain remedy or relief and compensation that could have been otherwise available under various civil obligations. Accordingly, the Committee refers this to Parliament.
26. However, the Committee also notes that subsection (3) of proposed section 22 refers to the section as not affecting the rights and obligations of the parties to a transaction arrangement in respect of the performance of obligations under the transaction arrangement, which provides for some protection to parties in respect of performance of obligations under specific transaction arrangements. The Committee notes that subsection (2) of proposed section 23 similarly refers to the section as not applicable to compensation payable under a transaction arrangement to a party to the transaction arrangement in connection with the performance of obligations under that transaction arrangement. This provides for some protection to parties in respect of compensation payable under specific transaction arrangements.

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

28. The Committee accepts the above reasons and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

6. NSW Trustee and Guardian Bill 2009

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

7. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

7. Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009

Issue: Consumers' Protection and Rights - Removal of licensing for optical dispensers (Schedule 1 and Schedule 4.1-4.4, 4.6 [2] and [4], 4.7 and 4.9-4.11); for supply of kit homes (Schedule 2 and Schedules 3, 4.5 and 4.6 [1] and [3]); for building consultancy (Schedule 2 and Schedules 3, 4.5 and 4.6 [1] and [3]); for non-structural flooring work (Schedule 3 [4] and [13]); and for mechanical services (Schedule 3 [4], [14] and [3]).

25. The Committee appreciates the cost savings to be made with the removal of the above licensing, particularly, removing regulation that does not add value and to reduce red tape, in order to improve the free flow of skills around the country to benefit the New South Wales economy and at the same time, to balance the needs for consumer protection and not to expose the public or consumers to undue health and safety risks.
29. The Committee appreciates the cost savings reasons behind the removal of the requirement for such licensing for the class of non-structural flooring. However, the Committee holds concerns for the individual builders and ultimately, the consumers, especially if the Home Warranty Insurance applies only to work greater than \$12,000 in value where most of these types of contracts will not exceed this threshold and will not be covered by Home Warranty Insurance. The Committee is concerned that this may erode the compensation, remedy or relief available to protect the rights of builders and consumers. The Committee, therefore, draws this matter to the attention of Parliament.
31. The Committee appreciates the reasons behind the removal of the licensing for this class of building consultancy. However, the Committee is concerned with consumers' protection given that pre-purchase inspections play an important role in the expensive transaction of purchasing a property. The Committee is also concerned that minimum standards for inspection reports including the requirement for a builders licence or accreditation will be removed for such pre-purchase property or building inspections. The Committee will be concerned that this may erode the purchasers' rights and basis for informed decision-making. Accordingly, the Committee brings this matter to the attention of Parliament.
32. The Committee understands that the New South Wales Better Regulation Office has conducted a review, completed in April, which looked at the costs and benefits of licensing these occupations for consumers, licensees and Government. The review included a public consultation process. The Committee suggests that the outcomes of the review or its report with the cost and benefit analysis and responses to public consultation or submissions, could be made better available through the tabling of that report in Parliament, in order to assist Parliament in its function to scrutinise the exercise of legislative powers in relation to this Bill.

8. Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009

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

9. Rookwood Necropolis Repeal Bill 2009

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

7. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

10. Rural Lands Protection Amendment Bill 2009

Issue: Schedule 1.2 – amends section 2 of *Rural Lands Protection Amendment Act 2008* No 112 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

19. The Committee accepts the above reasons and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

11. State Emergency and Rescue Management Amendment Bill 2009

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

SECTION B: Ministerial Correspondence

1. Parking Space Levy Bill 2009

6. The Committee thanks the Minister for his reply.

2. Tow Truck Industry Regulation 2008

4. The Committee thanks the Minister for his reply.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CORONERS BILL 2009

Date Introduced:	4 June 2009
House Introduced:	Legislative Council
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General

Purpose and Description

1. This Bill provides for the appointment and functions of coroners and assistant coroners; to repeal the *Coroners Act 1980*; and for other purposes.
2. The reforms deal with four main areas of coronial law: governance structure of the coronial jurisdiction; the categories of death that are within the jurisdiction of coroners; the conduct of post-mortems; and the case management of coronial proceedings.
3. This Bill aims to refine the jurisdiction of coroners by ensuring that unsuspecting deaths are not unnecessarily reported to coroners. It aims to enhance the investigative powers of coroners and to allow coroners to case manage proceedings so that the circumstances surrounding death can be revealed as quickly as possible. It also aims to ensure that the conduct of post-mortems will be managed with sensitivity and regard for the dignity of deceased persons.

Governance structure

4. In relation to the governance structure, the most significant change is that clause 12 provides that only magistrates and Australian lawyers will be eligible for appointment as coroners under the new Act.
5. Under the savings provisions, registrar coroners who are not Australian lawyers will be reappointed as assistant coroners. This change is consistent with coronial practice in other States and territories. The hierarchy of the coronial jurisdiction also has been amended. Currently, the State Coroner is supported by a Senior Deputy State Coroner, up to four Deputy State Coroners, coroners and assistant coroners. The coronial jurisdiction operates within the framework of the Local Court and is overseen by the Chief Magistrate. This structure has been streamlined by abolishing the position of Senior Deputy State Coroner.
6. The State Coroner will be supported by Deputy State Coroners and one of the Deputy State Coroners may be appointed to relieve the State Coroner during any period of temporary leave or vacancy. The structure has been made more flexible by removing the restriction on the number of Deputy State Coroners that may be appointed. The Act originally allowed for two Deputy State Coroners and subsequently this was increased by legislative amendment to three and then, four. There is no plan to appoint additional Deputy State Coroners at this time, however, it is cumbersome to continually require legislative amendment to alter the number of Deputy State Coroners that may be

Coroners Bill 2009

appointed. The number of Deputy State Coroners should be determined by reference to workloads.

7. Clause 7 makes it clear that the State Coroner operates under the supervision of the Chief Magistrate and is deemed to have the status of a Deputy Chief Magistrate. The State Coroner is a magistrate of the Local Court.

Jurisdiction of coroners

8. The second area of reform relates to the jurisdiction of coroners. This Bill includes changes to prevent non-suspicious natural deaths from being unnecessarily reported to coroners. Some of these reforms bring New South Wales into line with other jurisdictions in Australia.
9. Chapter 3 outlines the jurisdiction of coroners. It largely restates the current jurisdictional requirements with some modification. Coroners have jurisdiction to investigate reportable deaths that are defined in clause 6. Clause 20 now makes it clear that the jurisdiction of coroners is not dependent on the death being formally reported to the coroner and jurisdiction may be seized whenever the coroner becomes aware of a reportable death. The requirement to report a death that occurs during or within 24 hours of the administration of an anaesthetic has been replaced with a more general category of health-related deaths.
10. The Bill omits the reference to mandatory inquests in these circumstances and allows a coroner to determine whether or not an inquest is desirable. Medical practitioners may issue death certificates if a death is not reportable to a coroner and they are satisfied that the cause of death is known. Currently, a death certificate may be issued only if the medical practitioner has attended the person during the previous three months prior to the death.
11. Clause 6 therefore extends the period in which the medical practitioner attended the person from three to six months.
12. The Bill omits the requirement in the current *Coroners Act 1980* that a death be reported to a coroner if the person died within a year and a day after the date of any accident to which the cause of death is attributed. This provision was based on an antiquated legal rule that a person could be held responsible for the death of a person only if the death occurred within a year and a day of the incident. The rule has its origin at the beginning of the last century in response to limitations in medical science in identifying a connection between the medical cause of death and an event occurring at a much earlier time. The rule was abolished as part of the criminal law in 1991 by section 17A of the *Crimes Act 1900*.
13. The Bill makes it clear that the Coroner has jurisdiction to investigate deaths caused by accidents or criminal conduct, no matter when death actually occurs. This is consistent with coronial law in all other States and territories.
14. Clause 38 relates to the exception to the requirement to report deaths to the coroner when an elderly person dies as a result of an accidental fall, which is an accident attributable to the age of that person and not due to an act or omission by another person. One of the underlying principles of this Bill is that Coroners and investigating medical officers should be able to focus their

Coroners Bill 2009

attention on those cases in which a person dies of unknown causes or in suspicious or violent circumstances.

15. The current Coroners Act provides that these deaths need not be reported to a coroner if the person was aged more than 65 years and died after sustaining an injury from an accident, which was an accident that was attributable to the age of that person, contributed substantially to the death of the person, and was not caused by an act or omission by any other person. There is currently an exception to this provision if the person died in a hospital or nursing home.
16. The Bill changes the requirement to provide that such deaths need not be reported to a coroner, unless a relative objects to a medical practitioner issuing a death certificate. If an objection is raised, the medical practitioner will be obliged to report the death to a coroner. This will ensure that if the family of the deceased person has any concerns that the accidental fall should have been prevented, or that it was caused by the act or omission of another person, a coroner will be able to investigate those concerns. The Bill increases the age group to which this exception applies from 65 years or more to 72 years or more to reflect the improved health standards since the introduction of this provision.

Post mortem examinations

17. This Bill includes reforms to protect the dignity of deceased persons, to involve family members in decisions about post-mortem investigations and ensure that such investigations are completed in a timely manner.
18. One of the objectives of the reforms is to ensure that post-mortems are not undertaken unless it is necessary to establish the identity, time of death, or cause and manner of death. This is consistent with the principle enshrined in clause 88—that the dignity of the deceased person is to be respected. Under section 48 of the current Act, coroners are not obliged to make orders for a full post-mortem. The discretionary power is such that they may make an order for the purpose of identifying the deceased, date and place of death, and cause and manner of death.
19. This Bill will give a legislative basis for coroners taking the current approach whereby the State Coroner and Deputy State Coroners at Glebe already adopt the approach of examining any available medical records and considering whether the cause of death can be determined without the need for a post-mortem examination.
20. Clause 88 introduces an obligation on medical officers carrying out post-mortem examinations to establish the cause and manner of death by using the least invasive procedure that is appropriate in the circumstances. Prior to making an order for an invasive post-mortem examination, the coroner should consider whether it is possible to sufficiently establish the cause of death through non-invasive investigative means, such as arranging a review of medical records and consulting with treating doctors. On occasions, it will be sufficient to establish the cause of death through limited examinations, such as external examination, taking samples for toxicology or partial internal examinations. Clause 88 expressly refers to these more limited examinations.
21. This Bill makes it clear that examinations are carried out only to the extent necessary to establish the cause, manner and other circumstances surrounding death.

22. Clause 89 (6) introduces a new provision which allows the coroner the discretion to dispense with a post-mortem if, after obtaining advice from police officers and medical practitioners, the coroner is satisfied that the person died from natural causes and the senior next of kin indicates that the family does not wish to have a post-mortem conducted to ascertain the precise cause of the person's death.
23. Clause 25 (2) allows the coroner to dispense with an inquest in circumstances where the coroner has not directed a post-mortem examination on a person who has died from natural causes and where the coroner has obtained advice from police, medical practitioners and the deceased person's family.
24. Under new clause 89, it will be clear that the coroner could decline to order an autopsy if the deceased had died from natural causes and the family or next of kin did not desire a post-mortem examination.
25. Clause 90 deals with organ retention. This clause provides that a direction for a post-mortem examination does not permit the retention of whole organs without further order of the coroner. In addition, a new right is created in clause 96 to allow a relative to object to an order permitting retention of a whole organ.
26. One concern about the current process is that unless an objection was made to the conduct of the post-mortem examination by relatives, there is no provision to allow a relative to object to the retention of organs following a post-mortem examination. A number of families may wish to object to organ retention on the basis of cultural, religious or other personal beliefs. The Bill will allow those objections to be raised with the coroner, and if the matter is not satisfactorily resolved, the objection can be made to the Supreme Court. This increases the rights of relatives.

Case management of coronial cases

27. Reforms aim to enhance the case management powers of coroners to assist them meeting national time standards. Clause 52 allows the State Coroner to issue practice notes and give guidance to coroners generally on the appropriate manner for dealing with cases.
28. Clause 46 introduces the concept of coronial proceedings. The *Coroners Act 1980* does not permit a coroner to hold a hearing in open court unless the coroner commences an inquest or inquiry. Clause 46 introduces the concept of coronial proceedings. Coronial proceedings include the holding of an inquest or inquiry, conducting proceedings to determine whether or not to hold or to continue to hold an inquest or inquiry, or proceedings of an interlocutory or similar nature, including proceedings to deal with evidential matters or case management issues.
29. The effect of clause 46 is to confer on coroners the power to hold preliminary hearings in open court for the purposes of assisting their investigations or preparing the matter for inquest or inquiry. Currently, there is no provision allowing the coroner to conduct a preliminary hearing with the parties to determine issues such as the likely length of an inquest or inquiry, who will be appearing in the proceedings and the number of witnesses who are required to attend. The new provision will allow the coroner the option to determine any preliminary questions in open court, such as whether they have jurisdiction to deal with a particular death or whether or not an inquest or inquiry is necessary or desirable.

30. Clause 46 does not expand the powers of coroners. However, it will enable them to exercise their powers in open court instead of having to make preliminary decisions in chambers without the opportunity for interested parties to make submissions. The provision aims to promote the principle of open justice. It also has the potential to reduce the length of investigations, inquests and inquiries by identifying the scope of the matters to be investigated or limiting the need for witnesses to attend inquests and inquiries if their evidence is uncontested.
31. Clause 46 will allow a coroner to conduct coronial proceedings for the purposes of obtaining information from a witness prior to an inquest or inquiry. Clause 61 provides the coroner with the power to deal with claims of self-incrimination. If a witness declines to give evidence based on a claim of privilege against self-incrimination, the coroner may assess whether it is in the interests of justice that the evidence be given. If a person is compelled to give evidence, the coroner shall provide a certificate indemnifying the use of the evidence in other proceedings.
32. The new provision allows a coroner to issue a certificate to protect against evidence given in coronial proceedings being used in other proceedings. Clause 61 increases the scope of protection from the current Act. A certificate issued under section 33AA of the *Coroners Act 1980* prohibits the use of evidence in proceedings before any other proceedings before a New South Wales court. Clause 61 extends the protection so that it prohibits the use of evidence in proceedings before a New South Wales court, as well as any other proceedings where a person is empowered to take evidence.
33. The Bill restricts the availability of a coronial inquest or inquiry to be held before a jury. Clause 48 provides that a coronial inquest or inquiry may only be conducted with a jury if the State Coroner decides that a jury is required and that an inquest or inquiry before a jury may only be conducted by the State Coroner. However, there are limited circumstances in which the retention of a coronial jury may be useful. Clause 48 provides that a jury may be used for an inquest or inquiry only if the State Coroner directs it. The State Coroner will be able to give such a direction only if the State Coroner is to act as the coroner for the inquest or inquiry. Juries will not be permissible in any other coronial proceedings.
34. Clause 51 deals with the power of coroners to give directions to police officers in relation to coronial investigations. Clause 51 replaces sections 17B and 17C of the current Act. Although coroners oversee the conduct of investigations, police officers are the coroner's agents in the field gathering evidence on behalf of coroners. Where a death is suspicious or the circumstances surrounding the death are unclear, the coroner will direct the police officer in charge of the investigation to prepare a brief of evidence. Concerns have been raised by the New South Wales Police Force that the power to direct police officers can include directions to engage private experts which may involve significant costs. Clause 51 will allow the Commissioner of Police and the Director General of the Attorney General's Department to enter into a memorandum of understanding to regulate these costs.

Power of coroners to make recommendations

35. Clause 82 deals with the power of coroners to make recommendations. The importance of this power is highlighted in clause 3, which, for the first time, identifies the power of coroners to make recommendations in connection with an inquest or inquiry as one of the main objects of the Bill. The power to make recommendations provides coroners with

Coroners Bill 2009

the opportunity to identify any systemic failures in the health, law enforcement or other services to prevent similar deaths occurring in the future.

36. At present, the *Coroners Act 1980* does not contain any guidance on the communication of recommendations. Clause 82 will provide that a coroner making a recommendation shall, as soon as practicable, forward a copy of the recommendation to the State Coroner, to any person or body to which the recommendation is directed, and to the Minister who administers legislation, or who is responsible for the person or body, to which a recommendation in the record relates.
37. Clause 82 will ensure that copies of coronial recommendations are forwarded by the State Coroner. The State Coroner has primary responsibility under the Act to oversee coronial services in the State. That function will include the monitoring of coronial recommendations and ensuring that agencies respond to recommendations. Clause 82 aims to ensure that copies of coronial recommendations are also forwarded to the Minister responsible for the legislation or agencies to whom the recommendation is directed.

Background

38. Coroners are responsible for ensuring that deaths arising in suspicious, violent, unnatural and unknown circumstances are properly investigated. They have authority to investigate the cause and origins of fires and explosions. Unlike most other adversarial judicial proceedings, coroners conduct inquisitorial proceedings in which they are responsible for directing medical and police investigations and gathering evidence. In relation to deaths, the objective of coronial investigations is to reveal the circumstances surrounding the death, including the identity of the deceased, the time and date of death, and the cause and manner of death. Coronial inquests and inquiries can also uncover evidence of criminal conduct and can result in coronial recommendations and improved public health and safety.
39. This Bill contains reforms that aim to improve the efficiency and effectiveness of the coronial jurisdiction. These reforms from a review undertaken by the Attorney General's Department in consultation with the State Coroner and the Chief Magistrate. According to the Second Reading speech, consultation was also undertaken with the following stakeholders: the Royal College of Forensic Pathologists of Australasia, the Australian and New Zealand College of Anaesthetists, the New South Wales Bar Association, the Law Society of New South Wales, the Legal Aid Commission of New South Wales, the New South Wales Police Force, NSW Health, the Department of Ageing, Disability and Home Care, the New South Wales Council on the Ageing, the Funeral Directors Association of New South Wales, the New South Wales Society of Jewish Jurists and Lawyers, the Aboriginal Justice Advisory Council, the Australian Federation of Islamic Councils, the New South Wales Council for Pacific Communities, the Nan Tien Temple, the Buddhist Council of New South Wales and the Homicide Victims Support Group.
40. The State Coroner will be supported by Deputy State Coroners and one of the Deputy State Coroners may be appointed to relieve the State Coroner during any period of temporary leave or vacancy. The structure has been made more flexible by removing the restriction on the number of Deputy State Coroners that may be appointed. The Second Reading speech explained that although there is no plan to appoint additional Deputy State Coroners at this time, it is cumbersome and unnecessary to continually require legislative amendment to alter the number of Deputy State Coroners that may be appointed. The process is not conducive to responsive coronial services. The number of

Coroners Bill 2009

Deputy State Coroners should be determined by reference to workloads. Accordingly, the Minister for Police will be consulted about any proposal to increase the number of appointments that might impact on coronial support services provided by police.

41. The Speech also explained further on:

The New South Wales Regional Committee of the Australian and New Zealand College of Anaesthetists suggested change due to concerns that the current reporting criteria causes confusion when a sedative is used instead of an anaesthetic. The requirement to report anaesthetic-related deaths to the coroner also may lead to confusion when anaesthesia is not a contributory factor to the cause of death. The arbitrary time frame of 24 hours means that the decision to report a death to a coroner often is based on the timing of death rather than any concerns regarding the medical treatment provided. In view of these concerns, the category of reportable deaths has been changed to require deaths to be reported to a coroner if the death is not the reasonably expected outcome of a health-related procedure. This category more accurately identifies deaths arising from medical misadventure.

42. The category of health-related procedure deaths is consistent with the approach taken in the coronial jurisdictions of Victoria, Queensland, South Australia and the Australian Capital Territory. Section 14C of the *Coroners Act 1980* provides that an inquest must be held if a death occurs during or within 24 hours of the administration of an anaesthetic and an interested person requests, within 28 days of the death, that an inquest hearing be held. No other State mandates inquest hearings in relation to anaesthetic or health-related deaths.

43. The Second Reading speech stated:

The current three-month period is restrictive where a medical practitioner may have been treating the person for a known health problem and may have an opinion on the cause of death. New South Wales is currently one of only two jurisdictions that still mandates a coroner referral where a medical practitioner had not attended the deceased in the three months prior to death. The underlying principle of the Coroners Bill is that coroners and investigating medical officers should be able to focus their attention on those cases where a person dies of unknown causes or in suspicious or violent circumstances. The current restriction means deaths are reported to the coroner where the person died from known and non-suspicious natural causes. This provides no tangible benefit to the family of the deceased or to the wider community.

44. Therefore, six months is a more logical period in which a medical practitioner must have seen a deceased person prior to their death in order to issue a death certificate. It also better reflects current medical practice.

45. According to the Speech:

It is important to note once again that the Government has consulted widely in developing this Bill, including consultation with the New South Wales Council on the Ageing, COTA, which is the peak body for older persons in New South Wales and draws its membership from seniors clubs and groups, service providers, and older individuals. COTA's legal response group has examined in detail the provisions of this bill. They have indicated their support for the various reforms it provides, including the changes in clause 38.

46. In concluding, the Second Reading speech stated that:

In developing this legislation, the Government has worked closely with the State Coroner and Chief Magistrate as well as a number of key stakeholders, both inside and outside of the Government, including most notably the Royal College of Pathologists of Australasia. As a

Coroners Bill 2009

result, in addition to the government agencies that work in and with the coronial jurisdiction each day this Bill has been endorsed by various external organisations representing a diversity of interests, including the New South Wales Law Society, the Homicide Victims Support Group, the New South Wales Council on the Ageing and the Funeral Directors Association of New South Wales. Coroners undertake an important role on behalf of the community investigating deaths, fires and explosions. The Bill will ensure that they are able to investigate these matters effectively, sensitively and in a timely manner.

The Bill

47. The objects of this Bill are:

- (a) to repeal the *Coroners Act 1980*, and
- (b) to re-enact the provisions of the *Coroners Act 1980* (with the modifications noted below) so as to improve the efficiency and effectiveness of the exercise of coronial jurisdiction in the State, and
- (c) to enact provisions of a savings and transitional nature, and
- (d) to make consequential amendments to certain other legislation.

This Bill makes the following modifications to the provisions of *Coroners Act 1980*:

- (a) the existing legislation is rewritten in modern form, including an improved arrangement of provisions, the removal of spent provisions and the updating of outdated references and provisions,
- (b) all persons appointed as coroners under the proposed Act must be Australian lawyers and all persons appointed as assistant coroners must be members of staff of the Attorney General's Department,
- (c) coroners and assistant coroners may be appointed for a period,
- (d) the position of Senior Deputy State Coroner is abolished and the Minister is authorised instead to appoint an Acting State Coroner when the State Coroner is absent from duty,
- (e) the relationship between the State Coroner and the Chief Magistrate is clarified,
- (f) the restriction on the number of Deputy State Coroners (currently limited to 4) is removed,
- (g) the retirement age for appointed coroners is increased from 70 years of age to 72 years of age while the retirement age for assistant coroners is removed,
- (h) the proposed Act confirms that coronial jurisdiction arises regardless of whether or not a death, suspected death, fire or explosion is reported,
- (i) the current provisions relating to the reporting and investigation of deaths resulting from the use of anesthetic are replaced with provisions relating to deaths that are not the reasonably expected outcomes of health procedures,
- (j) the current provisions that require a death to be reported (and that prohibit a death certificate being issued) if the deceased person was not attended by a medical practitioner in the 3 months preceding death are replaced with provisions that extend that period to 6 months,
- (k) the current provisions that require a death to be reported (and that prohibit a death certificate being issued) if the deceased person died within a year and a day of an accident to which the death is attributable are not re-enacted,
- (l) a medical practitioner is authorised to give a death certificate concerning a cause of death in respect of a deceased person aged 72 years old or older who died as a result of injuries from an accident even if the accident occurred in a hospital or nursing home,
- (m) a coroner is authorised to direct certain medical investigators to conduct (or arrange for the conduct of) a review of the medical records of a deceased person and report to the coroner on the cause of death based on such a review,

Coroners Bill 2009

- (n) a person conducting a post mortem examination will be required to endeavour to use the least invasive procedures that are appropriate in the circumstances,
- (o) a coroner is expressly authorised to dispense with an inquest or post mortem examination in cases where the coroner is satisfied that the deceased person died of natural causes and that the deceased person's family does not wish it to be conducted,
- (p) a coroner who has previously dispensed with the holding of an inquest or inquiry concerning a matter is expressly authorised to hold an inquest or inquiry concerning the matter in light of the discovery of new evidence or facts,
- (q) the authorisation to retain tissue obtained from a post mortem examination will not extend to the retention of whole organs of a deceased person unless the coroner expressly makes an order to that effect,
- (r) a senior next of kin of a deceased person may object to an order by a coroner authorising the retention of a whole organ of the deceased person,
- (s) a coroner conducting coronial proceedings in connection with a death or suspected death is authorised to give directions regarding the retention and disposal of tissue obtained from a deceased person before his or her death,
- (t) coroners conducting coronial proceedings are given additional powers in connection with case management (including powers to conduct hearings and obtain evidence before a formal inquest or inquiry is held under the proposed Act),
- (u) the State Coroner is given additional powers to give directions concerning the allocation and transfer of cases and is given power to issue practice notes and approve forms for use in coronial proceedings,
- (v) the Director-General of the Attorney General's Department and the Commissioner of Police are authorised to enter into a memorandum of understanding in relation to the regulation of costs associated with the carrying out of investigations by police officers pursuant to certain directions given by coroners,
- (w) the power of a coroner to make non-publication orders is extended to prohibiting or restricting publication by means of the Internet,
- (x) the current provisions that impose functions on the Minister to ensure that an inquest or inquiry is held if the Supreme Court orders it are imposed instead on the State Coroner,
- (y) the current additional special procedural provisions dealing with inquests concerning deaths in mines are not re-enacted,
- (z) the use of a jury in coronial proceedings is limited to the situation where the State Coroner directs it at an inquest or inquiry that is to be presided over by the State Coroner.

48. Outline of provisions

Chapter 1 Preliminary

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

Clause 2 provides for most of the provisions of the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

One of the expressions defined by the proposed section is **senior next of kin** of a deceased person. The expression is defined to mean:

- (a) the deceased person's spouse, or
- (b) if the deceased person did not have a spouse or a spouse is not available—any of the deceased person's children who are adults, or
- (c) if the deceased person did not have a spouse or child or a spouse or child is not available—either of the deceased person's parents, or
- (d) if the deceased person did not have a spouse, child or living parent or a spouse, child or parent is not available—any of the deceased person's brothers or sisters who are adults, or

Coroners Bill 2009

(e) if the deceased person did not have a spouse, child, living parent, brother or sister or a spouse, child, parent, brother or sister is not available:

(i) any person who is named as an executor in the deceased person's will,
or

(ii) any person who was the deceased person's legal personal representative immediately before the deceased person's death.

Clause 5 defines the term **relative**. The term is defined in substantially the same way as it is defined in section 4 (1) and (5) of the *Coroners Act 1980*.

Clause 6 defines the expression **reportable death**. The expression is defined largely by reference to the kinds of deaths referred to in sections 12B (1) (a)–(g) and 13 (1) (a)–(c), (e)–(h) and (2) of the *Coroners Act 1980*. Section 12B (1) of the *Coroners Act 1980* provides for the circumstances in which a medical practitioner cannot give a death certificate in respect of a death, while section 13 (1) of that Act specifies the kinds of deaths or suspected deaths that a coroner has general jurisdiction to investigate.

The term **reportable death** is defined to mean a death that occurs in any of the following circumstances:

- (a) the person died a violent or unnatural death,
- (b) the person died a sudden death the cause of which is unknown,
- (c) the person died under suspicious or unusual circumstances,
- (d) the person died in circumstances where the person had not been attended by a medical practitioner during the period of 6 months immediately before the person's death,
- (e) the person died in circumstances where the person's death was not the reasonably expected outcome of a health-related procedure carried out in relation to the person,
- (f) the person died while in or temporarily absent from a declared mental health facility within the meaning of the *Mental Health Act 2007* and while the person was a resident at the facility for the purpose of receiving care, treatment or assistance.

The term does not include the following kinds of deaths referred to in sections 12B (1) (a)–(g) and 13 (1) (a)–(c) and (e)–(h) of the *Coroners Act 1980*:

- (a) where the person died while under, or as a result of, or within 24 hours after the administration of, an anesthetic administered in the course of a medical, surgical or dental operation or procedure or an operation or procedure of a like nature, other than a local anesthetic administered solely for the purpose of facilitating a procedure for resuscitation from apparent or impending death,
- (b) where the person died within a year and a day after the date of any accident to which the cause of his or her death or suspected death is or may be attributable.

Although the term does not cover deaths resulting from the use of an anesthetic, the term does include the death of a person in circumstances where the death was not the reasonably expected outcome of a health-related procedure carried out in relation to the person. The proposed section defines **health-related procedure** to mean a medical, surgical, dental or other health-related procedure (including the administration of an anesthetic, sedative or other drug), but excludes any procedure of a kind prescribed by the regulations as being an excluded procedure.

Schedule 3.5 [1] amends the *Coroners Regulation 2005* to prescribe certain procedures to be excluded procedures.

It should also be noted that the term includes the death of a person in circumstances where the person had not been attended by a medical practitioner during the period of 6 months immediately before the person's death. Currently, sections 12B (1) (a)–(g) and 13 (1) of the *Coroners Act 1980* provide for a period of 3 months.

Chapter 2 deals with Coronial officers
Chapter 3 covers Coronial jurisdiction
Chapter 4 looks at reporting of deaths
Chapter 5 deals with Coronial investigation of scenes
Chapter 6 addresses Coronial proceedings
Chapter 7 outlines Powers of Supreme Court
Chapter 8 deals with Post mortem investigative procedures
Chapter 9 addresses Disposal of human remains
Chapter 10 covers Miscellaneous

Issues Considered by the Committee

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

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

49. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation except as provided by subsections (2) and (3). This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee notes from the Second Reading speech, that a number of reforms need to be put in place and the range of stakeholders involved, which may require flexibility to ensure all parties are prepared before the commencement of the proposed Act.

<p>50. The Committee has not identified any issues identified under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i>.</p>

The Committee makes no further comment on this Bill.

2. COURTS AND OTHER LEGISLATION AMENDMENT BILL 2009

Date Introduced:	5 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General

Purpose and Description

1. This bill amends various Acts with respect to courts, civil and criminal procedure, sentencing procedure, personal information and reports; and for other purposes.
2. The following Acts are amended by the bill:
 - (a) the *Administrative Decisions Tribunal Act 1997*,
 - (b) the *Anti-Discrimination Act 1977*,
 - (c) the *Children (Criminal Proceedings) Act 1987*,
 - (d) the *Civil Procedure Act 2005*,
 - (e) the *Crimes (Sentencing Procedure) Act 1999*,
 - (f) the *Law Enforcement (Powers and Responsibilities) Act 2002*,
 - (g) the *Law Reform Commission Act 1967*,
 - (h) the *Local Court Act 2007*,
 - (i) the *Mining Act 1992*.

Background

3. The bill makes miscellaneous amendments to court-related legislation and other legislation. According to the agreement in principle speech, the bill is part of the government's regular legislative review and monitoring program and amends a number of Acts to improve the efficiency and operation of courts and tribunals in New South Wales.

Administrative Decisions Tribunal Act 1997

4. The *Administrative Decisions Tribunal Act 1997* is amended in response to the recent Court of Appeal decision of *Avilion Group Pty Ltd v Commissioner of Police* [2009] NSWCA 93. The amendment is intended to put beyond doubt that a single presidential judicial member may deal with both an application for leave to appeal against an interlocutory decision of the tribunal and the appeal if leave is granted.
5. According to the agreement in principle speech the amendments reaffirm the original intention of section 113, and will enable the tribunal to save on the cost of three member appeal panels and improve the timeliness of decisions on such appeals. The amendments are supported by the president of the tribunal.

Anti-Discrimination Act 1977

6. The *Anti-Discrimination Act 1977* is amended to enable the Anti-Discrimination Board to give access to information obtained under the Act to academics and for research purposes. The amendments also extend secrecy provisions of the Act to those people provided with information. The *Privacy and Personal Information Protection Act 1998* will continue to apply to the Board. The agreement in principle speech states that the amendments will enable the board to contribute to and collaborate on research being done in the area of discrimination, leading to clear public benefits.

Children (Criminal Proceedings) Act 1987 and Crimes (Sentencing Procedure) Act 1999

7. The amendments made to the *Children (Criminal Proceedings) Act 1987* and *Crimes (Sentencing Procedure) Act 1999* implement the recommendations of the Ombudsman's review of the Justice Legislation Amendment (Non-association and Place Restriction) Act 2001 that Parliament consider the apparent need for flexibility when imposing non-association and place restriction orders at sentencing.
8. The *Children (Criminal Proceedings) Act 1987* is amended to enable the court to make a limited non-association order prohibiting an offender from associating with a specified person for a specified term except at specified times or in specified circumstances. The amendments also enable the court to make a limited place restriction order prohibiting an offender from frequenting or visiting a place except at specified times or in specified circumstances.
9. The *Crimes (Sentencing Procedure) Act 1999* is further amended to allow a court to make a non-association order specifying a member of the offender's close family. Such an order is to be made in exceptional circumstances having regard to the ongoing nature and pattern of criminal activity in which the family member and the offender have both participated. According to the agreement in principle speech, this amendment is a direct result of a recommendation made by the Ombudsman that the Act allow more flexibility to target familial connections in organised criminal activities.
10. The agreement in principle speech notes that the amendments flowing from the Ombudsman's report will operate to ensure that the community is protected from further crime occurring by breaking down criminal associations and preventing offenders from frequenting their favourite criminal haunts, as well as, importantly, assisting in the rehabilitation of offenders.

Civil Procedure Act 2005

11. The amendments to the Civil Procedure Act 2005 provide that a garnishee order cannot reduce a debtor's net weekly wage or salary to below the full amount of the standard workers compensation weekly benefit. According to the agreement in principle speech The increase in the protected amount of wages and salary will reduce the financial hardship for people whose wages or salary are deducted as part of a court order to pay a debt. It is important that a person still has enough money to pay for the necessities of life when they are paying off a debt. This amendment has the support of the New South Wales Consumer Credit Legal Centre.

Law Reform Commission Act 1967

12. The Law Reform Commission Act 1967 is amended to allow the Law Reform Commission to table reports in Parliament out of session. This will assist in reducing delays in tabling Law Reform Commission reports.

Local Court Act 2007

13. The bill amends the Local Court Act 2007 in relation to functions that may be conferred on a registrar that are exercisable by the registrar in respect of one or more designated places in the State or under the Act, the rules or any other Act or law. The agreement in principle speech notes that advice received from the Crown Solicitor has cast some doubt as to whether current provisions achieve their intended outcome and the amendments are made in response to the Crown Solicitor's advice.

The Bill

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

Clause 2 provides for the commencement of the proposed Act (with exceptions specified in Schedule 1 to the Act) on the date of assent to the proposed Act.

Clause 3 makes it clear that the explanatory notes contained in Schedule 1 do not form part of the proposed Act.

The Acts listed below are amended as follows:

Administrative Decisions Tribunal Act 1997

The proposed amendments to the *Administrative Decisions Tribunal Act 1997* ensure that an Appeal Panel constituted by a single presidential judicial member may deal with both an application for leave to appeal against an interlocutory function exercised by the Tribunal and the appeal if leave is granted. An interlocutory function exercised by the President alone will be dealt with by a full Appeal Panel. The amendments are made in response to the decision of the Court of Appeal in *Avilion Group Pty Ltd v Commissioner of Police* [2009] NSWCA 93.

Anti-Discrimination Act 1977

The proposed amendments to the *Anti-Discrimination Act 1977* enable the Board to give access to information obtained under the Act to academics and other persons for certain purposes.

Children (Criminal Proceedings) Act 1987

The proposed amendments to the *Children (Criminal Proceedings) Act 1987* will make section 33D of that Act mirror section 17A of the *Crimes (Sentencing Procedure) Act 1999* (as amended by Schedule 1.5 [1] and [2]). Section 33D (6) of the 1987 Act adopts Part 8A (Non-association and place restriction orders) of the 1999 Act and accordingly the amendments made by Schedule 1.5 [3]–[7] to provisions of that Part will automatically flow through to section 33D. The proposed amendments:

(a) enable the court to make a limited non-association order prohibiting an offender from associating with a specified person for a specified term except at specified times or in specified circumstances (item [1]), and

(b) enable the court to make a limited place restriction order prohibiting an offender from frequenting or visiting a place except at specified times or in specified circumstances (item [2]).

Civil Procedure Act 2005

Section 122 of the *Civil Procedure Act 2005* prohibits the amounts attached under one or more garnishee orders from reducing the net weekly wage or salary paid to a judgment debtor to below 80% of the standard workers compensation weekly benefit (currently \$381.40). The proposed amendment to the Act will increase the limit to the full amount of the benefit. The increase will apply only in respect of garnishee orders entered on or after the commencement of the amendment.

Crimes (Sentencing Procedure) Act 1999 No 92

The proposed amendments to the Act:

(a) include within the definition of “close family” persons who are, or have been, part of the extended family or kin of an offender who is an Aboriginal person or

Torres Strait Islander (item [6]), and

(b) expand the list of places that may not be included in place restriction orders to include places the offender regularly attends to receive certain health, legal and welfare services (items [4] and [7]), and

(c) enable the court to make a non-association order prohibiting an offender from associating with a specified person for a specified term except at specified times or in specified circumstances (item [1]), and

(d) enable the court to make a place restriction order prohibiting an offender from frequenting or visiting a place except at specified times or in specified circumstances (item [2]), and

(e) enable the court to impose orders despite the restrictions relating to close family members and places and districts and require the court to give reasons for making such an order in specified exceptional circumstances (items [3] and [5]).

The amendments flow from certain recommendations made in the NSW Ombudsman’s Final Report of the Review of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*.

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

The proposed amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* remove an ambiguity in the language of provisions inserted by the *Law*

Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act 2009.

The amendments make it clear that an application for a covert search warrant, and any covert search warrant, must include the name of the occupier of the premises the subject of the warrant.

Law Reform Commission Act 1967 No 39

The proposed amendment to the *Law Reform Commission Act 1967* enables interim and final reports on the Law Reform Commission’s work under a reference to be tabled when Parliament is not sitting.

Local Court Act 2007 No 93

The proposed amendments to the *Local Court Act 2007* make it clear that (subject to any directions of the Director-General of the Attorney General’s Department or his or her delegate) functions generally or in particular may be conferred on a registrar that are exercisable by the registrar in respect of one or more designated places in the State or any place in the State by or under the Act, the rules or any other Act or law.

Mining Act 1992 No 29

The proposed amendment to the *Mining Act 1992* updates a reference to section 62 of the Act to more accurately reflect section 62 (6A) of the Act (which enables a party to a dispute

under section 62 (1) (a) or (b) of the Act concerning mining leases over land on which there are certain dwelling-houses or gardens to apply to the Land and Environment Court for determination of a dispute about those matters).

Issues Considered by the Committee

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

Schedule 1.2 Right to Privacy

14. Schedule 1.2 amends the *Anti-Discrimination Act 1977* to enable the Anti-Discrimination Board to give access to information obtained under the Act to academics and other people for research purposes and other similar purposes. The Committee is always concerned with breaches of confidentiality and privacy.
15. However, the Committee notes that there may be public benefits in conducting informed research in the area of discrimination. It also notes that the secrecy provisions of the Act will be extended to people who have been provided with information by the board for research purposes.

16. The Committee does not consider that Schedule 1.2 unduly trespasses on personal rights to privacy when weighed with the public benefits in conducting informed research in the area of discrimination. It also notes that the secrecy provisions of the Act will be extended to people who have been provided with information by the board for research purposes.

Schedule 1.5 Freedom of Association

17. The NSW Ombudsman reviewed the operation of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* after its first two years of operation and reported to the Parliament in December 2006. The Ombudsman noted that in its two years of operation the legislation had been used infrequently – only 20 times – to impose non-association and place restriction orders. A key intention of the Act was to attempt to target gangs and break down criminal associations thereby assisting in rehabilitation. However, in none of these instances was it imposed for serious organised criminal gang activity and in only five instances did the orders relate to criminal activity involving two or more persons.
18. Prior to the legislation being introduced courts imposed non-association and place restriction type conditions at sentencing through good behaviour bonds or a suspended sentence and appeared to continue to be doing so as the judiciary were familiar with these mechanisms and considered them adequate.
19. The only substantive differences of the orders over these other alternatives are that there a criminal sanctions available for breaches. However, there other sanctions still available for breaches of good behaviour bonds and suspended sentences.
20. In addressing criticisms that the Act makes conditions of orders somewhat inflexible the Ombudsman made a number of recommendations to increase their flexibility.
21. The Ombudsman also examined whether s 100A(3) of the Act which defines ‘close family’ should be extended to recognise the extended ties of indigenous people and recommended that Parliament give consideration to ‘the need to accommodate kinship

ties which extend beyond the immediate family in any definition of close family'. Section 100A(1) currently exempts association with close family from non-association orders. Accordingly, new s 100A (3) (f) now recognises the extended kinship of Aboriginal persons and Torres Strait Islanders.

22. However, new s 17A (3A) (b) will now allow a court to specify a place or district formally restricted from forming part of the order if the court considers that exceptional circumstances exist. The court must be satisfied, having regard to the ongoing nature and pattern of participation of the offender in criminal activity occurring at that place or district, that there is risk that the offender may be involved in conduct that could involve the commission of a further offence of the kind to which section 17A applies.

23. Currently, s 100A(2) of the *Crimes (Sentencing Procedure) Act 1999* specifies that place restriction orders cannot be placed over (a) the offender's place of residence or the place of residence of any members of the offender's close family (b) any place of work where the offender is regularly employed (c) any educational institution at which the offender may be enrolled (d) any place of worship at which the offender regularly attends.

24. The Committee is concerned that new s 17A (3A) (b) may deny a person his/her right to live in their home, their right to visit or live with close family, their right to work and their right to worship which are recognised under a number of International Covenants including Article 6 (1) of the *International Covenant on Economic, Social and Cultural Rights* and Article 22 (1) of the *International Covenant on Civil and Political Rights*.

25. While the need to protect public safety and to discourage offenders from associating with individuals who may encourage further criminal behaviour is acknowledged, the Committee is concerned that restricting access to housing, places of employment and places of worship can be an extremely onerous restriction on offenders, particularly when ties to community and family are such important factors in avoiding recidivism.

26. The Committee is concerned that new s 17A (3A) (b) may deny an offender his/her right to live in their home, their right to visit or live with close family, their right to work and their right to worship which are recognised under a number of International Covenants. The Committee refers the matter to Parliament as to whether this is an undue trespass on rights and liberties.

27. New s 100A (1A) now creates exemptions regarding an offender's association with close family if the court considers 'exceptional circumstances exist because there is reasonable cause to believe, having regard to the ongoing nature and pattern of criminal activity in which the member and the offender participated, that there is a risk that the offender may be involved in conduct that could involve the commission of a further offence...'

28. The Ombudsman had recommended that Parliament give consideration to the extensions of orders to cover close family. However, it was acknowledged that 'Legislative restrictions in respect of non-association have attracted critics from both sides of the fence - being too broad or narrow as regards family or kinship matters and not allowing for certain conditional associations.' (p74)

29. The Committee is always concerned with restrictions on freedom of association which is a fundamental right established by Article 22 (1) of the *International Covenant on Civil and Political Rights*. The Committee has most recently commented on this in relation to

Courts and Other Legislation Amendment Bill 2009

the *Crimes (Criminal Organisations Control) Bill 2009* which appeared in Legislation Review Digest 5 of 2009. While the need to protect public safety and to discourage offenders from associating with individuals who may encourage further criminal behaviour is acknowledged, the Committee is concerned that restricting access to close family is extremely onerous to offenders who may have few other ties to the community, particularly if they are restricted from seeing other usual associates. Further, the complicated ties between families may well create tensions and divisions within the family unit when some family members are unable to associate with each other.

30. The Committee further notes that while new s 100A (2B) requires that the court must make a record for the reasons for making an order subsection (1A) or (2A), new s 100A (2C) states that the failure to comply with subsection (2B) does not invalidate the order. Therefore, offenders can be placed under these restrictive orders without a recording for the reasons that the order was made.

31. The Committee is always concerned with restrictions on freedom of association which is a fundamental right established by Article 22 (1) of the *International Covenant on Civil and Political Rights*. The Committee has most recently commented on this in relation to the *Crimes (Criminal Organisations Control) Bill 2009* which appeared in Legislation Review Digest 5 of 2009. The Committee is concerned that restricting access to close family is extremely onerous to offenders who may have few other ties to the community. The Committee refers the matter to Parliament as to whether this is an undue trespass on rights and liberties.

The Committee makes no further comment on this Bill.

3. ELECTRICITY SUPPLY AMENDMENT (GGAS ABATEMENT CERTIFICATES) BILL 2009

Date Introduced:	5 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Ian MacDonald MLC
Portfolio:	Energy

Purpose and Description

1. The purpose of the Bill is to make legislative amendments to the *Electricity Supply Act 1995* (the principal Act) that will allow for the reduction in the number of surplus GGAS certificates at the end of the Greenhouse Gas Reduction Scheme (GGAS) and the commencement of the Commonwealth Carbon Pollution Reduction Scheme (CPRS).
2. The Bill amends the principal Act as follows:
 - (a) to prevent a person from applying for accreditation as an abatement certificate provider;
 - (b) to provide that an abatement certificate cannot be created under Part 8A of the Act in relation to category A generation; and
 - (c) to provide that compensation is not payable by the State in relation to Part 8A of the Act or the termination of the scheme.

Background

3. New South Wales established GGAS, a mandatory greenhouse gas emissions trading scheme, in 2003 under the *Electricity Supply Act 1995*. The scheme was designed to reduce emissions from the use of electricity in New South Wales and to encourage activities that offset the production of emissions. The agreement in principle speech describes the operation of GGAS:

GGAS establishes an annual statewide greenhouse gas benchmark for the electricity sector and then requires individual benchmark participants who buy or sell electricity in New South Wales to meet their allocation of the mandatory greenhouse gas benchmark, based on their share of the New South Wales electricity demand. Benchmark participants achieve this by surrendering abatement certificates created from project-based emission reduction activities. The surrender of these certificates effectively offsets a portion of the greenhouse gas emissions associated with their electricity purchases. Each certificate represents one tonne of greenhouse gas emissions reduction. GGAS is a baseline and credit form of emissions trading scheme, where certificates or credits for actions that reduce or abate emissions are created, compared to a baseline representing previous practices, business as usual or, in some cases, current industry practice...benchmark participants—mostly electricity retailers—are liable under GGAS to meet greenhouse gas benchmarks, and can reduce their emissions liability by purchasing abatement certificates and surrendering them to the Independent Pricing and Regulatory Tribunal [IPART], as GGAS regulator.

4. In 2006 New South Wales provided for the ending of GGAS, on the commencement of a national emissions trading scheme.
5. In 2008 the Commonwealth announced the introduction of the Carbon Pollution Reduction Scheme, a national emissions trading scheme. The Bill provides for the ending of the GGAS and the transition to the national emissions trading scheme. According to the agreement in principle speech “now that the details of the national scheme are better known it is time that New South Wales completes the provisions for the transition to a national scheme. This bill provides for that transition.”

The Bill

Clause 1 sets out the name of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Schedule 1[1] updates two references to the head of the Cabinet Office. This amendment is consistent with clause 2 of the *Public Sector Employment and Management (Cabinet Office) Order 2009*, which provides that those particular references are to be construed as being to either the Director-General of the Department of Premier and Cabinet or the Deputy Director General (General Counsel), Department of Premier and Cabinet.

Schedule 1[5] provides that a person may not apply for accreditation as an abatement certificate provider under Part 8A of the principal Act on or after 1 July 2009 (or any later date that may be prescribed).

Schedule 1[6] provides that an abatement certificate cannot be created under Part 8A of the principal Act in relation to category A generation that occurs on or after 1 July 2009 (or any later date that may be prescribed). Any such abatement certificate cannot be created after 1 October 2009, or if a later date is prescribed, 3 months after that later date.

Schedule 1[2]-[4] makes consequential amendments.

Schedule 1[7] provides that compensation is not payable by or on behalf of the State in relation to the enactment, making or operation of Part 8A of the principal Act, any Act that amends that Part (including the proposed Act) or any instrument under that Part, or in relation to any statement or conduct in relation to any such enactment, making or operation or any statement or conduct in relation to accreditation as an abatement certificate provider or to abatement certificates.

Schedule 1[8] permits the regulations to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Issues Considered by the Committee

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

Issue: Schedule 1 [7] – proposed Section 98A – Amendment of *Electricity Supply Act 1995* – Compensation not payable – Denial of Compensation:

6. The proposed section 98A reads:

(1) Compensation is not payable by or on behalf of the State:

- (a) because of the enactment, making or operation of any of the following:
- (i) Part 8A,
 - (ii) the *Electricity Supply Amendment (GGAS Abatement Certificates) Act 2009* or any other Act that amends that Part,
 - (iii) any instrument under that Part, or
- (b) because of any consequence of any such enactment, making or operation, or
- (c) because of any statement or conduct relating to any such enactment, making or operation, or
- (d) because of any statement or conduct relating to accreditation as an abatement certificate provider under Part 8A or to abatement certificates within the meaning of that Part.
- (2) The section extends to statements, conduct and any other matter occurring before the commencement of this section.

(3) In this section:

compensation includes damages or any other form of monetary compensation.

conduct includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

statement includes a representation of any kind:

- (a) whether made verbally or in writing, and
- (b) whether negligent, false, misleading or otherwise.

the State means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agent of the Crown.

7. The Committee notes that the current Part 8A of the *Electricity Supply Act 1995* aims to reduce greenhouse gas emissions associated with the production and use of electricity and to encourage participation in activities to offset the production of greenhouse gas emissions. Part 8A establishes State greenhouse gas benchmarks and individual greenhouse gas benchmarks for the reduction of greenhouse gas emissions that are to be met by retail suppliers, market customers and certain other persons who supply or consume electricity. It also provides for greenhouse gas benchmarks to be complied with by acquiring certificates relating to the carrying out of activities that promote the reduction of greenhouse gas emissions and by imposing a penalty on greenhouse gas emissions above the specified benchmark.

8. The effect of this proposed section 98A is to ensure that compensation is not payable by or on behalf of the State to retail suppliers, market consumers and certain other persons who supply or consume electricity. The Committee is of the view that that the right to seek damages or compensation is an important personal right and that these rights should not be removed or restricted by legislation unless there is a compelling public interest in doing so. Therefore, the Committee asks Parliament to consider whether there is a compelling public interest in this instance to remove the right to seek compensation by legislation.

The Committee makes no further comment on this Bill.

4. GAME AND FERAL ANIMAL CONTROL AMENDMENT BILL 2009*

Date Introduced:	3 June 2009
House Introduced:	Legislative Council
Minister Responsible:	Hon Robert Brown MLC
Portfolio:	Shooters Party

Purpose and Description

1. This Bill amends the *Game and Feral Animal Control Act 2002* to make further provision with respect to the management and regulation of the hunting of game; and for other purposes.
2. The Bill will allow the Minister responsible for national park estate land to declare that land—under the Game and Feral Animal Control Act—for the purposes of hunting game and pest species, in a similar manner as with other Crown lands currently able to be declared. It also extends the list of game animals that may be hunted in accordance with the Act. In the case of any native game animals that are listed in schedule 3, the Bill imposes special requirements on the hunting of those animals by licensed game hunters. It also provides for the operation of private game reserves under the authority of a licence granted by the Game Council.
3. It will introduce an amendment to make it an offence to approach persons who are lawfully hunting on declared public hunting land, or to interfere with persons lawfully hunting game animals.
4. Schedule 1 [5] and schedule 1 [6] amend the definition of "public land" so that it includes, rather than excludes, National Park Estate land that includes national parks and other land reserved under the *National Parks and Wildlife Act 1974*. The effect of this is that the Minister responsible for National Park Estate land may declare any such land as public hunting land under section 20 of the Act, as Ministers responsible for other public lands may declare the lands under their control.
5. Under the current Act, hunting of game animals on public land is permitted only if the land is declared to be available for hunting. The amendments to schedule 1 [4] and [10] are consequential, and schedule 1 [3] inserts a definition of "declared public hunting land" for clarification purposes.
6. Schedule 1 [7] recasts the provision of the Act and specifies the game animals that may be hunted in accordance with the Act so that provision refers instead to a list set out in proposed schedule 3. The list of game animals contains three separate parts. For example, the game animals currently referred to in section 5 (2) of the Act will be listed in part 3 of new schedule 3. The list will be amended by ministerial order and the Minister will be required to consult with the Minister administering the *National Parks and Wildlife Act 1974* before adding further native animals to the list. An order cannot add the name or description of an animal that is or is part of a threatened species—a population, or an ecological community.

Game And Feral Animal Control Amendment Bill 2009*

7. Schedule 1 [17] imposes special requirements in relation to the hunting of native game animals by licensed hunters for non-commercial purposes. A provision is made for the Game Council to impose, by way of licence conditions, quotas on the number of native game animals that may be hunted; restrictions on when and where native game animals may be hunted; and requirements related to the tagging of hunted game animals.
8. Another main change to the Act is the facilitation of private game reserves. Schedule 1 [20] provides a scheme for the licensing of private game reserves where private land in which game animals are confined or game birds are released for the purpose of being hunted by licensed game hunters who have paid a fee to hunt on that reserve.
9. The licensing scheme for private game reserves is similar to the existing scheme for the licensing of game hunters by the Game Council. Inspectors will be empowered to give directions to private game reserve operators to ensure that the conditions of the licence and the provisions of the Act and regulations are being complied with.
10. Exemptions will also be provided from certain offences under the *Non-Indigenous Animals Act 1987* and the *National Parks and Wildlife Act 1974* so as not to prevent the lawful operations of a licensed private game reserve. Schedule 1 [27] provides that the existing offence of releasing a game animal into the wild for the purpose of hunting the animal does not apply in relation to a game animal that is released on a licensed game reserve in accordance with the licence held by that reserve.
11. Schedule 1 [24] extends the existing offence of obstructing, hindering or impeding an inspector to include assaulting, threatening or intimidating an inspector. Schedule 1 [25] creates a new offence of not complying with a direction by an inspector to leave or not to enter declared public hunting land. Such directions may be given to a person if the inspector has reason to believe that the person is committing an offence under the Act.
12. Schedule 1 [21] provides that the power of an inspector to require a vehicle to stop so that it can be searched may be exercised without the inspector being accompanied by a police officer.
13. Schedule 1 [26] prohibits commercial taxidermists from preserving or preparing the skin of certain game animals unless satisfied the animals have been hunted by a licensed game hunter or by a person with some other lawful authorisation, for example, under the existing National Parks and Wildlife Act. Commercial taxidermists will be required to record certain information and to make those records available for inspection. Schedule 1 [11] provides that a game hunting licence authorises the licence holder to possess the carcass or the skin or any other part of a game animal that the licence holder has killed under the authority conferred by the licence. Schedule 1 [13] provides for exemptions from certain offences under the *National Parks and Wildlife Act 1974* and the regulations under that Act, insofar as those offences would otherwise relate to the lawful hunting by the holders of a game licence.
14. Schedule 2.1 amends the *Game and Feral Animal Control Regulation 2004*, mostly as a consequence of the amendments made by schedule 1, but also to prescribe new licence fees in relation to game hunting licences and private game reserve licences. Schedule 2.2 amends the *Prevention of Cruelty to Animals Act 1979* to remove the offence relating to game parks as these will be allowed to operate under a private game reserve licence under the Bill, and also to make it clear that certain offences under the Act relating to the hunting of animals do not apply in relation to hunting on licensed private game reserves.

15. Schedule 2.4 amends the *Western Lands Act 1901* to enable land that is leased under that Act to be used for the purpose of a private game reserve.

Background

16. A statutory five-year review of the *Game and Feral Animal Control Act 2002* has recently been completed. This Bill also takes into account the findings of the Scientific Panel Review of Open Seasons for Waterfowl in NSW 2000 and the Review of the *Prevention of Cruelty to Animals Act 1979* in February 2003.

17. The Game Council is recognised as the central agency for licensing and regulating conservation hunting in New South Wales. The review found the performance of the Act indicated a general level of approval by the community, particularly from farmers, landowners, pest animal managers and hunters. One of the Game Council's major objectives is to help in the reduction of some of the nation's pests such as pigs, goats, foxes and rabbits. As the Game Council is a statutory authority, all funds raised by it go directly back into future council activities such as research and conservation projects. The objectives of the Game Council are: to provide for the effective management of introduced species of game animals and to promote the responsible and orderly hunting of those game animals on public land and private land, and of certain species of pest animals on public land.

18. By introducing an amendment to make it an offence to approach persons who are lawfully hunting on declared public hunting land, or to interfere with persons lawfully hunting game animals, it brings the Act into line with similar provisions incorporated in the *Victorian Wildlife (Amendment) Act 1997*.

19. According to the Second Reading speech, in the case of native waterfowl, licensed game hunters will be required to pass an official identification test of native waterfowl. This will be conducted by or on behalf of the Game Council or other bodies recognised by the Game Council. The Game Council will recognise any test conducted before the commencement of this section by or on behalf of the Department of Environment and Climate Change in connection with the identification of native waterfowl, and the same test as administered in other States.

20. Further on in the speech:

Rural landholders in New South Wales are at a competitive disadvantage compared with landholders in other States where private game reserves operate. In other words, a farmer in the southern Riverina region of New South Wales is prohibited from operating a game reserve, whilst a farmer across the border in Victoria can do so and has that rural diversification option open to him or her.

The Bill

21. The object of this Bill is to amend the *Game and Feral Animal Control Act 2002* (**the Act**) as follows:

- (a) to enable the Minister responsible for national park estate land to make that land available for the hunting of game animals by licensed game hunters,
- (b) to expand the list of game animals that may be hunted in accordance with the Act and, in the case of any native game animals that are listed, to impose special requirements in relation to the hunting of those animals by licensed game hunters,

Game And Feral Animal Control Amendment Bill 2009*

(c) to provide for the operation of private game reserves under the authority of a licence granted by the Game Council,

(d) to make it an offence to approach persons who are lawfully hunting on declared public hunting land or to interfere with persons lawfully hunting game animals,

(e) to make a number of other amendments of an administrative, minor or consequential nature.

The Bill also makes consequential and other minor or miscellaneous amendments to the *Game and Feral Animal Control Regulation 2004* and to a number of other Acts.

22. Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act 3 months after the date of assent (though a proclamation may provide for a provision of the proposed Act to be commenced sooner).

Schedule 1 Amendment of *Game and Feral Animal Control Act 2002*

Declaration of national park estate land as public hunting land

Schedule 1 [5] and [6] amend the definition of *public land* so that it includes, rather than excludes as is the case at present, national park estate land (which includes national parks and other land reserved under the *National Parks and Wildlife Act 1974*). The effect of this amendment is that the Minister responsible for national park estate land (namely the Minister for Climate Change and the Environment) will be able to declare any such land as public hunting land under section 20 of the Act. Under the Act, the hunting of game animals on public land is only permitted if the land is declared to be available for hunting. **Schedule 1 [4] and [10]** are consequential amendments and **Schedule 1 [3]** inserts a definition of *declared public hunting land* for clarification purposes.

Game animals that may be hunted

Schedule 1 [7] recasts the provision of the Act that specifies the game animals that may be hunted in accordance with the Act so that the provision refers instead to a list set out in proposed Schedule 3 to the Act (as inserted by **Schedule 1 [32]**). The list of game animals contains 3 separate parts (eg the game animals currently referred to in section 5 (2) of the Act will now be listed in Part 3 of the new Schedule). The list

will be able to be amended by Ministerial order. The Minister will be required to consult with the Minister administering the *National Parks and Wildlife Act 1974* before adding any native animals to the list (which are included in Part 2 of the new Schedule). An order cannot add the name or description of an animal that is or is part of a threatened species, population or ecological community. **Schedule 1 [1], [2], [14] and [15]** are consequential amendments.

Schedule 1 [17] imposes special requirements in relation to the hunting of native game animals by licensed hunters for non-commercial purposes. In particular, provision is made for the Game Council to impose, by way of licence conditions, quotas on the number of native game animals that may be hunted, restrictions on when and where native game animals may be hunted and requirements relating to the tagging of hunted animals. In the case of native waterfowl, licensed game hunters will be required to pass an official identification test.

Private game reserves

Schedule 1 [20] provides a scheme for the licensing of private game reserves (that is, private land in which game animals are confined, or game birds are released, for the purposes of being hunted by licensed game hunters who have paid a fee to hunt on the

Game And Feral Animal Control Amendment Bill 2009*

reserve). The licensing scheme for private game reserves is similar to the existing scheme for the licensing of game hunters by the Game Council. Inspectors will be empowered to give directions to private game reserve operators to ensure that the conditions of the licence and the provisions of the Act and regulations are being complied with. Exemptions are provided from certain offences under the *Non-Indigenous Animals Act 1987* and the *National Parks and Wildlife Act 1974* so as not to prevent the lawful operations of a licensed private game reserve.

Schedule 1 [3] inserts definitions in relation to private game reserves.

Schedule 1 [27] provides that the existing offence of releasing a game animal into the wild for the purpose of hunting the animal does not apply in relation to a game animal that is released on a licensed private game reserve.

Offences

Schedule 1 [24] extends the existing offence of obstructing, hindering or impeding an inspector to include assaulting, threatening or intimidating an inspector.

Schedule 1 [25] creates a new offence of not complying with a direction by an inspector to leave, or not to enter, declared public hunting land. Such a direction may be given to a person if the inspector has reason to believe the person is committing an offence under the Act.

Schedule 1 [26] prohibits commercial taxidermists from preserving or preparing the skins of certain game animals unless satisfied the animals have been hunted by a licensed game hunter (or by a person with some other lawful authorisation). Commercial taxidermists will also be required to record certain information and to make those records available for inspection.

Schedule 1 [28] creates a new offence of approaching within 10 metres of a person who is lawfully hunting on declared public hunting land. It will also be an offence to interfere with a person who is lawfully hunting game animals in accordance with the Act.

Miscellaneous amendments relating to administration of the Act and other matters

Schedule 1 [8] provides for a member of the Game Council to be nominated by the Minister administering the *Aboriginal Land Rights Act 1983* rather than by the New South Wales Aboriginal Land Council.

Schedule 1 [9] enables the Game Council to delegate its functions to authorized persons such as the chief executive officer of the Game Council.

Schedule 1 [11] provides that a game hunting licence authorises the licence holder to possess the carcass (or other part) of a game animal that the licence holder has killed under the authority conferred by the licence

Schedule 1 [13] provides for exemptions from certain offences under the *National Parks and Wildlife Act 1974* (and the regulations under that Act) in so far as those offences would otherwise relate to lawful hunting by the holders of game hunting licences. **Schedule 1 [12]** is a consequential amendment. Schedule 1 [13] also provides that certain orders and notices under other legislation cannot prevent or interfere with hunting in accordance with a game hunting licence.

Schedule 1 [16] removes a provision that exempts professional game hunters from the licensing requirements under the Act.

Schedule 1 [18] and [19] provide that the Game Council may refuse an application for a game hunting licence, or may suspend or cancel such a licence, if the applicant or licence holder is found guilty of an indictable offence under the *Firearms Act 1996*.

Schedule 1 [21] provides that the power of an inspector to require a vehicle to stop so that it can be searched may be exercised without the inspector being accompanied by a police officer.

Game And Feral Animal Control Amendment Bill 2009*

Schedule 1 [22] removes the limit on the amount of a thing that a Local Court may require to be forfeited in connection with an offence under the Act.

Schedule 1 [23] requires a person, in order to be found guilty of an offence of failing to comply with a requirement by an inspector or a police officer under Division 2 of Part 4 of the Act, to first be warned that the failure to comply is an offence.

Schedule 1 [29]–[31] make provision for the office of Deputy Chairperson of the Game Council.

Schedule 1 [33] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of other legislation

Schedule 2.1 amends the *Game and Feral Animal Control Regulation 2004* mainly as a consequence of the amendments made by Schedule 1 to the proposed Act, but also so as to prescribe new licence fees in relation to game hunting licences and private game reserve licences.

Schedule 2.2 amends the *Prevention of Cruelty to Animals Act 1979* to remove the offence relating to game parks (as these will now be allowed to operate under a private game reserve licence) and to also make it clear that certain offences under that Act relating to the hunting of animals do not apply in relation to hunting on licensed private game reserves.

Schedule 2.3 amends the *Rural Lands Protection Act 1998* to prevent pest control orders being made in relation to game animals that are kept on licensed private game reserves.

Schedule 2.4 amends the *Western Lands Act 1901* to enable land that is leased under that Act to be used for the purpose of a private game reserve.

Issues Considered by the Committee

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

Issue: Schedule 1 [8] – Membership and procedure of Game Council – Right of Access and Representation:

23. The Bill proposes to amend section 8 of the *Game and Feral Animal Control Act 2002* by omitting “New South Wales Aboriginal Land Council” from section 8 (2) (e) and instead insert “Minister administering the *Aboriginal Land Rights Act 1983*”.

24. Section 8 currently provides the Game Council to consist of 16 members appointed by the Minister. Subsection (2) provides that members of the Game Council are:

- (a) 8 persons appointed on the nomination of hunting organisations prescribed by the regulations for the purposes of this paragraph, and
- (b) a person appointed on the nomination of the State Management Council of Livestock Health and Pest Authorities, and
- (c) a person appointed on the nomination of the Australian Veterinary Association, and
- (d) 2 persons who are wildlife management scientists, and
- (e) a person appointed on the nomination of the New South Wales Aboriginal Land Council, and
- (f) a person appointed on the nomination of the Minister administering the *Forestry Act 1916*, and

- (g) a person appointed on the nomination of the Minister administering the *Crown Lands Act 1989*, and
- (h) a person appointed on the nomination of the Minister.

25. The Committee is concerned that the proposed amendment of Schedule 1 [8] aims to remove the direct representation of a person appointed on the nomination of the Aboriginal Land Council on the Game Council by replacing that membership with the Minister administering the *Aboriginal Land Rights Act 1983*. This may appear to be disproportionate to the number of other community or stakeholders' representations on the Game Council who are not represented by their responsible Ministers, such as, direct nominations of the State Management Council of Livestock Health and Pest Authorities and, of the Australian Veterinary Association, as well as, the 8 persons who are appointed on the nomination of hunting organisations.

26. The Committee is concerned with Schedule 1 [8], that the removal of the requirement for a person to be appointed on the nomination of the New South Wales Aboriginal Land Council on the Game Council, who would be a nominated representative of the community, could potentially disadvantage Aboriginal communities by affecting their access to and representation on the Game Council as the Aboriginal Land Council represents a peak body to protect the interests of its members and the broader Aboriginal communities that range in their diversity from modern to traditional in their beliefs and practices, with regard to land. This may lead to unintended but potential undue trespass on rights and liberties of Aboriginal communities with regard to Aboriginal land. Accordingly, the Committee refers this to Parliament.

Issue: Schedule 1 [21] – Power to detain and search vehicles or vessels – Privacy and Property:

27. Schedule 1 [21] proposes to omit section 44 (3) of the Game and Feral Animal Control Act 2002. Section 44 (1) currently provides for an inspector who has reason to believe that there is in or on a vehicle or vessel anything connected with a game hunting offence may:

- (a) stop and detain the vehicle or vessel, and
- (b) enter and search the vehicle or vessel, and
- (c) break open and search any container in or on the vehicle or vessel that the inspector has reason to believe contains any such thing.

Section 22 (3) currently provides that an inspector may only exercise the power under this section of requiring a vehicle to stop if accompanied by a police officer.

Section 33 provides for the appointment of inspectors where the Game Council may appoint as an inspector: a member of staff of the Game Council, a statutory officer, public servant or person employed by a public or local authority, a person belonging to a class of persons prescribed by the regulations. Under section 34, a police officer may exercise the functions of an inspector under the Act.

- 28. The Committee notes the power requiring a vehicle to stop, without being accompanied by a police officer, in order to stop, then detain and search the vehicle or vessel, could be a significant trespass on rights of privacy and property. The Committee further notes that this power can be exercised by inspectors appointed by the Game Council which includes a broad range of people such as a statutory officer, a public servant, a member of staff of the Game Council and a person belonging to a class of persons prescribed by regulations.**
- 29. By having regard to the aims of section 44, where the power to search the vehicle or vessel without a warrant, by civilian inspectors ranging from staff of the Game Council, statutory officers, public servants of public or local authorities through to a class of persons prescribed by regulations, the Committee refers to Parliament whether the proposed amendment by Schedule 1 [21] to omit section 44 (3) of the requirement for an inspector to be accompanied by a police officer when exercising the power under the section to stop a vehicle, may unduly trespass on personal rights and liberties.**

The Committee makes no further comment on this Bill.

5. NSW LOTTERIES (AUTHORISED TRANSACTION) BILL 2009

Date Introduced:	3 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Kevin Greene MP
Portfolio:	Gaming and Racing

Purpose and Description

1. This Bill provides for the transfer of the business of New South Wales Lotteries Corporation, and for other purposes.
2. The Bill has two primary functions. Firstly, to authorise the transfer of NSW Lotteries to a new private operator, but retaining Government ownership of intellectual property currently owned by the business, including games and brands. The second function is to enable amendments to the regulatory regime to ensure that public lotteries continue to be operated in a manner that protects community interests and provides harm minimisation measures.
3. It will ensure that net proceeds from the transaction of taxpayer resources locked in NSW Lotteries to be transferred directly to the Consolidated Fund, to support important social infrastructure and community priorities such as health, education and roads.
4. It will authorise the transfer of employees to the new operator, and the continuation of their existing leave and superannuation entitlements, and a three-year employment guarantee. It will empower the Treasurer to provide transfer payments to those employees who choose to move across to the new private operator. The Bill has a provision to allow NSW Lotteries award employees to remain with the public sector if they choose.
5. To provide flexibility, the Bill authorises the transfer of the NSW Lotteries business through various methods: first, through direct vesting of assets and liabilities; or second, through the conversion of NSW Lotteries to a *Corporations Act 2001* company and the subsequent transfer of its shares; or third, through the establishment and transfer of a new company. It provides the Treasurer with the necessary powers and functions to effect the transfer to a new private operator through one of these methods.
6. This Bill also includes amendments to the *Public Lotteries Act 1996* to ensure that public lotteries continue to be operated in a manner that protects community interests and provides harm minimisation measures, and to ensure public lotteries are conducted in a responsible and orderly manner.
7. One of the key features includes provision for the issue of an exclusive operator licence to conduct public lotteries in New South Wales.
8. The Bill proposes that the Minister for Gaming and Racing would issue the licence, subject to the approval of the Treasurer. The proposed operator will be required to satisfy integrity and capability requirements to be eligible for an operator licence. The

NSW Lotteries (Authorised Transaction) Bill 2009

Minister, as regulator, will have the power to conduct integrity and capability reviews from time to time during the term of the operator licence. The licensed operator will be required to apply for product licences, which will be granted only if the game meets integrity, harm minimisation, consumer protection and other game-specific criteria. Regulatory requirements relating to harm minimisation will remain.

9. It maintains the prohibitions and obligations in the current legislation and regulation on marketing and harm minimisation of lottery games. These include: information pamphlets, display of notices, access to rules, access to counselling services, prohibition of liquor as inducement, sale to minors and the use of minors for advertisement, and misleading and deceptive advertisements. It clarifies what constitutes the offer of credit.
10. The Bill sets out the grounds for disciplinary action against the licensee. These include: the licensee failing to comply with provisions of the Act or the regulations; the licensee failing to comply with the licence conditions and the rules of the public lottery conducted by the licensee; the licensee or a close associate of the licensee being convicted of certain offences; and the licensee or close associate of the licensee no longer being a suitable person to be concerned with the operation of public lotteries. If grounds for disciplinary action exist, the Bill specifies the actions that can be taken: immediate suspension of the licence, cancellation of the licence, amendment of the licence, and issue of a direction to rectify and censure the licensee.
11. Before taking disciplinary action, the Minister, in most cases, has to follow a show cause procedure. This enables the licensee to make a submission to the Minister to show cause why a proposed action should not be taken. The Minister cannot cancel or suspend a licence except with the approval of the Treasurer. The Bill allows the Minister, with the approval of the Treasurer, to amend an operator licence, but only with the agreement of the operator. The Minister can also amend a product licence with the agreement of the operator. The Minister may also unilaterally amend an operator or product licence under the Bill's disciplinary process.

Background

12. This Bill follows the Government's endorsement of a detailed strategic review of the NSW Lotteries business, which included consultation with representatives of newsagents. The strategic review considered important factors such as current market conditions, the performance and readiness of the business, the current regulatory framework, licence terms, transaction structure, and process and timetable. The process was undertaken by the Government's financial, legal, accounting and tax advisers.
13. From the Agreement in Principle speech, this Bill:

...is part of the Government's responsible program of transferring non-core assets to the private sector to strengthen the State's financial position. This in turn, improves the Government's ability to focus more resources to core social services such as health, education, roads and transport. Significantly, it removes the Government's conflict of interest as owner and regulator of the State's lottery products. While divesting ownership of the NSW Lotteries, the Government will continue through the licence regime to regulate the operation and sale of lottery products in New South Wales to ensure the continued protection of community interests.
14. The Government will continue to receive duties on the sale of lottery products. In the last financial year, these levies were more than \$300 million, which were allocated to core social infrastructure and front-line services.

15. The Bill includes a provision allowing the new licence holder to be excluded from the payment of State taxes relating to the transaction, such as stamp duty.
16. The existing Keno licence is not impacted by the new licensing arrangements.
17. The Bill will prohibit the licensee or agent from offering credit to a person to play the game, however, it will not prohibit a customer purchasing an entry via credit cards. This is due to the common use of credit cards for every day purchases, which meant separate transactions at the point of sale that may inconvenience the agent and the customer.

The Bill

18. The object of this Bill is to authorise and facilitate the transfer to the private sector of the assets, rights and liabilities of New South Wales Lotteries Corporation (**NSW Lotteries**) which are referred to in the Bill as **NSW Lotteries assets**. The Bill has detailed provisions dealing with the transfer of NSW Lotteries employees and their rights and entitlements on transfer. See **Schedule 4**. The Bill also makes significant amendments to the *Public Lotteries Act 1996* to establish a new system for licensing the operation of public lotteries in New South Wales which will regulate the conduct of public lotteries by the private sector. See **Schedule 5**.

19. Outline of provisions

Part 1 Preliminary

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

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

Clause 3 contains definitions of key terms used in the proposed Act. Schedule 1 contains other definitions. The clause defines **authorised transaction** to mean the transfer of NSW Lotteries assets authorised by Part 2.

Part 2 The authorised transaction

Clause 4 authorises the transfer to the private sector of NSW Lotteries assets.

Clause 5 authorises the transfer of NSW Lotteries assets to one or more public sector agencies.

Clause 6 requires the proceeds of the transfer of NSW Lotteries assets pursuant to the authorised transaction, after deduction of certain amounts for debt repayment and payment of expenses, to be paid into the Consolidated Fund.

Part 3 Facilitating the authorised transaction

Clause 7 provides that the Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction.

Clause 8 provides for the establishment of companies as **transaction companies** for the purposes of the authorised transaction (including by means of the corporate conversion of NSW Lotteries).

Clause 9 provides that NSW Lotteries and each transaction company has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction. The clause also authorises the Treasurer to act for and on behalf of and in the name of NSW Lotteries or a transaction company in the exercise of any of its functions for the purposes of the authorised transaction.

Clause 10 provides that NSW Lotteries and transaction companies are subject to the direction and control of the Treasurer in the exercise of any of their functions for the purposes of the authorised transaction.

NSW Lotteries (Authorised Transaction) Bill 2009

Clause 11 establishes the Lotteries Assets Ministerial Holding Corporation to hold NSW Lotteries assets acquired by it or transferred to it and to carry on any activities or business that relate to any NSW Lotteries assets held by it.

Clause 12 authorises the Treasurer to make vesting orders under Schedule 3 for the purposes of the authorised transaction.

Clause 13 references Schedule 4 which provides for the transfer of employment of employees of NSW Lotteries in connection with the authorised transaction.

Clause 14 provides that various State taxes and charges are not payable by public sector agencies in connection with transactions for the purposes of the authorised transaction and authorises the Treasurer to exempt other persons from liability for State taxes and charges in connection with the authorised transaction.

Clause 15 exempts contracts for the sale of land from section 52A of the *Conveyancing Act 1919* when entered into for the purposes of the authorised transaction.

Part 4 Miscellaneous

Clause 16 authorises the release of information by the Auditor-General for the purposes of the authorised transaction.

Clause 17 authorises the Treasurer to delegate any function of the Treasurer under the proposed Act to the Secretary of the Treasury or any other officer of the Government Service prescribed by the regulations.

Clause 18 provides for the proposed Act to bind the State and all other Australian jurisdictions.

Clause 19 provides for the provisions of the proposed Act to prevail in the event of an inconsistency between the proposed Act and other State legislation.

Clause 20 provides for the operation of the proposed Act outside the State.

Clause 21 provides for the interpretation of the proposed Act so as not to exceed the legislative power of the State.

Clause 22 prevents the operation of the proposed Act and the various arrangements and actions that it authorises from constituting a breach of various civil obligations.

Clause 23 protects the State from claims for compensation in connection with the enactment or operation of the proposed Act.

Clause 24 provides for the issue of evidentiary certificates by the Treasurer.

Clause 25 is a general regulation-making power.

Clause 26 provides a savings and transitional regulation-making power.

Clause 27 repeals the *New South Wales Lotteries Corporatisation Act 1996*.

Schedule 1 Interpretative provisions

Schedule 1 contains definitions and other interpretative provisions for the purposes of the proposed Act.

Schedule 2 Corporate conversion of NSW Lotteries

Schedule 2 provides the procedure for the corporate conversion of NSW Lotteries into a transaction company.

Schedule 3 Vesting of assets, rights and liabilities

Schedule 3 provides for the making of vesting orders by the Treasurer for the purposes of the authorised transaction. Vesting orders operate to vest assets, rights and liabilities of NSW Lotteries or a transaction company in the transferee specified in the order.

Schedule 4 Employee protections

Schedule 4 provides for the transfer of employees of NSW Lotteries either to an employer in the private sector or to a Public Service Department as an excess employee of the

Department. Permanent and temporary employees can elect not to be transferred to the private sector. The following employment protections will apply for the benefit of transferred employees:

- (a) the terms and conditions of employment of an employee transferred to the private sector are to be the same as applied to the employee immediately before transfer,
- (b) those terms and conditions will not be able to be varied for permanent and temporary employees for their **employment guarantee period** (which is 3 years, or a shorter period for those temporary employees who have less than 3 years to run on their appointment),
- (c) employment of permanent and temporary employees with the private sector employer will not be able to be terminated for the employment guarantee period (with exceptions for such things as serious misconduct and disciplinary termination),
- (d) employees transferred to a Public Service Department will be employed on the terms and conditions that applied before their transfer and their employment will be managed in accordance with the Public Service excess employee policy,
- (e) employees will be entitled to remain as members of or contributors to their current superannuation schemes and will retain any rights to accrued leave,
- (f) service with NSW Lotteries will count as service with the new employer.

The Schedule also authorises the payment of transfer payments to transferred employees.

Schedule 5 Amendment of Acts

Schedule 5 amends various Acts in connection with the authorised transaction. The Schedule makes significant amendments to the *Public Lotteries Act 1996* (**the Act**) to change the arrangements for licensing the conduct of public lotteries in New South Wales. The following are the significant features of the new licensing arrangements:

- (a) there will be 2 kinds of licence—an operator licence (which is a licence to conduct any public lottery for which the licensee holds a product licence) and a product licence (which is a licence to authorise the conduct of the particular public lottery for which it is issued by the holder of the operator licence to which it is granted),
- (b) the Minister will be required to undertake an integrity and capability assessment of a prospective licensee and their close associates to determine suitability to hold an operator licence,
- (c) the Minister will be authorised to impose conditions on the grant of a licence (with some conditions to be mandatory) but licence conditions will usually only be able to be amended with the agreement of the licensee and (in the case of an operator licence) with the approval of the Treasurer,
- (d) a licensee will be able to be required to pay amounts as consideration payments for the grant or continuation of the licence,
- (e) the maximum term for which a licence can be granted will be 30 years and the grant of an exclusive operator licence will be permitted,
- (f) a significant change to the ownership structure of a licensee will require the consent of the Minister,
- (g) there will be provision for ongoing review of the integrity and capability of an operator licensee and their close associates,
- (h) there will be a revised procedure for the taking of disciplinary action against a licensee, including revised grounds for disciplinary action, limited grounds for suspending or canceling a licence and provision for immediate suspension in certain circumstances,
- (i) there will be provision for the grant of a temporary licence following the suspension, cancellation or surrender of a licence, and arrangements for the former licensee to assist a temporary licensee,
- (j) unclaimed prizes held by a licensee will be required to be paid into the Consolidated Fund (with liability to pay unclaimed prizes transferred to the Crown).

The Act is also amended to include provision for the following savings and transitional arrangements:

- (a) the existing provisions of the Act will continue to apply to the existing keno licence,
- (b) the grant of a new operator and product licences will be authorised in connection with the authorised transaction before the amendments commence, with those licences not to operate until commencement of the amendments,
- (c) arrangements to ensure the continuity of existing lotteries,
- (d) there will be power to require an existing licensee to pay the surplus in any lotteries prize fund to the Treasurer for payment into the Consolidated Fund.

Issues Considered by the Committee

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

Issue: Clause 15 (Part 3) – Contracts for sale of land – Compensation:

20. The proposed clause 15 reads: Section 52A (Contracts for sale of land) of the *Conveyancing Act 1919* does not apply to a contract for the sale of land that is entered into for the purposes of the authorised transaction.
21. The Committee notes that section 52A of the *Conveyancing Act 1919* includes regulations that may provide for remedies and relief available to a purchaser under a contract for the sale of land and penalties which may be incurred by a vendor under such a contract including for any failure or refusal to comply with any of the provisions of section 52A or the regulations made for the purposes of the section as well as for any breach of a term, condition or warranty deemed to be included in the contract under the section. Such remedies and relief may include rescission of the contract by the purchaser and the payment of compensation by the vendor. The regulations made under section 52A may also require the attachment to contracts for the sale of land of notices or other documents and the inclusion of terms, conditions and warranties prescribed.

22. Given the extension of Crown immunity and immunity afforded to the State, Minister and public authority of the State, the Committee is concerned that under clause 15 of Part 3, the rights and remedies of purchasers who may suffer as a result of the exercise of a right conferred under the Bill in relation to the sale of land, may constitute as a potential undue trespass on the purchasers' rights to obtain remedies or relief and compensation that could have been otherwise available under section 52A of the *Conveyancing Act 1919*. Accordingly, the Committee refers this to Parliament.

Issue: Clause 22 (Part 4) – Protection of contractual and other obligations – Clause 23 (Part 4) – Compensation not payable:

23. Clause 22 prevents the operation of the proposed Act and the various arrangements and actions that it authorises from constituting a breach of various civil obligations. It applies to the following:
- (a) the operation of this Act (including any order under this Act and anything done or omitted to be done under or for the purposes of this Act),
 - (b) the transfer of NSW Lotteries assets for the purposes of the authorised transactions,

- (c) the entering into or performance of obligations under a transaction arrangement by a public sector agency,
- (d) a disclosure of information by, on behalf of or with the consent of a public sector agency for the purposes of the authorised transaction.

For the purpose of the section, it prevents cause of action arising from:

- (2) (a) a breach of contract or confidence or otherwise as a civil wrong, or
- (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities) or as requiring any act to be done under an instrument, or
- (c) giving rise to any right or remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument, or
- (d) an event of default under any contract or other instrument, or
- (e) giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information, or
- (f) releasing a surety or other obligee wholly or in part from an obligation.

24. Clause 23 also protects the State from claims for compensation in connection with the enactment or operation of the proposed Act.

25. Given the extension of Crown immunity and immunity afforded to the State, Minister and public authority of the State, the Committee is concerned that under clause 22 and clause 23 of Part 4, the rights and remedies of parties who may suffer as a result of the exercise of a right conferred under the Bill, may constitute as a potential undue trespass on a party's right to obtain remedy or relief and compensation that could have been otherwise available under various civil obligations. Accordingly, the Committee refers this to Parliament.

26. However, the Committee also notes that subsection (3) of proposed section 22 refers to the section as not affecting the rights and obligations of the parties to a transaction arrangement in respect of the performance of obligations under the transaction arrangement, which provides for some protection to parties in respect of performance of obligations under specific transaction arrangements. The Committee notes that subsection (2) of proposed section 23 similarly refers to the section as not applicable to compensation payable under a transaction arrangement to a party to the transaction arrangement in connection with the performance of obligations under that transaction arrangement. This provides for some protection to parties in respect of compensation payable under specific transaction arrangements.

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

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

27. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee accepts the reasons provided in the Agreement in Principle speech that “the strategic review considered a number of important factors including current market conditions, the performance and readiness of the business, the current regulatory framework, licence terms, transaction structure, and overall process and timetable”.

28. The Committee accepts the above reasons and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

The Committee makes no further comment on this Bill.

6. NSW TRUSTEE AND GUARDIAN BILL 2009

Date Introduced:	5 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon John Hatzistergos
Portfolio:	Attorney General

Purpose and Description

1. The objects of this Bill are:

(a) to constitute the NSW Trustee and Guardian as a statutory corporation and to confer on it the functions currently exercised by the Public Trustee and the Protective Commissioner, and

(b) for that purpose, to repeal and re-enact and update, with some modifications, the provisions of the *Public Trustee Act 1913* and the *Protected Estates Act 1983*.

Background

2. According to the Agreement in Principle Speech, the NSW Trustee and Guardian Bill 2009 facilitates a merger between the Office of the Protective Commissioner and the Public Trustee, enabling service improvements and operational efficiencies that will benefit the people of New South Wales. It is proposed that this legislation commence on 1 July 2009.
3. A merger implementation team, comprising the Director General of the Attorney General's Department, the Protective Commissioner, and the Public Trustee, has been working this year on the merger, and has held a number of meetings with stakeholder groups in the disability sector.
4. It is argued that the bill does not involve substantive amendment to the roles and responsibilities currently exercised by the Protective Commissioner or the Public Trustee. Rather it integrates the two, repeals the existing legislation and replaces it with one Act, focusing on the roles of the merged entities—personal trustee and financial management services.
5. It is acknowledged that the amendments proposed in the Bill have focussed almost exclusively on amalgamating the two offices and that further reform may be required. In order to address any further concerns and ensure that they are canvassed through a comprehensive consultation process—particularly with the disability sector—it is proposed that the Legislative Council Standing Committee on Social Issues inquire into any additional matters as part of a general reference and report on whether the New South Wales legislation requires amendment to make better provision for the management of estates of people incapable of managing their affairs, and the guardianship of people who have disabilities, and report back by 1 February 2010. This will also provide a means by which any further concerns regarding the proposed merger can be adequately addressed.

The Bill

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 4 repeals the *Public Trustee Act 1913* and the *Protected Estates Act 1983*.

Chapter 2 Constitution of NSW Trustee

Part 2.1 Constitution and management of NSW Trustee

Clause 5 constitutes the NSW Trustee and Guardian (the *NSW Trustee*).

Clause 6 provides that the NSW Trustee is to be a NSW Government agency (that is a statutory body representing the Crown).

Clause 7 provides for the appointment of the Chief Executive Officer of the NSW Trustee, who is to be responsible for the day-to-day management of the affairs of the NSW Trustee.

Part 2.2 General functions

Clause 10 confers on the NSW Trustee functions that are conferred or imposed on it by or under the proposed Act or any other Act and also confers on it ancillary functions. The NSW Trustee may not employ staff, staff are to be provided under the *Public Sector Employment and Management Act 2002*.

Clause 11 confers on the NSW Trustee the trustee and estate management functions previously conferred on the Public Trustee and also the financial management functions on behalf of certain incapable and missing persons previously conferred on the Protective Commissioner. It also makes it clear that the NSW Trustee may prepare wills and carry out professional services in connection with wills, probate and administration.

Clauses 12-19 re-enacts, and applies to the NSW Trustee, provisions that permit the NSW Trustee to be appointed and act as a trustee in the same capacity as the Protective Commissioner and Public Trustee.

Clause 20 enables the NSW Trustee to appoint agents, including a power to appoint registrars and deputy registrars of Local Courts as agents, and to employ persons to advise or assist it.

Clause 21 enables the NSW Trustee when acting in one capacity (for example, a trust capacity) to sue itself when acting in another capacity (for example, a protective capacity). The NSW Trustee may apply to the Supreme Court for directions in any such case.

Chapter 3 Deceased estates

Part 3.1 Appointment of NSW Trustee as executor or administrator or collector under order to collect

Clause 22 enables the Supreme Court to grant probate of a will or administration of any estate to the NSW Trustee.

Clause 23 entitles the NSW Trustee to a grant of administration of an intestate estate where the deceased person left property in New South Wales if administration of the estate has not been previously granted, has been revoked or the administrator dies without completing the administration.

Clause 24 enables the Supreme Court to transfer administration of an estate to the NSW Trustee on application by an executor or administrator, whether or not there is any other existing executor or administrator. Existing provisions about the effect of such a transfer and the liability of former executors and administrators and the NSW Trustee are re-enacted.

Clause 25 enables the Supreme Court to order the NSW Trustee to act as the collector of an estate of a person if there are reasonable grounds to suppose that the person has died intestate leaving property in New South Wales. Existing provisions prohibiting distribution of the estate without special authorisation by the Court are re-enacted.

Part 3.2 Small estates

Division 1 Elections to administer small estates

Clause 26-30 re-enacts provisions enabling small estates to be dealt with by filing an election to administer instead of applying for probate or administration where probate or administration has not previously been obtained. On an election being filed, the NSW Trustee is taken to have been appointed as the executor or administrator of the estate.

Division 2 Small estates for which probate or administration not required

Clause 31-37 re-enacts, and applies to the NSW Trustee, provisions which enable certain small estates to be dealt with by the NSW Trustee, after giving notice in accordance with the regulations, as if probate or administration had been granted to the NSW Trustee and the NSW Trustee's powers to do this are set out.

Chapter 4 Management functions relating to persons incapable of managing their affairs

Part 4.1 Preliminary

Clause 38 defines words and expressions used in the proposed Chapter.

Clause 39 sets out the duties of persons exercising functions under the proposed Chapter with respect to protected persons and patients. The duties reflect those established under the *Guardianship Act 1987*.

Clause 40 enables an order for the management of an estate under the proposed Chapter to be made for part of the estate.

Part 4.2 Orders by Supreme Court that estates of persons subject to management

Clause 41 re-enacts the power of the Supreme Court to declare that a person is incapable of managing his or her own affairs and to appoint a suitable person as the manager of the person's estate or to commit the management of the person's estate to the NSW Trustee.

Clause 42 enables orders for the management of estates of persons to be made by the Supreme Court if a finding of incapacity has been made in another State or Territory or a country to which the proposed section applies.

Part 4.3 Orders for management of estates of mental health patients

Division 1 Orders by MHRT

Clause 43 re-enacts provisions requiring information about the question of capacity to manage affairs to be given by an authorised medical officer who is bringing a person before a mental health inquiry (that is, an inquiry to determine whether a person should be involuntarily detained in a mental health facility) under the *Mental Health Act 2007*.

Clause 44 requires the Mental Health Review Tribunal (the **MHRT**) to order that the estate of a person be subject to management under the proposed Act if the MHRT has ordered the detention of the person in a mental health facility and it is satisfied that the person is not capable of managing his or her own affairs. Currently, the MHRT must make a management order unless it is satisfied that a person is capable of managing his or her own affairs. A person the subject of such an order or any such order under any other provision of the proposed Part is a **protected person**.

Clause 45 requires the MHRT to consider the capacity of a person to manage his or her own affairs after reviewing the person's case under the *Mental Health (Forensic Provisions) Act 1990* and order that the estate of a person be subject to management under the proposed Act if the MHRT has ordered the detention of the person in a mental health facility and it is satisfied that the person is not capable of managing his or her own affairs. Currently, the MHRT must make a management order unless it is satisfied that a person is capable of managing his or her own affairs.

Clause 46 enables the MHRT, on application, to consider the capacity of a person to

NSW Trustee and Guardian Bill 2009

manage his or her own affairs and to order that the estate of a person be subject to management under the proposed Act if it is satisfied that the person is not capable of managing his or her own affairs. Currently, the MHRT must make a management order unless it is satisfied that a person is capable of managing his or her own affairs.

Clause 47 re-enacts a provision enabling the MHRT to make interim management orders but limits the period of such orders to 6 months.

Clause 48 re-enacts a provision enabling the MHRT to review an interim management order.

Clause 49 re-enacts a provision providing for an appeal to the Supreme Court by the protected person against a management order made by the MHRT.

Clause 50 re-enacts a provision providing for an appeal to the Administrative Decisions Tribunal (the **ADT**) by the protected person against a management order made by the MHRT.

Clause 51 re-enacts a provision that requires the MHRT, on request, to give formal written reasons for a decision to make a management order.

Clause 52 provides that the estate of a person ordered by the MHRT to be subject to management is committed to the management of the NSW Trustee, subject to any special order of the Supreme Court.

Division 2 Applications by patients who are not protected persons

Clause 53 re-enacts, and applies to the NSW Trustee, a provision that enables the NSW Trustee to undertake the management of the estate of a patient in a mental health facility, on application by the patient or, if the patient is under 18 years, on application by the person having parental responsibility for the patient.

Part 4.4 Orders for management of estates of missing persons

Clause 54 re-enacts the provision conferring power on the Supreme Court to declare that a person is a missing person and to make a management order. The Supreme Court may appoint a suitable person as the manager of the missing person's estate or commit the management of the missing person's estate to the NSW Trustee. A person subject to such an order is a *managed missing person*.

Part 4.5 Management of estates

Division 1 Management of estates by NSW Trustee

Clause 55 applies the proposed Division to the estate of a protected person or managed missing person or patient (a *managed person*) that is committed to the management of the NSW Trustee.

Clause 56 confers on the NSW Trustee, in respect of the management of the estate of a managed person, all necessary and incidental functions and such other functions as are directed or authorised by the Supreme Court.

Clause 57 confers on the NSW Trustee, for the purposes of exercising its protective capacities, all the functions of a managed person (including those that the person would have if not under incapacity or missing).

Clause 58 re-enacts, and applies to the NSW Trustee, provisions conferring power to execute and sign documents in the name of and on behalf of a managed person and relating to the effect of any such document.

Clause 59 sets out the things for which money of the estate of a managed person may be used, including for the payment of debts and engagements, repayment of expenses chargeable to the estate, the person's funeral expenses, maintenance of dependants, maintenance of the person and the preservation and improvement of the estate.

Clause 60 enables the NSW Trustee to pay money, or hand over chattels or documents, of the estate of a protected person to the person or another person as directed if the person is absent from a mental health facility.

Clause 61 re-enacts, and applies to the NSW Trustee, a provision conferring jurisdiction on the Supreme Court, on application, to give necessary directions with respect to the exercise by the NSW Trustee of its protective capacities.

Clause 62 re-enacts, and applies to the NSW Trustee, a provision enabling an application to be made to the ADT for a review of a decision by the NSW Trustee made in connection with the exercise of its functions under the proposed Division or a decision that is of a class prescribed by the regulations for the purposes of the proposed section.

Division 2 Management of estates by other persons

Clause 63 applies the proposed Division to the estate of a managed person that is managed by a person other than the NSW Trustee.

Clause 64 re-enacts, and applies to the NSW Trustee, provisions enabling the Supreme Court and the NSW Trustee to make orders as to the administration and management of the estates of managed persons, including orders in connection with authorising, directing and enforcing the functions of managers. The Supreme Court may also make orders in connection with supervising the exercise of functions of managers. Any order by the NSW Trustee is subject to the regulations or any direction by the Supreme Court or, in the case of a person under guardianship, the Guardianship Tribunal.

Clause 65 re-enacts, and applies to the NSW Trustee, provisions enabling the Supreme Court and the NSW Trustee to make orders as to the property of the estate of a managed person. Any order by the NSW Trustee is subject to the regulations or any direction by the Supreme Court or, in the case of a person under guardianship, the Guardianship Tribunal.

Clause 66 re-enacts, and applies to the NSW Trustee, a provision conferring on the NSW Trustee power to make orders authorising managers to have necessary and incidental functions for the management and care of a managed estate and to give the manager direction in respect of such orders. Any order by the NSW Trustee is subject to the regulations or any direction by the Supreme Court or the Guardianship Tribunal (in the case of a person under guardianship).

Clause 67 confers on the manager of an estate power to execute and sign documents in the name of and on behalf of a managed person, in accordance with an order or direction of the Supreme Court or the NSW Trustee or the Guardianship Tribunal (in the case of a person under guardianship), and provides for the effect of any such document.

Clause 68 re-enacts a provision enabling the Supreme Court and the Guardianship Tribunal to require the manager of an estate to provide security in respect of the management. Any such security must be approved by the NSW Trustee and the NSW Trustee is to ensure compliance with the conditions of any such security.

Clause 69 enables the manager of an estate to lodge money of an estate with the NSW Trustee.

Clause 70 re-enacts, and applies to the NSW Trustee, a provision enabling an application to be made to the ADT for a review of a decision by the NSW Trustee made in relation to the functions of a person appointed as a manager.

Division 3 Management of estates generally

Clauses 71-77 re-enacts existing provisions suspending the power of a managed person to deal with so much of his or her estate as is subject to management and the powers and obligations of the NSW Trustee in those circumstances.

Clause 80 enables the manager of the estate of a managed person to require, by written notice, the person who has custody of the managed person's will to provide a certified copy of the will within 14 days. It will be an offence, without reasonable excuse, to fail to comply with any such notice or order. A person who has custody of

the will may obtain a direction from the Supreme Court that the person is not required to provide a copy of the will.

Clause 81 enables the NSW Trustee to exercise in NSW functions relating to the estate of an interstate protected person, if authorised to do so by the equivalent body in another State or Territory or in a country recognised by the regulations for the purpose of the proposed section (the **Public Trustee of a reciprocating State**). The NSW Trustee may also, by notice in writing, authorise the Public Trustee of a reciprocating State to exercise specified management functions of the NSW Trustee in relation to the estate of a managed person in the reciprocating State.

Clause 82 re-enacts a provision preserving uses, trusts and other rights attached to property of a managed person that is exchanged on behalf of the managed person.

Clause 83 re-enacts a provision that protects the interests of a managed person and any beneficiary of a managed person where property of the managed person is disposed of or otherwise dealt with under the proposed Act.

Clause 84 provides that a managed person may give a power of attorney even though the estate of the person is subject to management. The effect of a management order on existing powers of attorney is dealt with in amendments made to the *Powers of Attorney Act 2003* by **Schedule 2.46 [6]** to the proposed Act.

Part 4.6 Suspension or termination of management

Division 1 Revocation of management orders

Clause 85 provides for the termination of the management of an estate under the proposed Act if the management order is revoked.

Clause 86 enables the Supreme Court, on application by a protected person, to revoke a declaration that a person is incapable of managing his or her affairs and to revoke a management order and make any other necessary orders to give effect to that order.

Clause 87 enables the Supreme Court, on application by a managed missing person or other person, to revoke a declaration that a person is a missing person and to revoke a management order and make any other necessary orders to give effect to that order.

Clause 88 enables the MHRT, on application by a protected person, to revoke the management order.

Division 2 Termination by NSW Trustee

Clause 89 enables the NSW Trustee, by certificate, to terminate management of the estate of a managed person who ceases to be under guardianship or to be a patient if the NSW Trustee is satisfied that the person is capable of managing his or her own affairs.

Clause 90 requires the NSW Trustee to notify a managed person who ceases to be under guardianship or to be a patient and who the NSW Trustee is not satisfied is capable of managing his or her affairs of the person's right to apply for revocation of the order. Pending such a revocation, the NSW Trustee may, at its discretion, continue to manage the person's estate.

Clause 91 enables the NSW Trustee, by certificate, to terminate management of the estate of a managed person who ceases to be a missing person.

Clause 92 enables the NSW Trustee, on application by a person or a patient who is not a protected person or the person having parental responsibility for that person, to terminate management of the estate of the person.

Division 3 Termination on death

Clause 93 terminates the management of the estate of a managed person if the person dies.

Clause 94 provides for the NSW Trustee to pay money, and hand over chattels or

documents, of the estate of a managed person who has died to the legal representative of the managed person, subject to any order of the Supreme Court and proposed section 95.

Clause 95 re-enacts a power to pay money, and hand over chattels or documents, to a beneficiary of the estate of a managed person without probate or administration of the estate having been granted and without legal proof of the right or title of the beneficiary.

Clause 96 re-enacts, and applies to the NSW Trustee, a power to complete transactions relating to the estate of a managed person that were commenced before the death of the person.

Division 4 General matters relating to termination of management of estates

Clause 97 sets out the circumstances in which the NSW Trustee may continue to act as the manager of an estate after the occurrence of a termination event, pending proof of the event.

Clause 98 provides for the NSW Trustee to pay money, and hand over chattels or documents, of the estate of a managed person (other than a person who has died) to the managed person on termination of the management.

Clause 99 re-enacts, and applies to the NSW Trustee, a provision that, on termination of management, provides for the acts of the NSW Trustee as the manager of the estate of the managed person to have continuing force as if they had been done by the managed person not suffering from incapacity.

Clause 100 re-enacts, and applies to the NSW Trustee, a power to sell unclaimed personal effects of a managed person after 2 years after management of the estate is terminated and provides for the payment and recovery of the proceeds.

Chapter 5 Investments and funds

Part 5.1 Investments

Clause 101 enables the NSW Trustee to invest funds held in its trust or protective capacities in accordance with the *Trustee Act 1925* and also enables other managers of estates of managed persons to so invest funds of those estates.

Clause 102 re-enacts, and applies to the NSW Trustee, a power to purchase real estate from the estate of a managed person and a power to invest in the preferred investments (if known) of the managed person.

Part 5.2 Common funds and Reserve Fund

Clause 103 requires the NSW Trustee to keep a separate account with respect to each trust matter and each managed estate.

Clause 104 enables the NSW Trustee to establish one or more common funds and to pay into those funds money in respect of one or more trust matters or managed estates. Any such amounts are held on trust by the NSW Trustee. The NSW Trustee may establish portfolios and accounts within a common fund and may establish it on the basis of a unitised system or other basis.

Clause 105 provides that trust funds or protective funds, amounts payable from the Reserve Fund, certain money paid into court and other money required to be so paid by law may be included in a common fund. Funds must not be included if payment to the common fund is prohibited by an applicable trust instrument or a person who jointly holds funds with the NSW Trustee objects.

Clause 106 requires investment income from a common fund to be applied for investments, to the Reserve Fund, proportionately to the relevant accounts from which the fund is derived and for payment of the costs incurred by the NSW Trustee in the exercise of functions under the proposed Act. The Director-General of the Attorney General's Department must approve the maximum amount of payments for costs.

Clause 107 enables the NSW Trustee to determine policies relating to the nature,

management and operation of a common fund.

Clause 108 enables the NSW Trustee to sell and withdraw investments belonging to a common fund for the purpose of exercising functions in a trust or protective capacity and to withdraw from a common fund amounts on account of a particular matter in which the funds for a particular matter are invested.

Clause 109 requires the NSW Trustee to establish a Reserve Fund, which is to be applied for repayment to the common fund of losses on investments, payment of costs of protecting investments, certain legal costs and other costs that are not properly chargeable against a particular estate or trust or able to be paid out of a particular estate or trust.

Clause 110 enables the NSW Trustee to make advances from a common fund for any purpose of or relating to a trust matter or managed estate and also enables the NSW Trustee to advance to a person beneficially entitled to an estate or trust an amount not exceeding half of the value of the person's beneficial interest. Interest is payable on any such advance and any such advance is a charge on the assets of the estate or trust.

Chapter 6 General

Part 6.1 Fees and charges

Clause 111 enables the NSW Trustee to charge fees and provides for the amount of the fees to be prescribed by the regulations.

Clause 112 enables the NSW Trustee to retain or pay from trust property any costs that it could retain or pay if it were a private trustee.

Clause 113 enables the NSW Trustee to retain or pay from a managed estate costs incurred in the care and management or supervision of the estate. Such costs are chargeable whether or not management of the estate is terminated.

Clause 114 enables the NSW Trustee to recover any costs due or payable to the NSW Trustee as a debt in a court of competent jurisdiction.

Clause 115 enables the Supreme Court and the NSW Trustee to order the payment from the estate of a managed person of costs with respect to actions taken to comply with an order or direction under the proposed Act or a transfer or conveyance under Chapter 4 of the proposed Act or for a specified amount of remuneration for a manager. The NSW Trustee may only make such an order in relation to costs arising from an order or direction given by the NSW Trustee or work carried out by a manager for the purposes of such an order or direction.

Part 6.2 Miscellaneous

Clause 116 provides that the NSW Trustee may require, by notice in writing, a person to provide specified information or records in connection with a responsibility of the NSW Trustee when acting in a protective capacity.

Clause 117 confers on the Supreme Court, on application by the NSW Trustee, power to set aside the disposition of an interest in real or personal property by a mental health patient while a managed person.

Clause 118 provides for orders of the NSW Trustee under the proposed Act to have effect according to their tenor and makes it an offence to fail, without reasonable excuse, to comply with an order or direction of the NSW Trustee.

Clause 119 re-enacts, and applies to the NSW Trustee, a provision requiring a person who obtains an order directing payment to be made to the NSW Trustee or an order vesting property in the NSW Trustee or appointing the NSW Trustee as a trustee, executor or administrator to serve a copy of the order and other information on the NSW Trustee.

Clause 120 re-enacts, and applies to the NSW Trustee, a provision appropriating the Consolidated Fund for the discharge of certain liabilities of the NSW Trustee that it would be personally liable to discharge if it were a private trustee. It also re-enacts the exclusion from liability of the NSW Trustee for acts that do not arise out of an act

or omission of its staff.

Clause 121 contains provisions excluding the Chief Executive Officer and other staff of the NSW Trustee from personal liability for acts done in good faith for the purpose of executing the proposed Act or any other Act or the functions of the NSW Trustee.

Clause 122 provides for certificates by the Chief Executive Officer relating to the appointment of the NSW Trustee as the administrator or executor of an estate, a trustee or as manager of an estate to have evidentiary effect.

Clause 123 re-enacts, and applies to the NSW Trustee, a power to direct a specified person to visit a managed person and report on the state of mind, bodily health and general condition of the managed person and on the care and treatment of the managed person.

Clause 124 provides for the service of documents on the NSW Trustee.

Clause 125 provides that proceedings for an offence under the proposed Act are to be dealt with summarily.

Clause 126 enables the Director-General of the Attorney General's Department to require the NSW Trustee to submit a budget to the Director-General in relation to the NSW Trustee's costs, including projected costs.

Issues Considered by the Committee

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

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

6. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee accepts the advice received from the Attorney General's Department that it is necessary to commence the proposed amendments on proclamation as the merger, while intended for July 1 2009, may take slighter longer.

7. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

The Committee makes no further comment on this Bill.

7. OCCUPATIONAL LICENSING LEGISLATION AMENDMENT (REGULATORY REFORM) BILL 2009

Date Introduced:	4 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Joe Tripodi MP
Portfolio:	Finance, Regulatory Reform

Purpose and Description

1. This Bill amends the *Home Building Act 1989* and repeals and amends other legislation to remove licensing requirements for certain occupations.
2. This Bill will amend several Acts. In the home building sector, this Bill will remove licensing for floor finishers and coverers, kit home suppliers, property inspectors and lift mechanics. It will clarify that kit home suppliers must continue to meet contract and information disclosure requirements under the *Home Building Act 2004*, and disputes about kit home suppliers may continue to be heard by the Home Building Division of the Consumer, Trader and Tenancy Tribunal.
3. It will amend the *Home Building Act 2004* to remove the flooring contractor licence, and remove the requirement for floor finishers and coverers to be licensed. The range of flooring covered by the flooring contractor licence relates to decorative aspects and the appearance of flooring, which is not considered structural work.
4. It will amend the *Home Building Act 2004* to remove the requirement for kit home suppliers to be licensed. The Home Building Act imposes probity, insurance, contractual and information disclosure requirements on suppliers. It provides for consumers a right of redress for poor quality dealings. The compulsory contract and information disclosure provisions and dispute resolution mechanisms will be retained.
5. The Bill amends the Home Building Act to ensure that consumer rights will continue to be protected through the home building division of the Consumer, Trader and Tenancy Tribunal.
6. This also amends the Home Building Act to remove the requirement for lift mechanics to be licensed by eliminating the mechanical services contractor licence. Activities carried out under this licence that pose a significant threat to the health and safety of consumers are covered by other regulatory frameworks.
7. The Bill also amends the *Home Building Act 2004* to remove the requirement for pre-purchase property inspectors to be licensed by eliminating the building consultancy licence.
8. In relation to the removal of these four home building licences, the Bill will provide that any person who holds a current licence that is no longer required will be able to apply to the Office of Fair Trading for a pro rata refund of the fees paid for that licence.

9. The Bill will remove licensing for optical dispensers and clarify that optical dispensers will continue to be subject to the *Health Care Complaints Act 1993*.
10. It will repeal the *Optical Dispensers Act 1963* and the *Optical Dispensers Regulation 2007* to remove the requirement for optical dispensers to be licensed. On repeal of the Act, optical dispensers will be subject to the Code of Conduct for Unregistered Health Professionals in schedule 3 of the *Public Health (General) Regulation 2002*. This Bill will make minor amendments to the *Health Care Complaints Act 1993* to ensure that complaints about breaches of the code by optical dispensers can continue to be heard by the Health Care Complaints Commission. As a result of the removal of the licence, the Optical Dispensers Licensing Board will be wound up at the end of June 2010.

Background

11. The removal of these licences aim to save businesses \$900,000 per year in administrative costs, such as fees, time taken to apply for and renew licences, and the costs of complying with education and insurance requirements.
12. In May 2008, the Productivity Commission released its report on its review of Australia's consumer policy framework. The Productivity Commission recommended that the Council of Australian Governments Business Regulation and Competition Working Group to oversee a reform program for industry-specific consumer regulation, including identifying and repealing unnecessary regulation, by initially focusing on requirements that apply in only one or two jurisdictions. In response to this, "the New South Wales Government reviewed licensing of eleven occupations identified as being licensed only in New South Wales, or in New South Wales and one or two other States, to determine whether the requirement is justified, and to remove any unnecessary regulation".
13. According to the Agreement in Principle speech:

The New South Wales Better Regulation Office review, which was completed in April, looked at the costs and benefits of licensing these occupations for consumers, licensees and Government. It assessed whether licensing is the best way to protect consumers, or whether there are other less costly ways to do so. The review included a full public consultation process. The review is just one element of the Rees Government's comprehensive program of red tape reduction, and will contribute to our goal to cut red tape for business by \$500 million by June 2011.

14. The Agreement in Principle speech further explained that:

The Bill amends the *Home Building Act 2004* to remove the flooring contractor licence, and eliminate the requirement for floor finishers and coverers to be licensed. The range of flooring covered by the flooring contractor licence essentially relates to decorative aspects and the appearance of flooring, and is not considered structural work. The licence provides information to consumers about the educational qualifications of a contractor, requires the contractor to be insured, and provides the consumer with a right of redress in the event of substandard work. However, in practice the benefits to consumers of the licensing scheme are low.

Data provided by the Office of Fair Trading indicates that there are few serious complaints about floor finishers and coverers. The relatively low value of consumer flooring contracts means that insurance requirements are rarely activated, and disputes can be heard in the general division of the Consumer Trader and Tenancy Tribunal. Protections already provided under the Consumer Claims Act 1998 and information provided on the Office of Fair Trading website are sufficient to address the risks associated with non-structural flooring work. A

Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009

contractor licence will continue to be required for structural flooring work and could be fulfilled by licences such as general building work and carpentry.

15. The Bill amends the *Home Building Act 2004* to remove the requirement for kit home suppliers to be licensed. The Agreement in Principle speech stated that:

Licensing of kit home suppliers was introduced in response to an event in 1990 in which a major kit home supplier collapsed and consumers lost \$2.7 million in deposits. The Home Building Act imposes probity, insurance, contractual and information disclosure requirements on suppliers. It also provides for consumers a right of redress in the event of poor quality dealings. However, the review found licensing does not provide any particular protection for consumers over and above other provisions in the Act. The compulsory contract and information disclosure provisions and dispute resolution mechanisms will be retained, and are sufficient to address the financial risks that consumers face when purchasing a kit home. Given the high value of most kit home purchases, the Bill amends the Home Building Act to ensure that consumer rights will continue to be protected through the home building division of the Consumer, Trader and Tenancy Tribunal. The Bill also amends the Home Building Act to remove the requirement for lift mechanics to be licensed through elimination of the mechanical services contractor licence. The usefulness of the mechanical services licence is limited in practice. All activities carried out under this licence that pose a significant threat to the health and safety of consumers are adequately covered by other regulatory frameworks.

16. The Speech explained further on:

Occupational health and safety laws apply to many of the activities covered by the mechanical services contractor licence, and these requirements are more comprehensive than are conditions under the licence. Also, many activities relating to mechanical services are considered specialist work which may only be performed by an appropriately licensed or certified tradesperson such as an electrician. By removing the mechanical services contractor licence, the Bill will reduce duplicative and unnecessary regulation and reduce costs for business.

17. In relation to the optical dispensers licensing, the Speech referred to:

The licensing scheme provides a mechanism for lodging and handling complaints about licence holders. However, few issues have arisen which could not be resolved between a consumer and an optical dispenser. Other jurisdictions do not require licensing to manage health and safety risks, and there is no evidence that consumers in any of those jurisdictions have been harmed by the absence of licensing. For these reasons, the Government has agreed that licensing should be removed...High professional standards will be assured in the absence of licensing with optical dispensers subject to the Code of Conduct for Unregistered Health Professionals, oversight by the Health Care Complaints Commission and general fair trading laws.

18. It continued to explain that:

Reserve funds held by the Board—funds contributed by the industry through licence fees—should be used to support the maintenance of high professional standards in optical dispensing. The Government will be having discussions with the board about the best use of these funds. Health risks do exist if contact lenses are incorrectly used, and it is important that consumers are fully informed about those risks. The sale of sight-corrective contact lenses is currently controlled through requirements for an optometrist's prescription. The sale of cosmetic contact lenses also will be controlled through an optometrist's prescription from 1 July 2010, as part of the national registration scheme for health professionals.

19. The review recommended that the Code of Conduct for Unregistered Health Professionals should be amended to ensure that consumers are informed of the health

Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009

risks. However, this is stated as not necessary due to the decision to regulate supply of cosmetic lenses at the national level. The repeal of the Act is timed to coincide with the introduction of the national registration scheme.

20. In relation to the licensing of motor vehicle repairers, under the *Motor Vehicle Repairs Act 1980*, was reviewed by the Better Regulation Office. The review found the scheme achieves consumer protection, vehicle fleet safety and law enforcement outcomes. The Better Regulation Office's review re-affirmed the need for licensing motor vehicle repairers.

21. In relation to motor vehicle accessories, such as audio systems and wheel trims, which are produced for retail sale and for fitting by the purchaser. In many cases, they do not alter the performance or safety characteristics of a vehicle and do not present a risk to the safety of consumers or vehicle roadworthiness. However, there is some uncertainty within industry as to whether or not accessory fitting is captured by the Act. The review recommended that the Motor Vehicle Repairs Act be amended to clarify that licensing does not apply to the fitting of accessories which do not affect the performance, safety, or security of a vehicle. The Speech explained that, rather than amending the Act, the recommendation will be pursued through amending the Motor Vehicle Repairs Regulation following more detailed consideration of the best way to improve certainty for industry.

22. From the Agreement in Principle speech:

I make it clear that nothing in this Bill will unduly reduce consumer protections in New South Wales, or expose the public to undue risk, or in any way affect the health or safety of consumers or the public. This Bill does not take away the protections afforded to all consumers under fair trading and contract laws. The Bill is concerned only with removing regulation that does not add value, and clarifying some provisions so that legislation is effectively protecting consumers.

The Bill

23. The object of this Bill is to remove the current licensing regimes for certain occupations in cases where such regulation is no longer considered to be necessary. The following occupational licences will be removed:

- (a) optical dispensers licences (under the *Optical Dispensers Act 1963*),
- (b) contractor licences for the supply of kit homes (under the *Home Building Act 1989*),
- (c) building consultancy licences (under the *Home Building Act 1989*),
- (d) contractor licences for non-structural flooring work (under the *Home Building Act 1989* and the *Home Building Regulation 2004*),
- (e) contractor licences for mechanical services (under the *Home Building Act 1989* and the *Home Building Regulation 2004*).

24. Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act (subject to a specified exception) on 1 July 2009 or the date of assent, whichever is the later. The amendments relating to optical dispensers licensing are to commence on 1 July 2010 (to coincide with the expiry of these licences).

Removal of optical dispensers licences

Schedule 1 provides for the removal of the optical dispensers licensing regime by the repeal of the *Optical Dispensers Act 1963* and the consequential repeal of the *Optical Dispensers Regulation 2007*.

Schedule 4.1–4.4, 4.6 [2] and [4], 4.7 and 4.9–4.11 make consequential amendments to other Acts. The *Health Care Complaints Act 1993* and the *Health Records and Information Privacy Act 2002* will continue to apply to optical dispensers.

Removal of contractor licences for the supply of kit homes and building consultancy licences

Schedule 2 provides for the removal of contractor licences for the supply of kit homes and building consultancy licences and any reference relating to those licences in the *Home Building Act 1989*. **Schedules 3, 4.5 and 4.6 [1] and [3]** make consequential amendments.

Removal of contractor licences for non-structural flooring work and mechanical services

Schedule 3 [4] provides that any work involved in the installation of any material that forms an upper layer or wearing surface of a floor is not **residential building work** for the purposes of the *Home Building Act 1989* (provided that it does not involve any structural changes to the floor). As a result, a contractor licence is not required for non-structural flooring work. Accordingly, **Schedule 3 [13]** removes the category of flooring that is currently prescribed in relation to contractor licences. A contractor licence will continue to be required for structural flooring work and the categories of licence that may be appropriate for this work include general building work and carpentry.

Schedule 3 [4] also provides that any work that involves the installation or maintenance of lifts, escalators, inclinators or automatic garage doors is not **residential building work** for the purposes of the *Home Building Act 1989*. As a result, a contractor licence is not required for this type of work. Accordingly, **Schedule 3 [14]** removes the category of mechanical services that is currently prescribed in relation to contractor licences. **Schedule 3 [3]** makes a consequential amendment.

Savings and transitional provisions

Schedule 2 [78] inserts a transitional provision in relation to the refund of application fees, on a pro rata basis, in relation to contractor licences and building consultancy licences that are no longer required under the *Home Building Act 1989* as a result of the amendments made by the proposed Act.

Schedule 4.8 [2] inserts a transitional provision to ensure optical dispensers are not required to pay a roll fee in relation to a period during which the requirement to hold a licence will have been removed.

Schedules 2 [77], 4.8 [1] and 4.11 [5] enable regulations of a savings and transitional nature consequent upon the enactment of the proposed Act to be made.

Issues Considered by the Committee

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

Issue: Consumers' Protection and Rights - Removal of licensing for optical dispensers (Schedule 1 and Schedule 4.1-4.4, 4.6 [2] and [4], 4.7 and 4.9-4.11); for supply of kit homes (Schedule 2 and Schedules 3, 4.5 and 4.6 [1] and [3]); for building consultancy (Schedule 2 and Schedules 3, 4.5 and 4.6 [1] and [3]); for non-structural flooring work (Schedule 3 [4] and [13]); and for mechanical services (Schedule 3 [4], [14] and [3]).

25. The Committee appreciates the cost savings to be made with the removal of the above licensing, particularly, removing regulation that does not add value and to reduce red tape, in order to improve the free flow of skills around the country to benefit the New South Wales economy and at the same time, to balance the needs for consumer protection and not to expose the public or consumers to undue health and safety risks.

26. The Committee notes that this Bill is proposing a significant reform by eliminating the requirements for licences for the above occupations. The Committee also notes the significance and importance of the following:

- optical dispensers that may affect the personal health and safety of consumers;
- building consultancy for pre-purchase property inspections which should require suitably qualified persons to undertake such property inspections;
- contractors for the supply of kit homes especially in the event of the collapse of a major kit home supplier and in the event of poor quality dealings;
- contractors for mechanical services such as any work that involves the installation or maintenance of lifts, escalators, inclinators or automatic garage doors, in particular, in relation to safety risks and quality of installation, which should require appropriately licensed or certified tradespersons to conduct such work.

27. The Committee notes in particular, that in the review *Report by the Better Regulation Office on Licensing of Selected Occupations*, on the matter of floor finisher and coverer under the flooring licence class of the *Home Building Act 2004*, three submissions explicitly commented on the flooring contractor licence and all supported retention of the licence. The Masters Builders Association also noted that builders need protection from the risk that sub-contractors they engage may perform poor quality work.

28. At page 24 of the report: "stakeholders have suggested that licensing floor contractors protects builders from the risk of poor quality work performed by sub-contractors". The report stated that: "While it is recognised that licensing can provide benefits to consumers by ensuring the selection of a suitably qualified contractor and providing recourse if work is not undertaken to a suitable standard, it is difficult to argue that licensing provides the same benefits to builders. Licensed builders should be aware of the skills and experience required to undertake flooring work, and should also be able to verify the quality of the work performed by a flooring sub-contractor before finalising payment".

29. The Committee appreciates the cost savings reasons behind the removal of the requirement for such licensing for the class of non-structural flooring. However, the Committee holds concerns for the individual builders and ultimately, the consumers, especially if the Home Warranty Insurance applies only to work greater than \$12,000 in value where most of these types of contracts will not exceed this threshold and will not be covered by Home Warranty Insurance. The Committee is concerned that this may erode the compensation, remedy or relief available to protect the rights of builders and consumers. The Committee, therefore, draws this matter to the attention of Parliament.

30. The Committee notes the other concern arising from the review report relates to property inspector for pre-purchases of properties, to which this Bill aims to remove the requirement for licensing such building consultants under the *Home Building Act 2004*. At page 40 of the review report: "Two submissions to the review were received on this and both supported the retention of licensing for property inspectors (pre-purchase). Arguments for retaining the licence were that pre-purchase inspections play a significant role in the largest transaction most consumers will make, that many buyers strongly rely on the reports, and that the licence establishes minimum standards for inspection reports. The Masters Builders Association submitted that the licensing requirement should be extended to pest inspectors".

31. The Committee appreciates the reasons behind the removal of the licensing for this class of building consultancy. However, the Committee is concerned with consumers' protection given that pre-purchase inspections play an important role in the expensive transaction of purchasing a property. The Committee is also concerned that minimum standards for inspection reports including the requirement for a builders licence or accreditation will be removed for such pre-purchase property or building inspections. The Committee will be concerned that this may erode the purchasers' rights and basis for informed decision-making. Accordingly, the Committee brings this matter to the attention of Parliament.

32. The Committee understands that the New South Wales Better Regulation Office has conducted a review, completed in April, which looked at the costs and benefits of licensing these occupations for consumers, licensees and Government. The review included a public consultation process. The Committee suggests that the outcomes of the review or its report with the cost and benefit analysis and responses to public consultation or submissions, could be made better available through the tabling of that report in Parliament, in order to assist Parliament in its function to scrutinise the exercise of legislative powers in relation to this Bill.

The Committee makes no further comment on this Bill.

8. RESIDENTIAL TENANCIES AMENDMENT (MORTGAGEE REPOSSESSIONS) BILL 2009

Date Introduced:	4 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Virginia Judge MP
Portfolio:	Fair Trading

Purpose and Description

1. The object of this Bill is to amend the *Residential Tenancies Act 1987*:
 - (a) to require a mortgagee, once they become entitled to possession of rented premises to the exclusion of the tenant, to give the tenant at least 30 days' notice to vacate the premises before the mortgagee takes possession, and
 - (b) to provide that the former tenant who is given notice to vacate may withhold or recoup any rent for the period in which they are holding over after termination of the residential tenancy agreement.
2. The Bill also amends the Landlord and Tenant (Rental Bonds) Act 1977 to make it clear that a mortgagee may authorise the Rental Bond Board to release the rental bond to the former tenant once the mortgagee becomes entitled to possession of the rented premises.

Background

3. The bill will give all tenants in New South Wales legislative protection when a mortgagee seeks to recover possession of rented premises. Presently, the amount of notice given to tenants to vacate in these particular situations is entirely up to the mortgage lender involved.
4. According to the Agreement in Principle Speech The Government has conducted a comprehensive review of existing tenancy laws. During the consultation period urgent legislative reform regarding the plight of innocent tenants caught up in the crossfire between banks and landlords received almost unanimous support.
5. Specifically, the bill has three main objects: firstly, to require mortgagees to give tenants at least 30 days' notice if they wish to recover vacant possession of the rental property; secondly, in cases where a tenant is told to leave by a mortgagee, to specify that no rent is payable during the period of the notice given; and, thirdly, to put in place a simple system to allow a mortgagee to authorise release of the tenant's rental bond.

The Bill

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

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Residential Tenancies Act 1987 No 26

A residential tenancy agreement terminates if a mortgagee in respect of the rented

Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009

premises becomes entitled to possession of the premises to the exclusion of the tenant. **Schedule 1 [1]** provides that in these cases the mortgagee will be required to give the former tenant who is holding over under the terminated agreement a notice to vacate before the mortgagee can take possession. The notice must specify the date (being not less than 30 days after the notice is given) by which the former tenant is to vacate the premises. The former tenant will be able to withhold or recoup any rent for the period in which the tenant is holding over after termination of the agreement.

Schedule 1 [2] makes it clear that the right to take possession of rented premises in accordance with a court order is, in the case where the residential tenancy agreement is terminated because a mortgagee has become entitled to possession of the property, subject to the new requirement to give the former tenant at least 30 days' notice to vacate.

Schedule 1 [3] provides that former tenants may be served with notices to vacate in the same way as other documents or notices are given to tenants.

Schedule 1 [4] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Landlord and Tenant (Rental Bonds) Act 1977 No 44

Schedule 2 makes the amendment to the *Landlord and Tenant (Rental Bonds) Act 1977* described in the above Overview.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

9. ROOKWOOD NECROPOLIS REPEAL BILL 2009

Date Introduced:	3 June 2009
House Introduced:	Legislative Council
Minister Responsible:	The Hon Tony Kelly MLC
Portfolio:	Lands

Purpose and Description

1. The public cemetery at Rookwood (*the Rookwood Necropolis*) is administered under the *Rookwood Necropolis Act 1901 (the 1901 Act)*. Almost all the other major public cemeteries in Sydney, together with one in the Hunter Valley, are administered under the *Crown Lands Act 1989 (the 1989 Act)*.
2. The objects of this Bill are to repeal the 1901 Act and, by means of amendments to the 1989 Act and the by-laws under that Act, to transfer the administration of the Rookwood Necropolis from the 1901 Act to the 1989 Act. The co-ordinating functions exercised by the Joint Committee of Necropolis Trustees under the 1901 Act are in future to be exercised by the Rookwood Necropolis Trust to be established under the 1989 Act.

Background

3. According to the Second Reading Speech, the bill follows a review the Department of Lands conducted into the management of Rookwood Cemetery. Most stakeholders agreed that the Rookwood Necropolis Act, and the administering joint committee, were now inadequate to deal with the challenges of modern public land management. Many stakeholders considered that a new body was required which was independent, but still worked closely with the denominational trusts, to bring a renewed focus on the sustainable management of Rookwood as a single parcel of Crown land.
4. The central thrust of the bill is to bring the necessary components of the Rookwood Necropolis Act into the Crown Lands Act.
5. The new Rookwood Necropolis Trust will replace the former Joint Committee of the Necropolis Trustees, a creation of the old Rookwood Necropolis Act. The Rookwood Necropolis Trust will comprise board members chosen not because they represent a sectional interest, but because of their specific skills.

The Bill

Clause 2 provides for the commencement of the proposed Act on a day to be proclaimed.

Clause 3 repeals the *Rookwood Necropolis Act 1901* and the regulations under that Act.

Schedule 1 Amendment of Crown Lands Act 1989

Proposed clause 52 abolishes the Joint Committee of Necropolis Trustees

Rookwood Necropolis Repeal Bill 2009

(established under the 1901 Act) and the Rookwood Necropolis Trust (a reserve trust recently established under the 1989 Act) and removes the members of those bodies from office.

Proposed clause 53 establishes a new Rookwood Necropolis Trust as a reserve trust for the lands in the Rookwood Necropolis that are not currently managed by a reserve trust. The new trust is taken to be a continuation of, and the same legal entity as, the existing Joint Committee, and is to take over the assets, rights and liabilities of the existing Rookwood Necropolis Trust.

Proposed clause 54 preserves the effect of any dedications, appointments and vestings that currently depend on provisions of the 1901 Act.

Proposed clause 55 preserves existing obligations under the 1901 Act with respect to the payment of certain contributions, fees and other amounts and the provision of certain information.

Proposed clause 56 provides that the general crematorium lease referred to in the 1901 Act is taken to be a lease granted under section 34A of the 1989 Act, and preserves certain rights of appeal that are provided for under section 8E of the 1901 Act with respect to the valuations that are made for the purpose of determining the rent payable under that lease.

Partial revocation of dedications

Schedule 1 [1] amends section 84 so as to enable a dedication of land under the 1989 Act to be revoked in relation to part only of that land. Currently, a dedication can be revoked in relation only to the whole of the dedicated land. This amendment will bring section 84 into line with section 90 (which deals with the revocation of reservations under the 1989 Act).

Payment between reserve trusts

Schedule 1 [2] amends section 128 so as to enable the by-laws to make provision with respect to the payments to be made from one reserve trust to another. The proposed amendment is intended to support certain provisions of the new Division 3 that is proposed to be inserted into Part 3 of the *Crown Lands (General Reserves) By-law 2006* (see **Schedule 2 [1]**).

Recovery of debts owed to reserve trusts

Schedule 1 [4] amends section 147 so as to enable a reserve trust to commence debt recovery proceedings against those persons who owe money to it under the 1989 Act or the by-laws. This amendment will ensure that the Rookwood Necropolis Trust has the same means of enforcing the debts owed to it as the Joint Committee currently has under section 36A of the 1901 Act. **Schedule 1 [3]** makes a consequential amendment to section 147 (1).

Schedule 2 Amendment of Crown Lands (General Reserves) By-law 2006

Special provisions concerning the Rookwood Necropolis

Schedule 2 [1] inserts a new Division 3 into Part 3. The proposed Division contains the following provisions:

Proposed clause 41B provides for the payment of contributions to the Rookwood Necropolis Trust by the various denominational trusts that manage cemeteries within the Rookwood Necropolis. The clause replicates section 20B of the 1901 Act, except that the contributions are in future to be made in relation to the financial year commencing 1 July.

Proposed clause 41C requires denominational trusts that operate crematoria in the Rookwood Necropolis to pay fees to the Rookwood Necropolis Trust for each cremation they carry out. The clause replicates section 20G of the 1901 Act.

Proposed clause 41D requires denominational trusts that carry out interments or cremations in the Rookwood Necropolis to provide information in that regard to the Rookwood Necropolis Trust. The clause replicates section 20H of the 1901 Act.

Extension of by-law to the Rookwood Necropolis

Schedule 2 [3] amends Part 2 of Schedule 1 so as to apply the *Crown Lands (General Reserves) By-law 2006* to the various cemeteries and crematoria within the Rookwood Necropolis. **Schedule 2 [2]** makes a further amendment consequent on the repeal of the 1901 Act.

Issues Considered by the Committee

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

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

6. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee accepts the advice received from the Department of Lands that it is necessary to commence the proposed amendments on proclamation as the existing Boards of Trustee's terms do not expire until 30 June 2009. The new Rookwood Necropolis Trust is then due to commence on 3 July 2009.

<p>7. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i>.</p>

The Committee makes no further comment on this Bill.

10. RURAL LANDS PROTECTION AMENDMENT BILL 2009

Date Introduced:	3 June 2009
House Introduced:	Legislative Council
Minister Responsible:	Hon Ian MacDonald MLC
Portfolio:	Primary Industries

Purpose and Description

1. This Bill amends the *Rural Lands Protection Act 1998* and the *Rural Lands Protection Amendment Act 2008* to make further provision with respect to rates; and for other purposes.
2. It aims to bring changes to the Livestock Health and Pest Authorities rating system. Currently, the Minister for Primary Industries has a supervisory role in relation to the State Management Council. The Minister's role is only in relation to the functions of the State Management Council. Rate setting rests with the individual authorities, so the Minister for Primary Industries, has no control.
3. The first amendments will give the Minister for Primary Industries the power to approve all rates set by authorities and the State Management Council. The second amendments will defer replacing notional carrying capacity with an amount payable per hectare.
4. The first amendment addresses the issue that there is at present, no specific provision in the Act for the Government, or the Minister for Primary Industries, to approve rates set by authorities or the State Management Council. Providing this level of ministerial oversight aims to ensure rate increases are equitable and fair, and that excessive increases are avoided in the future.
5. The second amendment will provide ratepayers and the authorities with more time to adjust to the significant reforms to the system. It will also allow authorities time to plan their approach to setting rates and to provide a smooth transition to calculating rates on a per hectare basis in the future.

Background

6. The Bill aims to prevent excessive rate increases in the future and protect the gains brought about by recent reforms to the Livestock Health and Pest Authorities system. The reforms were the result of amendments made to the *Rural Lands Protection Act 1998*, which were passed by this Parliament in December last year. These reforms were directed at improving the long-term viability and ensuring the relevance of the system. The reforms were the result of two independent reviews of the Act.
7. The first review was the New South Wales Rural Lands Protection Board System Review 2008. This review of the board system was commissioned by the State Council of the then Rural Lands Protection Boards. The review was presented to the New South Wales Government in June 2008. The second review was the Rural Lands Protection Boards Rating System, undertaken by the Hon Richard Bull, which was completed in July 2007.

Rural Lands Protection Amendment Bill 2009

Ratepayers and members of the board system were consulted. Public meetings and workshops were held and submissions were received in response to the two reviews. Key stakeholders included the New South Wales Farmers Association, catchment management authorities, Animal Health Australia and the Department of Lands.

8. The majority of the amendments resulting from the 2008 Bill commenced on 1 January 2009, and have resulted in major structural and operational changes to the former Rural Lands Protection Board system established under the Act. As part of these reforms, the 47 boards were amalgamated into 14 Livestock Health and Pest Authorities. These reforms also included changes to the rating system to make the system more equitable and easier to understand for ratepayers. These changes implemented recommendations made in the Bull's report on the rating system.
9. Some of these changes came into effect this year. This included abolishing minimum rates and increasing the minimum rateable area to 10 hectares. Changes to the Act allowed authorities to set rates consisting of a base amount and an amount payable based on the total notional carrying capacity of the land. The changes also provided authorities with the capacity to rate differentially by choosing to set different rates for the former board districts that were amalgamated into the new authorities. The Livestock Health and Pest Authorities system is mostly funded by ratepayers. This allows the system to provide a range of vital services to the rural community. These services include administering the control of declared pest animals and insects, providing animal health services, managing travelling stock reserves, administering stock identification systems and locally administering drought and other natural disaster relief.
10. According to the Second Reading speech, a few of the authorities raised rates this year beyond recent consumer price index levels. Eight of the 24 authorities across the State kept rate increases below the consumer price index, including one authority that decreased its rates, however, a minority have imposed excessive increases on their ratepayers. The overall increase in total rates collected from 2008 to 2009 was 5.45 per cent—from \$27.5 million to \$29.0 million. However, three authorities raised rates far beyond the consumer price index levels. Cumberland increased its rates by 25.59 per cent, the mid coast by 23.26 per cent and the North Coast by 9.02 per cent.
11. The reintroduction of the special purpose pest insect levy in 2009 also added to the perception of significant rate increases. The Second Reading speech stated that this levy had nothing to do with changes brought by amendments to the Act last year. The levy is vital in fighting against pest insects such as the Australian plague locust. Money collected is paid into the Pest Insect Destruction Fund, which contributes to the costs of plague locust control campaigns and the Australian Plague Locust Commission. The 2008-09 plague locust control campaign is estimated to have cost approximately \$4.7 million. Due to the drought, the levy was deferred over three years from 2006 to 2008. The Speech referred to the shortfall from deferring the levy as being funded by way of loans from the Government.
12. The Second Reading Speech stated the following in respect of this Bill:

Throughout these changes, the system has retained at its core an independence from Government, and has provided an effective forum for local decision making to be done at the farm gate level. However, based on what has unfolded this year and the clear lack of judgement by a minority of authorities in setting rates, it is evident that this autonomy at the local level needs to be balanced with a degree of ministerial oversight of rates. This is a fine balance and it is important to get this right. It is vital that any changes retain the core element

Rural Lands Protection Amendment Bill 2009

of the Livestock Health and Pest Authorities system, this being its independence from Government and autonomy at the local level. This Bill delivers this balance. This legislation responds to the concerns of rural communities and ratepayers in New South Wales for ministerial oversight of rates.

The Bill

13. The Review of the Rural Lands Protection Boards Rating System carried out by Mr Richard Bull recommended that a number of changes be made to the rating system under the Rural Lands Protection Act 1998 (**the Principal Act**). The Rural Lands Protection Amendment Act 2008 (**the 2008 amending Act**) contained amendments relating to rating in response to that review. That Act provided that those amendments were to commence in two rounds: one round on 1 January 2009 and a second round on 1 January 2010. The amendments that commenced on 1 January 2009:

- (a) abolished minimum rates, and
- (b) increased the minimum rateable area to 10 hectares, and
- (c) made provision (as a transitional measure) for the making of rates during the 2009 calendar year.

14. The amendments due to commence on 1 January 2010:

- (a) remove the concept of “notional carrying capacity” of land (being the number of stock that the relevant livestock health and pest authority assessed could be maintained on the land) as the basis for the making and levying of rates, and
- (b) provide that rates may consist of a base amount and an amount calculated on a per hectare basis, and
- (c) provide that livestock health and pest authorities may, in accordance with any regulations under the Principal Act or any guidelines given by the State Management Council of Livestock Health and Pest Authorities (**the State Council**), if any, divide their districts into zones and make and levy different rates for different zones, and
- (d) make amendments to the *Agricultural Livestock (Disease Control Funding) Act 1998* and the *Meat Industry Act 1978* consequent on the abolition of the concept of notional carrying capacity of land.

15. The objects of this Bill are as follows:

- (a) to amend the Principal Act to provide that a rate made by a livestock health and pest authority does not have effect until it is approved by the Minister administering the Act (currently the Minister for Primary Industries) (**the Minister**),
- (b) to amend the 2008 amending Act to postpone the commencement of the amendments that were due to commence on 1 January 2010 to a date to be proclaimed,
- (c) to amend the Principal Act to make provision (as a transitional measure) for the making of rates until the commencement of the postponed provisions,
- (d) to make other amendments to the Principal Act of a savings or transitional nature.

16. Outline of provisions

Schedule 1 Amendment of rural lands protection legislation

Schedule 1.1 *Rural Lands Protection Act 1998* No 143

Schedule 1.1 [1] inserts proposed section 62 (3A) into the Principal Act to provide that a rate does not have effect until it is approved by the Minister. **Schedule 1.1 [3]** inserts proposed clause 48 into Schedule 7 (Savings and transitional provisions) to the Principal Act to provide that proposed section 62 (3A) applies only to a rate made after the commencement of that proposed subsection.

Schedule 1.1 [3] also inserts proposed clause 49 into Schedule 7 (Savings and transitional provisions) to the Principal Act. Proposed clause 49 (which is to commence on 1 January 2010 and cease to have effect on the commencement of the postponed provisions):

- (a) continues in force certain transitional provisions that applied to rating in the 2009 calendar year (see clause 44 of Schedule 7 (Savings and transitional provisions) to the Principal Act), and
- (b) brings into effect the proposed power of a livestock health and pest authority to divide its district into zones and make and levy different rates for different zones (see proposed section 62 (6) in Schedule 4 [4] to the 2008 amending Act).

More specifically, proposed clause 49 provides that:

- (a) a rate may consist of a base amount and an amount payable for each stock unit based on the total notional carrying capacity of rateable land in the district, and
- (b) a livestock health and pest authority may, in accordance with the regulations under the Principal Act, if any, do either or both of the following:
 - (i) divide its district into zones and make and levy different rates for different zones,
 - (ii) make and levy different rates for the different constituent parts of its district (being the divisions of districts and parts of divisions of districts that have been amalgamated to constitute the district).

Schedule 1.2 Rural Lands Protection Amendment Act 2008 No 112

Schedule 1.2 amends section 2 of the 2008 amending Act to provide that Schedule 4 [1], [2] and [4]–[8] and Schedule 6.1 [1], [4], [5] and [7] and Schedule 6.19 [1] and [2] to that Act (being amendments relating to rating) are to commence on a day or days to be appointed by proclamation rather than 1 January 2010.

Issues Considered by the Committee

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

Issue: Schedule 1.2 – amends section 2 of Rural Lands Protection Amendment Act 2008 No 112 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

17. The Committee notes that the proposed Schedule 1.2 amends section 2 of the 2008 amending Act to provide that Schedule 4 [1], [2] and [4]–[8] and Schedule 6.1 [1], [4], [5] and [7] and Schedule 6.19 [1] and [2] to that Act (being amendments relating to rating) are to commence on a day or days to be appointed by proclamation rather than 1 January 2010. This may delegate to the government the power to commence those parts of the 2008 amending Act on whatever day it chooses or not at all.

18. However, the Committee accepts the reasons provided in the Second Reading speech as the amendment will defer replacing notional carrying capacity with an amount payable per hectare so that it “will provide ratepayers and the authorities with more time to adjust to the significant reforms to the system. It will also allow authorities time to plan their approach to setting rates and to provide a smooth transition to calculating rates on a per hectare basis in the future, which was the result of these inquiries”.

19. The Committee accepts the above reasons and has not identified any issues identified under s 8A(1)(b)(iv) of the Legislation Review Act 1987.

The Committee makes no further comment on this Bill.

11. STATE EMERGENCY AND RESCUE MANAGEMENT AMENDMENT BILL 2009

Date Introduced:	5 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Steve Whan MP
Portfolio:	Emergency Services

Purpose and Description

1. This Bill amends the *State Emergency and Rescue Management Act 1989* (the principal Act) to provide for the appointment of a State Emergency Recovery Controller; and for other purposes. The Bill aims to improve and streamline emergency recovery arrangements in New South Wales.
2. The amendments contained within the Bill create two new statutory positions: the State Emergency Recovery Controller, known as “SERCon”; and the Deputy State Emergency Recovery Controller.
3. The SERCon, appointed by the Minister for Emergency Services, is to be an existing member of the New South Wales Senior Executive Service with experience in emergency management. The SERCon will also become a member of the State Disaster Council and the State Emergency Management Committee.
4. According to the agreement in principle speech, the SERCon’s primary roles are to create a sustainable emergency recovery capability for New South Wales and to control the recovery from an emergency that affects more than one district or for which he or she assumes responsibility.
5. The deputy SERCon is also to be an existing member of the New South Wales Senior Executive Service or senior officer, also with experience in emergency management.
6. The agreement in principle speech indicates that the SERCon will bring together the relevant government agencies and organisations to ensure the necessary services and assistance are provided in a coordinated and timely manner. In addition to the power to engage with State government agencies, the SERCon will be able to liaise with industry, non-government organisations and local and Commonwealth government as needed to address issues that arise.

Background

7. The agreement in principle speech notes that responsibility for recovery planning and management has been diffused across different organisations and committees with no clear lines of accountability or chains of command. This Bill streamlines and formalises existing mechanisms for providing government support in times of emergencies by defining a State official who is responsible for emergency recovery.

8. According to the agreement in principle speech, “these clear lines of responsibility created by the amendments to the principal Act are essential to ensure that recovery support is provided in a coordinated and consistent manner, rather than as an ad hoc response to each individual disaster.”
9. The legislative amendments contained in the Bill will be reflected in amendments to detail the new recovery arrangements in the New South Wales State Disaster Plan and its subordinate plans. The agreement in principle speech notes that these reforms will ensure that communities devastated by natural disasters and other emergencies continue to receive the full cooperation and support of government and other agencies to overcome the damage and hardship they may have suffered.

The Bill

Schedule 1 [1] amends section 3 of the principal Act to include definitions for the terms **State Emergency Recovery Controller** (being the State Emergency Recovery Controller appointed under proposed section 20A) and **recovery agency** (being an agency identified in the State Disaster Plan as the agency primarily responsible for controlling the recovery from an emergency).

Schedule 1 [2] amends section 10 of the principal Act to provide that the State Emergency Recovery Controller exercises his or her functions under the principal Act subject to the control and direction of the Minister.

Schedule 1 [3] amends section 10 (4) of the principal Act to provide that the Minister may delegate certain functions under the principal Act to the State Emergency Recovery Controller.

Schedule 1 [4] amends section 11 of the principal Act to provide that the State Emergency Recovery Controller is to be a member of the State Disasters Council.

Schedule 1 [5] amends section 12 of the principal Act to provide that the State Disaster Plan is to specify the responsibilities of the State Emergency Recovery Controller.

Schedule 1 [6] amends section 14 of the principal Act to provide that the State Emergency Recovery Controller is to be a member of the State Emergency Management Committee.

Schedule 1 [8] inserts proposed Subdivision 5 (proposed sections 20A and 20B) in Division 1 of Part 2 of the principal Act.

Proposed section 20A provides that the Minister may appoint:

- (a) a senior executive officer, with experience in emergency management, as the State Emergency Recovery Controller, and
- (b) a senior executive officer or senior officer, with experience in emergency management, as the Deputy State Emergency Recovery Controller, to exercise the functions of the State Emergency Recovery Controller during any absence of, or vacancy in the office of, the State Emergency Recovery Controller.

Proposed section 20B makes provision for the responsibilities and functions of the State Emergency Recovery Controller. In particular, the section deals with the following matters:

- (a) the circumstances in which the State Emergency Recovery Controller is responsible for the recovery from an emergency,
- (b) the circumstances in which the State Emergency Recovery Controller may assume responsibility for the recovery from an emergency when the State Disaster Plan designates a recovery agency with primary responsibility for controlling the recovery from the emergency,
- (c) the authority of the State Emergency Recovery Controller to issue directions to certain agencies and appoint officers to control particular activities of certain agencies, where the State Emergency Recovery Controller is responsible for controlling the recovery from an emergency.

Schedule 1 [7] and [9]–[11] make consequential amendments.

Schedule 1 [12] and [13] make minor amendments in the nature of statute law revision.

Schedule 1 [14] amends clause 1 of Schedule 4 to the principal Act to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Issues Considered by the Committee

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

SECTION B: MINISTERIAL CORRESPONDENCE

1. PARKING SPACE LEVY BILL 2009

Date introduced:	11 March 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Transport

Background

1. The Parking Space Levy Regulation 2009 is contained within Schedule 2 of the Parking Space Levy Bill 2009. The Committee reported on this bill/regulation in *Digest 3 of 2009*.
2. The Committee noted its concern in *Digest 3 of 2009* that because the regulation had been included within the bill that it was not subject to the requirements of section 5 of the *Subordinate Legislation Act 1989* and that a Regulatory Impact Statement (RIS) had not been prepared. In particular, the Committee indicated concern over the lack of cost benefit analysis and stakeholder scrutiny.
3. At its meeting of 23 March 2009, the Committee resolved to write to the Minister and ask why the standard regulation making process had not been followed in this instance.

Minister's Reply

4. The Minister wrote his reply in a letter received on 26 May 2009:

The matters addressed under the Parking Space Levy Bill 2009 have undergone an extensive public consultation process. This involved the release of a Discussion Paper in December 2003 and the staging of a number of public forums with key stakeholder groups. A series of public forums with stakeholder groups were conducted in early 2004. Approximately 230 written submissions have been received, of which 168 submissions were from residents or residential property owners within the City of Sydney Local Government Area.

The result of the consultation process was that the *Parking Space Levy Act 1992* and the *Parking Space Levy Regulation 1997* were found to be generally meeting their objectives. However, opportunities for minor improvements were identified in a number of areas, which have now been adopted by the Government.

The amendments introduced by the Parking Space Levy Bill 2009 (ie clarification of the definitions contained in legislation, consolidation of all exemptions in one place in the legislation, clarification of the boundaries) have been considered as matters of a minor nature that will enhance the administrative efficiency of the Parking Space Levy legislation, benefiting the Government and stakeholders.

Committee's Response

5. The Committee acknowledges the extensive consultation process undertaken by the Department of Transport in 2003/2004 as referred to in the letter received 26 May 2009. However, the Committee is always concerned when a RIS is not undertaken pursuant to section 5 of the *Subordinate Legislation Act 1989*. In particular, the Committee has some

concerns about the lack of cost benefits analysis of the Parking Space Levy Regulation 2009.

6. The Committee thanks the Minister for his reply.



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

The Hon David Campbell MP
Minister for Transport
GPO Box 5341
SYDNEY NSW 2000

23 March 2009

Dear Minister,

Parking Space Levy Bill 2009

The Committee has considered this Bill in relation to its functions under the *Legislation Review Act 2003* and noted that the accompanying regulation has been included within Schedule 2 of the Bill.

As part of its responsibilities under Section 9(vii) of the *Legislation Review Act 2003* the Committee is always concerned when a Regulatory Impact Statement (RIS) has not been undertaken in accordance with Section 5 of the *Subordinate Legislation Act 1989*.

The Committee would like to inquire into the reasons why the normal RIS process was not followed in this instance and why the decision was made to include the regulation in the Bill.

Thank you for your attention to this matter. Should you have any queries please contact Catherine Watson, Committee Manager, on 9230 2036 or Catherine.Watson@parliament.nsw.gov.au

Yours sincerely,

A handwritten signature in blue ink that reads 'Allan Shearan'.

Allan Shearan MP
Chair



David Campbell
Minister for Transport
Minister for the Illawarra

Mr Allan Shearan MP
Chair, Legislation Review Committee
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000



Dear Mr Shearan,

I refer to your correspondence of 23 March 2009, in relation to the Parking Space Levy Bill 2009.

The matters addressed under the Parking Space Levy Bill 2009 have undergone an extensive public consultation process. This involved the release of a Discussion Paper in December 2003 and the staging of a number of public forums with key stakeholder groups. A series of Public Forums with stakeholder groups were conducted in early 2004. Approximately 230 written submissions have been received, of which 168 submissions were from residents or residential property owners within the City of Sydney Local Government Area.

The result of the consultation process was that the *Parking Space Levy Act 1992* and *Parking Space Levy Regulation 1997* were found to be generally meeting their objectives. However, opportunities for minor improvements were identified in a number of areas, which have now been adopted by the Government.

The amendments introduced by the Parking Space Levy Bill 2009 (ie. clarification of definitions contained in legislation, consolidation of all exemptions in one place in the legislation, clarification of the boundaries) have been considered as matters of a minor nature that will enhance the administrative efficiency of the Parking Space Levy legislation, benefiting the Government and stakeholders.

I trust this clarifies the matter.

Yours sincerely

David Campbell MP
Minister for Transport
Minister for the Illawarra

25 MAY 2009

All Correspondence to:
GPO Box 5344
Sydney NSW 2001
david@campbell.minister.nsw.gov.au

Ground Floor
84 Crown St, Wollongong NSW 2500
Ph: +61 2 4229 5744
Fax: +61 2 4229 9113

Level 35, Governor Macquarie Tower
1 Farrer Place, Sydney NSW 2000
Ph: +61 2 9228 3777
Fax: +61 2 9228 3722

2. TOW TRUCK INDUSTRY REGULATION 2008

Date of Gazette:	22 August 2008
Commencement:	1 September 2008
Minister Responsible:	Hon Michael Daley MP
Portfolio:	Roads

Background

1. The Committee reported on this Regulation in its Legislation Review *Digest* 10 of 2008. This Regulation commenced on 1 September 2008.
2. At its meeting of 22 September 2008, the Committee also resolved to write to the Minister and draw attention to the useful nature of a Regulatory Impact Statement (RIS) to identify costs arising from this Regulation.

Minister's Reply

3. The Minister wrote his reply in a letter received on 26 May 2009:

Thank you for your letter of 24 September 2008 about the Tow Truck Industry Regulation 2008.

The Roads and Traffic Authority (RTA) advises it will examine systems to monitor any costs to industry associated with the new provisions.

As discussed in the Regulatory Impact Statement, costs to industry are expected to be minimal and some of the reforms will lead to a reduction in industry costs.

Committee's Response

4. **The Committee thanks the Minister for his reply.**



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

The Hon Michael Daley MP
Minister for Roads
Level 31, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Tow Truck Industry Regulation 2008
Our Ref: LRC 2866

The Legislation Review Committee at its meeting on 22 September 2008 examined this Regulation and resolved to draw your attention to certain observations of the Committee in regard to the costing of the regulatory proposal.

The Regulatory Impact Statement (RIS) contained a satisfactory identification of the objectives sought to be achieved by the proposal and these were usefully set in the context of the legislative framework governing the tow truck industry.

Where costs were discussed the RIS considered they would be minimal and a necessary part of such a scheme. The Committee nevertheless believes that it would be useful for your administration to put in place some form of monitoring of costs arising out of the new provisions so as to identify any procedures that might need to be modified to further improve their operation.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Allan Shearan'.

Allan Shearan MP
Chair



Minister for Roads

Mr Allan Shearan MP
Chair
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000



M08/8812

21 MAY 2009

Dear Mr Shearan *Alan*

Thank you for your letter of 24 September 2008 about the *Tow Truck Industry Regulation 2008*.

The Roads and Traffic Authority (RTA) advises it will examine systems to monitor any costs to industry associated with the new provisions.

As discussed in the Regulatory Impact Statement, costs to industry are expected to be minimal and some of the reforms will lead to a reduction in industry costs.

Yours sincerely

Michael Daley MP
Minister

Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Tel (02) 9226 5665 Fax (02) 9223 5699 Email: office@daley.minister.nsw.gov.au

Appendix 1: Index of Bills Reported on in 2009

	Digest Number
Appropriation (Budget Variations) Bill 2009	4
Associations Incorporation Bill 2009	2
Barangaroo Delivery Authority Bill 2009	2
Biofuel (Ethanol Content) Amendment Bill 2009	3
Children and Young Persons (Care and Protection) Amendment Bill 2009	6
Children and Young Persons (Care and Protection) Amendment (Children's Employment) Bill 2009	2
Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009	2
Civil Procedure Amendment (Transfer of Proceedings) Bill 2009	6
Coroners Bill 2009	8
Courts and Other Legislation Amendment Bill 2009	8
Crimes (Administration of Sentences) Amendment (Private Contractors) Bill 2009	2
Crimes (Appeal and Review) Amendment Bill 2009	2
Crimes (Criminal Organisations Control) Bill 2009	5
Crimes (Forensic Procedures) Amendment Bill 2009	7
Crimes (Sentencing Procedure) Amendment (Council Law Enforcement Officers) Bill 2009	5
Criminal Legislation Amendment Bill 2009	6
Criminal Organisations Legislation Amendment Bill 2009	6
Education Amendment Bill 2009	3
Education Amendment (Educational Support For Children With Significant Learning Difficulties) Bill 2008*	1
Electricity Supply Amendment (Energy Savings) Bill 2009	7
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	8
Energy Legislation Amendment (Infrastructure Protection) Bill 2009	7

	Digest Number
Food Amendment (Meat Grading) Bill 2008*	1
Game and Feral Animal Control Amendment Bill 2009	8
Garling Inquiry (Clinician and Community Council) Bill 2009*	5
Gas Supply Amendment (Ombudsman Scheme) Bill 2009	5
Greyhound Racing Bill 2009	5
Harness Racing Bill 2009	5
Hawkesbury-Nepean River Bill 2009	4
Health Legislation Amendment Bill 2009	4
Heritage Amendment Bill 2009	7
Home Building Amendment (Insurance) Bill 2009	6
Hurlstone Agricultural High School Site Bill 2009	3, 6
Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009	4
Land Acquisition (Just Terms Compensation) Amendment Bill 2009	7
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	2
Liquor Amendment (Special License) Conditions Bill 2008	1
Mining Amendment (Safeguarding Land And Water) Bill 2009*	7
Motor Accidents Compensation Amendment Bill 2009	6
Motor Accidents (Lifetime Care And Support) Amendment Bill 2009	7
NSW Lotteries (Authorised Transaction) Bill 2009	8
NSW Trustee and Guardian Bill 2009	8
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	2
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	8
Parking Space Levy Bill 2009	3
Racing Legislation Amendment Bill 2009	5

	Digest Number
Real Property and Conveyancing Legislation Amendment Bill 2009	4
Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009	8
Rookwood Necropolis Repeal Bill 2009	8
Rural Lands Protection Amendment Bill 2009	8
State Emergency and Rescue Management Amendment Bill 2009	8
Surveillance Devices Amendment (Validation) Bill 2009	4
Succession Amendment (Intestacy) Bill 2009	5
Telecommunications (Interception and Access) (New South Wales) Amendment Bill 2008	1
Transport Administration Amendment (CountryLink Pensioner Booking Fee Abolition) Bill 2009	3
Western Lands Amendment Bill 2008	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1		
Civil Liability Legislation Amendment Bill 2008	Attorney General	28/10/08			12	
Contaminated Land Management Amendment Bill 2008	Minister for Climate Change and the Environment	22/09/08	03/12/08		10	1
Crimes (Administration of Sentences) Amendment Bill 2008	Attorney General and Minister for Justice	2/12/07			15	
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	6/02/09		9	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07	13/2/09	1		2
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1	
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning		12/06/08		8	
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7		
Home Building Amendment	Minister for Fair Trading		30/10/08		10, 13	
Liquor Legislation Amendment Bill 2008	Minister for Gaming and Racing	24/11/08	5/01/09		14	2
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07	22/01/09	1		2
Parking Space Levy Bill 2009	Minister for Transport	23/03/09	26/05/09			3, 8
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1, 2		
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1		
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2009

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Associations Incorporation Bill 2009		N, R			N, R
Barangaroo Delivery Authority Bill 2009	N				
Biofuel (Ethanol Content) Amendment Bill 2009	N			N	N, R
Courts and Other Legislation Amendment Bill 2009	R, N				
Crimes (Criminal Organisations Control) Bill 2009	R, N		R		
Crimes (Forensic Procedures) Amendment Bill 2009	N				
Criminal Legislation Amendment Bill 2009		N			
Criminal Organisations Legislation	R, N			N	
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	N				
Game and Feral Animal Control Amendment Bill 2009	R, N				
Gas Supply Amendment (Ombudsman Scheme) Bill 2009				N	
Greyhound Racing Bill 2009				N	
Harness Racing Bill 2009				N	
Hawkesbury-Nepean River Bill 2009				N	
Health Legislation Amendment Bill 2009	N				
Heritage Amendment Bill 2009	N			N, R	
Home Building Amendment (Insurance) Bill 2009	N				
Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009				N	
Land Acquisition (Just Terms Compensation) Amendment Bill 2009	N				
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	N, R, C	R			
Liquor Amendment (Special Licence) Conditions Bill 2008				N, R	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Motor Accidents Compensation Amendment Bill 2009				N	
NSW Lotteries (Authorised Transaction) Bill 2009	R, N				
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	N		N	N	
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	R, N				
Parking Space Levy Bill 2009				N	N, C
Racing Legislation Amendment Bill 2009				N	
Real Property and Conveyancing Legislation Amendment Bill 2009	N, R				
Succession Amendment (Intestacy) Bill 2009	N			N	
Surveillance Devices Amendment (Validation) Bill 2009	N, R				
Western Lands Amendment Bill 2008				R	

Key

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

Appendix 4: Index of correspondence on regulations

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008	Digest 2009
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12	
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08	5/01/09	10	2
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10	