

PARLIAMENT OF NEW SOUTH WALES



# **Legislation Review Committee**

## LEGISLATION REVIEW DIGEST

---

No 2 of 2004

---

24 February 2004

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, 2004, 44 p; 30cm

Chair: Barry Collier MP

24 February 2004

ISSN 1448-6954

1. Legislation Review Committee—New South Wales
2. Legislation Review Digest No 2 of 2004

I Title.

II Series: New South Wales. Parliament. Legislative Assembly. Legislation Review Committee Digest; no. 2 of 2004

## TABLE OF CONTENTS

Membership & Staff .....	ii
Functions of the Legislation Review Committee.....	iii
<b>Part One – Bills.....</b>	<b>1</b>
<b>SECTION A: Comment on Bills.....</b>	<b>1</b>
1. Animal Diseases Legislation Amendment (Civil Liability) Bill 2004.....	1
2. Education Amendment (Non-Government Schools Registration) Bill 2004 .....	4
3. Freedom Of Information (Terrorism And Criminal Intelligence) Bill 2004.....	8
4. National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004.....	13
5. Public Lotteries Legislation Amendment Bill 2004 .....	17
6. The Synod of Eastern Australia Property Amendment Bill 2004 .....	21
7. Wool, Hide And Skin Dealers Bill 2004 .....	23
<b>SECTION B: Responses to Previous Digests .....</b>	<b>29</b>
8. Ministerial Correspondence — Electricity Consumer Safety Bill 2004.....	29
<b>Part Two – Regulations .....</b>	<b>34</b>
<b>SECTION A: Regulations about which the Committee is Seeking Further Information.....</b>	<b>34</b>
Appendix 1: Index of Bills Reported on in 2004 .....	35
Appendix 2: Index of Ministerial Correspondence on Bills from September 2003 .....	36
Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2004.....	38
* Denotes Private Member’s Bill	

## MEMBERSHIP & STAFF

### Chairman

**Barry Collier MP, Member for Miranda**

### Vice Chairman

**Marianne Saliba MP, Member for Illawarra**

### Members

**Shelley Hancock MP, Member for South Coast**

**Don Harwin MLC**

**Virginia Judge MP, Member for Strathfield**

**Peter Primrose MLC**

**Russell Turner MP, Member for Orange**

**Peter Wong MLC**

### Staff

Russell Keith, Committee Manager

Indira Rosenthal, Project Officer

Mel Keenan, Project Officer

Rachel Dart, Committee Officer

Cathy Brown, Assistant Committee Officer

### Panel of Legal Advisers

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

Professor Phillip Bates

Mr Simon Bronitt

Dr Steven Churches

Dr Anne Cossins

Professor David Farrier

Mr John Garnsey QC

Associate Professor Luke McNamara

Ms Rachel Pepper

Mr Rohan Price

Ms Diane Skapinker

Ms Jennifer Stuckey-Clarke

Professor George Williams

### Contact Details

Legislation Review Committee

Legislative Assembly

Parliament House

Macquarie Street

Sydney NSW 2000

### Telephone

02 9230 3418

### Facsimile

02 9230 3052

### Email

[legislation.review@parliament.nsw.gov.au](mailto:legislation.review@parliament.nsw.gov.au)

### URL

[www.parliament.nsw.gov.au/lrc/digests](http://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.



## Part One – Bills

### SECTION A: COMMENT ON BILLS

# 1. ANIMAL DISEASES LEGISLATION AMENDMENT (CIVIL LIABILITY) BILL 2004

Date Introduced:	18 February 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Ian Macdonald MLC
Portfolio:	Agriculture and Fisheries

### Purpose and Description

1. The object of this Bill is to amend the *Exotic Diseases of Animals Act 1991* (EDAA) and the *Stock Diseases Act 1923* (SDA) to provide persons who disclose information that they are required to disclose under those Acts with protection from civil liability for such disclosures.

### Background

2. According to the Parliamentary Secretary's second reading speech, the matters addressed in the Bill have arisen primarily as a result of concerns raised by stock and station agents about their exposure to civil liability arising from disclosing information required under the *Stock Diseases Act 1923*.<sup>1</sup>

At present the only legislative protection from civil liability under the Act is in respect of notification of diseases. The amendment in this bill will further protect a person when he or she is required to disclose information under either the *Stock Diseases Act 1923* or the *Exotic Diseases of Animal Act 1991*.<sup>2</sup>

3. The EDAA and SDA include provisions requiring a person:
  - who is in charge or control of an animal suspected of having an exotic disease, or is consulted in relation to an animal suspected of having an exotic disease, to notify an inspector [s 7 EDAA];
  - to answer any question asked by an inspector, or produce any record or other document, that the inspector reasonably believes may provide information bearing on the prevention, control or eradication of an exotic disease [s 43 EDAA]; and
  - to answer any questions asked by an inspector regarding any stock or carcass which is infected or which the inspector suspects to be or to have been infected, any stock which in the opinion of the inspector is straying, any fodder

<sup>1</sup> Mr Joseph Tripodi MP, *NSW Parliamentary Debates (Hansard)*, Legislative Assembly, 18 February 2004.

<sup>2</sup> Mr Joseph Tripodi MP, *NSW Parliamentary Debates (Hansard)*, Legislative Assembly, 18 February 2004.

which is or fittings which are contaminated with disease or which the inspector suspects to have been so contaminated or any stock, carcass, fodder or fittings in respect of which, in the opinion of the inspector, an offence against the Act or the regulations has been committed, or produce any record in relation to such a question [s 7A SDA].

4. Section 9 of the SDA also requires a range of persons to give notice in relation to diseased stock. However, s 9A of that Act provides:

The notification of a disease as required by section 9 does not subject the person notifying the disease to any civil liability arising from any confidentiality of the matters required to be notified.

5. According to the second reading speech:

The unfettered supply of information such as that required under the *Stock Diseases Act 1923* and the *Exotic Diseases of Animals Act 1991* to the bodies responsible for disease surveillance, such as the rural lands protection boards and NSW Agriculture, is essential in order to safeguard the integrity of our livestock slaughtering and livestock product industry, the gross value of which in 2000-01 was \$8,837.1 million for New South Wales and \$33,546.1 million for Australia.<sup>3</sup>

## The Bill

6. The Bill inserts a new section into both the EDAA and the SDA providing that if a person is required under the Act to provide any information, the provision of that information by the person does not subject the person personally to any action, liability, claim or demand [proposed s 75A EDAA and s 22B SDA].
7. The new provisions apply to information provided before the commencement of the sections, but do not extend to proceedings in respect of the provision of such information that were brought before that commencement.
8. The Bill commences on assent.

## Issues Considered by the Committee

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

#### Right to compensation: Proposed s 75A EDAA & s 22B SDA

9. Protecting a person who discloses information from civil liability prevents another person who suffers loss as a result of that disclosure from recovering compensation to which they would have otherwise been entitled.
10. However, it is apparent that not granting such protection may put a person who makes a disclosure in the intolerable situation of incurring liability to a third person for giving information that the law compels them to give.
11. The Committee further notes the significant public interest in the relevant authority being able to obtain information regarding exotic and stock diseases.

---

<sup>3</sup> Mr Joseph Tripodi MP, *NSW Parliamentary Debates (Hansard)*, Legislative Assembly, 18 February 2004.



**12. In the circumstances, the Committee does not consider that the provisions unduly trespass on personal rights and liberties.**

*The Committee makes no further comment on this Bill.*

## 2. EDUCATION AMENDMENT (NON-GOVERNMENT SCHOOLS REGISTRATION) BILL 2004

Date Introduced:	18 February 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Dr Andrew Refshauge MP
Portfolio:	Education & Training

### Purpose and Description

1. The object of this Bill is to amend the *Education Act 1990* (the Act) to provide more rigorous standards for registration of non-government schools by:
  - enhancing the criteria for the registration of non-government schools, including new requirements relating to teaching staff standards and annual public reporting;
  - reducing, from 2 years to 12 months, the maximum period for which the initial period of registration for a non-government school may be granted;
  - reducing, from 6 years to 5 years, the maximum period for which the renewal of registration of a non-government school may be granted;
  - making it clear that the initial period of registration for a non-government school is given on a provisional basis;
  - providing that the Minister for Education and Training may, on the recommendation of the Board of Studies, reduce the duration of the initial period of provisional registration, or the period of renewal of registration, of a non-government school;
  - providing that the Board of Studies may reduce the period of accreditation of a non-government school;
  - requiring the Board of Studies and at least one responsible person for a school to be notified if the proprietor, principal or member of a governing body of a non-government school is convicted of certain offences, becomes bankrupt or otherwise takes the benefit of any law for the relief of bankrupt or insolvent debtors, or becomes a mentally incapacitated person; and
  - providing daily penalties for certain continuing offences.

### Background

2. According to the Minister's Second Reading Speech<sup>4</sup>, this Bill "follows the recommendations of the first report of the review of non-government schools, the so-called Grimshaw Report".<sup>5</sup>

---

<sup>4</sup> The Hon Dr Andrew Refshauge MP, Minister for Education and Training, *NSW Parliamentary Papers (Hansard)*, Legislative Assembly, 18 February 2004.

“The Grimshaw Report proposes a policy framework for the establishment, regulation and accountability of non-government schools in New South Wales”.<sup>6</sup>

## The Bill

3. The main change introduced by the Bill is the introduction of new registration requirements for non-government schools. These requirements are that:
- (a) in the case of an individual school seeking registration, the school’s proprietor be a corporation or other form of legal entity approved by the Minister;
  - (b) each **responsible person for the school**<sup>7</sup>, and any other person or body having similar functions, is of good character;<sup>8</sup>
  - (c) any refusal to register, or cancellation of registration, of a school during the period of 5 years immediately before the application for registration is made, has not been largely attributable to the actions of a responsible person or proposed responsible person for the school, or any other person or body having similar functions in relation to the management or operation of the school;
  - (d) teaching staff for the school:
    - (i) have attained the standard of professional teacher competence determined by the Minister; or
    - (ii) are working towards the standard of professional teacher competence determined by the Minister and are under the direct, on-site supervision of teaching staff who have attained the necessary standard of professional teacher competence;
  - (e) educational facilities are adequate for the courses of study provided at the school;
  - (f) school premises and buildings are satisfactory;
  - (g) a safe and supportive environment is provided for students by means that include:

<sup>5</sup> W. Grimshaw *Review of Non-Government Schools in NSW: Report 1*, March 2002  
<http://www.det.nsw.gov.au/reviews/ngsreview/report1.pdf>

<sup>6</sup> W. Grimshaw AM, Warren, *Review of Non-Government Schools in NSW: Report 1*, March 2002, p. 9

<sup>7</sup> Defined by the proposed amendment to s 3(1) of the *Education Act 1990* as meaning:

- (a) the proprietor of a school and, if the proprietor is a corporation, each director or person concerned in the management of the school; or
- (b) a member of the governing body of a school; or
- (c) the principal of a school: [Schedule 1[1] of the *Education Amendment (Non-Government Schools Registration) Bill 2004*]

<sup>8</sup> This provision is supported by the proposed s 63A which makes provision for the compulsory notification of the Board of Studies and at least one other responsible person for the school, where a responsible person for a school, or any other person or body having similar functions in relation to the school:

- (a) is convicted of an offence punishable by imprisonment for 12 months or more;
  - (b) becomes bankrupt or insolvent; or
  - (c) is a corporation that is the subject of a winding up order or appointment of a controller or administrator.
- Likewise, if such a person becomes mentally incapacitated, the proposed s 63A(2) sets out the class of persons who must make such a notification to both the Board of Studies and one other responsible person for the school: [Schedule 1[20] of the *Education Amendment (Non-Government Schools Registration) Bill 2004*]  
 The penalty for the failure to make the necessary notification is 5 penalty units (currently \$550).

- (i) school policies and procedures that make provision for the welfare of students;
  - (ii) persons who are employed at the school being employed in accordance with the *Child Protection (Prohibited Employment) Act 1998*; and
  - (iii) school policies and procedures that ensure compliance with relevant notification requirements imposed in relation to persons employed at the school by Part 3A of the *Ombudsman Act 1974* and Part 7 of the *Commission for Children and Young People Act 1998*.
- (h) school policies relating to discipline are based on principles of procedural fairness, and do not permit corporal punishment of students;
- (i) if boarding facilities are provided, school policies and procedures are in place to satisfactorily ensure the safety and welfare of boarders;
- (j) compliance with the requirements<sup>9</sup> regarding the minimum curricula;
- (k) appropriate school policies and procedures to ensure the personal and social development of students undertaking study by means of distance education;
- (l) policies and procedures to ensure participation in annual reporting:
- (i) to publicly disclose the educational and financial performance measures and policies of the school, and
  - (ii) to provide data to the Minister that is relevant to the Minister's annual report to Parliament on the effectiveness of schooling in the State [new s 47 of the *Education Amendment (Non-Government Schools Registration) Bill 2004*].

4. The Bill also introduces the following amendments:

- a requirement that applications for a non-government school must be made not later than 31 March in the calendar year *before* the school is intended to operate [Schedule 1[12]];
- a reduction, from two years to twelve months, the maximum period of the initial registration of a non-government school [Schedule 1[11]];
- a requirement that an application for renewal of a registration must be made at least 9 months *before* the school's existing registration is to expire (unless a later date is otherwise approved in writing by the Board) and the information that such an application must include [Schedule 1[14]];
- a reduction in the duration of a renewal of registration from 6 years to 5 years [Schedule 1[16]];
- the power of the Minister to reduce the period of initial registration or renewal of registration, on the recommendation of the Board of Studies [Schedule 1[18]];
- a maximum of penalty of five penalty units (currently \$550) per day for the continuing offence of conducting an unregistered school [Schedule 1[21]]; and

---

<sup>9</sup> As set out in the proposed amendments to Part 3 of the Act.

- clarification that a person who is guilty of an offence either under the Act or regulation, is guilty of an offence for each day the contravention continues, unless the relevant legislative instrument does not provide a penalty for a continuing offence [Schedule 1[27]].

## Issues Considered by the Committee

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

#### Commencement by proclamation: Clause 2

5. This Act is to commence on a day or days to be appointed by proclamation.
6. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on whatever day it chooses after assent or not to commence the Act at all.

While there may be good reasons why such a discretion is required, the Committee considers that, in some circumstances, it can give rise to an inappropriate delegation of legislative power.

7. The Minister's Office has advised, however, that the Bill will be proclaimed very soon after assent.

***The Committee makes no further comment on this Bill.***

### 3. FREEDOM OF INFORMATION (TERRORISM AND CRIMINAL INTELLIGENCE) BILL 2004

Date Introduced: 18 February 2004  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Bob Carr MP  
Portfolio: Premier

#### Purpose and Description

1. The object of this Bill is to amend the *Freedom of Information Act 1989*:
  - (a) to provide that the following documents are both exempt documents and restricted documents for the purposes of the Act:
    - (i) documents that contain matter the disclosure of which could reasonably be expected to facilitate the commission of terrorist acts or to prejudice counter-terrorism activities,
    - (ii) documents created by the Counter Terrorist Co-ordination Command of NSW Police,
    - (iii) documents created by the State Crime Command of NSW Police in the exercise of its functions concerning the collection, analysis or dissemination of intelligence, and
  - (b) to provide that the New South Wales Crime Commission is exempt from the operation of the Act in relation to the exercise of its investigative and reporting functions.

#### Background

2. According to the Second Reading Speech,<sup>10</sup> the Bill gives an additional exemption from the operation of the *Freedom of Information Act* (FOI Act) for information relating to “counterterrorism and other sensitive law enforcement information”. The exemption will “stop sensitive information being inadvertently released or deliberately sought”.
3. The Parliamentary Secretary stated:

This is a bill that:

  - protects security and risk management plans concerning private and public critical infrastructure;
  - ensures intelligence agencies can prepare and share sensitive documentation without risking release;

---

<sup>10</sup> Second Reading Speech, Miss Cherie Burton, Parliamentary Secretary, Parliamentary Debates, Legislative Assembly (Hansard), 18 February 2004.

- protects intelligence about particular people, groups or activities that may present a threat to the security of the State; and
- protects plans for prevention, preparedness, response or recovery that may reveal vulnerabilities or risks that could be exploited by terrorists...

and that means, for example, protecting information about the location and quantity of medical supplies in the event of a chemical attack, information that does not readily fall within any of the current exemptions in the Freedom of Information Act.<sup>11</sup>

4. The second reading speech states that the “exemptions will only apply where restricted access is reasonably necessary for the proper administration of government”.
5. Further, a decision to invoke any of the new exemptions will be reviewable internally within agencies and externally by the Ombudsman or the Administrative Decisions Tribunal.

## The Bill

6. The Bill amends Schedules 1 and 2 of the FOI Act. Schedule 1 sets out documents that are exempt for the purposes of the Act and Schedule 2 lists the bodies and offices that are exempt from the operation of the Act.
7. The Bill provides that a document is exempt if it has been created by the Counter Terrorism Co-ordination Command in New South Wales Police.<sup>12</sup>

A document will also be exempt if it has been created by the State Crime Command of NSW Police or the Corrections Intelligence Group of the Department of Corrective Services in the exercise of their functions concerning the collection, analysis or dissemination of intelligence.<sup>13</sup>

8. According to the second reading speech, exemption for documents created by the State Crime Command:

... replaces the current provision in the [FOI Act] that exempts from disclosure all documents created by the New South Wales Police Information and Intelligence Centre, which has been disbanded and its intelligence functions moved to State Crime Command. This amendment will ensure that intelligence documents that were protected from release under the previous command structure continue to be protected.<sup>14</sup>

9. New clause 4A, provides that a “document is an exempt document if it contains matter the disclosure of which could reasonably be expected:
  - (a) to facilitate the commission of a terrorist act; or

---

<sup>11</sup> Second Reading Speech, Miss Cherie Burton, Parliamentary Secretary, Parliamentary Debates, Legislative Assembly (Hansard), 18 February 2004.

<sup>12</sup> See clause 2 of Schedule 1 of the Bill amending clause 4 of Schedule 1 of the FOI Act.

<sup>13</sup> See clause 3 of Schedule 1 of the Bill amending clause 4 of Schedule 1 of the FOI Act.

<sup>14</sup> Second Reading Speech, Miss Cherie Burton, Parliamentary Secretary, Parliamentary Debates, Legislative Assembly (Hansard), 18 February 2004.

- (b) to prejudice the prevention of, preparedness against, response to, or recovery from, the commission of a terrorist act.
10. New sub-clause 4A(1) provides that “terrorist act” has the same meaning as in section 3 of the *Terrorism (Police Powers) Act 2002*.
- The definition of “terrorist act” is set out at Annexure A below.
11. Schedule 2 of the FOI Act is amended to add the New South Wales Crime Commission to the list of bodies and offices exempt from the operation of the FOI Act in relation to its investigative and reporting functions.
- According to the second reading speech, this exemption is consistent with that afforded to other investigative agencies such as the ICAC and the Police Integrity Commission.<sup>15</sup>
12. Review of a decision in relation to a request for information under the Act can be undertaken internally, by the Ombudsman or the Administrative Decisions Tribunal as the case may be.<sup>16</sup>
13. The Bill is to commence on proclamation.

## Issues Considered by the Committee

### Trespasses on personal rights and liberties [s 8A(1)(b)(i) *Legislation Review Act*]

#### Issue: Schedule 1, clauses 2, 3, 4 & 5 – Freedom of information

14. The Committee is of the view that freedom of information is an important principle of democracy as well as the rule of law and that individuals have a general right to access information held by government.<sup>17</sup>
15. The Committee is also of the view that expanding the list of documents or agencies that are exempt from the operation of the FOI Act trespasses on individual rights by

---

<sup>15</sup> Second Reading Speech, Miss Cherie Burton, Parliamentary Secretary, Parliamentary Debates, Legislative Assembly (Hansard), 18 February 2004.

<sup>16</sup> See Division 3 of Part 3 and Part 5 of the *FOI Act*.

<sup>17</sup> “... the elected representatives have a responsibility not only to ascertain the views of the electorate but also to explain and account for their decisions and actions in government and to inform the people so that they may make informed judgements on relevant matters.” *Australian Capital Television P/L v Commonwealth (No 2)* (1992) 177 CLR 106, at page 139, per Mason CJ.

Note that the Committee of Ministers of the Council of Europe adopted a resolution which states that “freedom of expression and information are a ‘fundamental element ...[of the] principles of genuine democracy, the rule of law and respect for human rights’ ... Further, access to government information is important ‘to enhance the individual’s understanding of, and his ability to discuss freely political, social, economic and cultural matters’”. *Declaration on the freedom of expression and information*, adopted by the Committee of Ministers, Council of Europe in 1982. (The Council of Europe is Europe’s oldest political organisation, founded in 1949. It has 45 member countries, including 21 countries from Central and Eastern Europe. The Holy See, the United States, Canada, Japan and Mexico have observer status. The Council is distinct from the European Union, but no country has ever joined the Union without first belonging to the Council of Europe.)



reducing access to information held by government. It may also diminish the accountability of agencies which hold such information.

16. However, the Committee also recognises that the right to freedom of information is not absolute and that it must be balanced against other competing public interests such as protecting national security and preventing terrorist acts.

**17. The Committee is of the view that the balance between providing access to information held by government and protecting national security, is not undermined by this Bill.**

**18. Consequently, the Committee is of the view that expanding the exemptions from the operation of the FOI Act under this Bill does not unduly trespass on rights and liberties.**

#### **Delegation of legislative powers [s 8A(1)(b)(iv) *Legislation Review Act*]**

##### **Issue: Clause 2 – Commencement by proclamation**

19. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on whatever day it chooses after assent or not to commence the Act at all.

While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to an inappropriate delegation of legislative power.

20. The Premier's office has advised that the delay in commencement is to allow time for the relevant agencies to be advised of the new exemptions and to allow those agencies to put procedures in place.

***The Committee makes no further comment on this Bill.***

## Annexure A

### ***TERRORISM (POLICE POWERS) ACT 2002***

#### **SECTION 3: DEFINITION OF “TERRORIST ACT”**

##### **(1) General**

In this Act, ***terrorist act*** means an action where:

- (a) the action falls within subsection (2) and does not fall within subsection (3), and
- (b) the action is done with the intention of advancing a political, religious or ideological cause, and
- (c) the action is done with the intention of:
  - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country, or
  - (ii) intimidating the public or a section of the public.

##### **(2) Action included**

Action falls within this subsection if it:

- (a) causes serious harm that is physical harm to a person, or
- (b) causes serious damage to property, or
- (c) causes a person’s death, or
- (d) endangers a person’s life, other than the life of the person taking the action, or
- (e) creates a serious risk to the health or safety of the public or a section of the public, or
- (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:
  - (i) an information system, or
  - (ii) a telecommunications system, or
  - (iii) a financial system, or
  - (iv) a system used for the delivery of essential government services, or
  - (v) a system used for, or by, an essential public utility, or
  - (vi) a system used for, or by, a transport system.

##### **(3) Action excluded**

Action falls within this subsection if it:

- (a) is advocacy, protest, dissent or industrial action, and
- (b) is not intended:
  - (i) to cause serious harm that is physical harm to a person, or
  - (ii) to cause a person’s death, or
  - (iii) to endanger the life of a person, other than the person taking the action, or
  - (iv) to create a serious risk to the health or safety of the public or a section of the public.

##### **(4) Application**

In this section:

- (a) a reference to any person or property is a reference to any person or property wherever situated, within or outside the State (including within or outside Australia), and
- (b) a reference to the public includes a reference to the public of another State or Territory or of a country other than Australia.

**Note.** The above definition is in the same terms as those used in Part 5.3 of the Commonwealth Criminal Code (as inserted by the *Security Legislation Amendment (Terrorism) Act 2002* of the Commonwealth), except that threats of terrorist acts are excluded since it is not necessary to refer to threats in the context in which the expression is used in this Act.

## 4. NATIONAL COMPETITION POLICY AMENDMENTS (COMMONWEALTH FINANCIAL PENALTIES) BILL 2004

Date Introduced:	18 February 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Carr MP
Portfolio:	Premier

### Purpose and Description

1. The Bill's object is to amend various Acts in connection with Commonwealth financial penalties arising from National Competition Policy [NCP] reviews.

### Background

2. Pursuant to the 1995 national *Competition Principles Agreement*, the New South Wales Government agreed to put in place a range of structural reforms, including the review and reform of all legislation that restricts competition.
3. Such reforms are required unless the benefits to the community of restrictions outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.
4. In return for complying with the obligations set out in the NCP agreements,<sup>18</sup> including legislation review and reform, the Commonwealth agreed to provide annual competition payments to the States and Territories.
5. The NCP agreements recognise that while the States and Territories have *responsibility* for implementing the major competition reforms, much of the *financial dividend* from the economic growth arising out of the NCP reforms accrues to the Commonwealth rather than the States and Territories through higher income tax receipts.
6. In 2003–2004, New South Wales' maximum competition payment entitlement is \$254.4 million.
7. The National Competition Council [NCC] has assessed New South Wales as having fulfilled all of its obligations under the NCP agreements, with the exception of certain legislation review and reform activity. The NCC has expressed dissatisfaction in

---

<sup>18</sup> The NCP reform program was established on 11 April 1995 and is implemented through three agreements:

(a) the *Conduct Code Agreement*;  
(b) the *Competition Principles Agreement*; and  
(c) the *Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement)*.

relation to the degree of reform undertaken in the regulation of poultry supply, liquor, farm debt mediation, and the dentistry, optometry and pharmacy professions.

8. The Commonwealth has advised the New South Wales Government that it accepts the NCC's recommendation to impose a penalty of \$50.9 million in respect of New South Wales' 2003–04 competition payments.
9. The aim of this Bill is to ensure that this penalty is not imposed in future years and, subject to the NCC's assessment and recommendation, enable New South Wales to "earn back" a portion of the \$50.9 million penalty.
10. In the Bill's Second Reading speech, the Premier said:

The simple purpose of [the Bill] is to enable New South Wales to avoid penalties being imposed by the Federal Government on the advice of the National Competition Council [NCC]. Every member of this House will be aware that the Commonwealth is compelling New South Wales to change the way we regulate these industries or forfeit \$51 million in competition payments because the National Competition Council has deemed us "non-compliant" under the National Competition Principles Agreement. That \$51 million represents 20 per cent of the competition payments due to New South Wales, and the threat will continue to hang over us unless we do the National Competition Council's bidding...

The Government has calibrated, as best it can, the provisions of the bill so they will have the least possible impact on New South Wales families, while at the same time preserving essential services from a \$51 million cut we simply cannot afford. I reluctantly commend this bill to the House and urge the Commonwealth Government and the National Competition Council to take a more balanced view of competition policy.<sup>19</sup>

## The Bill

11. Schedules 1–7 to the Bill amend the *Liquor Act 1982*, the *Poultry Meat Industry Act 1986*, the *Dentists Act 1989*, the *Dental Practice Act 2001*, the *Optometrists Act 2002*, the *Pharmacy Act 1964* and the *Farm Debt Mediation Act 1994*.

### *Liquor Act 1982*

12. The *Liquor Act 1982* is amended to:

- remove the "**needs**" test and replace it with a **social impact assessment process** in relation to hoteliers' licences and off-licences (retail).

the Act removes a provision allowing objections to be taken to the granting of an application for a hotelier's licence or an off-licence to sell liquor by retail on the ground that the needs of the public in the neighbourhood of the premises to which the application relates can be met by facilities for the supply of liquor existing in, and outside, the neighbourhood [amended s 45; the "needs" test], and to provide instead for a **social impact assessment** process in relation to any such application [new Division 6A];

---

<sup>19</sup> The Hon R J Carr MP, Premier, *NSW Parliamentary Papers (Hansard)*, Legislative Assembly, 17 February 2004.

- prevents service stations from being granted an off-licence (retail) *in any circumstances* [amended s 49C];<sup>20</sup>
- provide that the existing restrictions on granting an off-licence (retail) that apply in relation to convenience stores will also apply to other general stores such as mixed business shops, corner shops and milk bars [amended s 49C];<sup>21</sup>
- to provide that the fee for granting a hotelier's licence or an off-licence (retail) will be the fee prescribed by (or determined in accordance with) the regulations instead of being fixed by the Liquor Administration Board [amended s 56]; and
- provide that an annual fee will be payable in respect of a hotelier's licence or an off-licence (retail) [proposed s 56C].

### ***Poultry Meat Industry Act 1986***

13. The *Poultry Meat Industry Act 1986* is to be amended to:

- replace the existing requirement for batch poultry supply agreements between poultry growers and poultry processors to be approved by the Poultry Meat Industry Committee with a requirement that they merely be registered with the Committee [new Part 3]<sup>22</sup>;
- abolish the Poultry Meat Industry Committee's existing power to set base rates for batch poultry supplied by poultry growers to poultry processors [amended s 6];

### ***Dentists Act 1989 and the Dental Practice Act 2001***

14. These Acts are amended to remove restrictions on the persons or bodies who may employ dentists or in association with whom dentists may practise [new s 53 *Dentists Act 1989*], and to prohibit employers of dentists from directing or inciting them to engage in misconduct [new Part 11A *Dental Practice Act 2001*].

### ***Optometrists Act 2002***

15. This Act is amended to remove restrictions on the persons or bodies who may carry on the business of optometry [new s 23], and to prohibit employers of optometrists from directing or inciting them to engage in misconduct [new Part 10A].

<sup>20</sup> The definition of **service station** is replaced so that it refers to a building or place used *primarily* for the fuelling of motor vehicles.

<sup>21</sup> The term **convenience store** is replaced with **general store** so that the restriction on granting an off-licence (retail) to such a store will extend to other similar stores such as mixed business shops, corner shops and milk bars regardless of their operating hours.

<sup>22</sup> The new Part 3 to Schedule 3 to the *Poultry Meat Industry Act 1986* deems certain agreements to be registered for the purposes of the amended Act [cl 13]; continues in operation former s 9A (the existing authorisation for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*) in relation to existing agreements and past conduct [cl 14]; continues in operation former Part 4 (Payments to growers) in relation to existing agreements [cl 15]; and continues in operation former s 18 (Disputes) in relation to disputes the subject of existing applications for settlement by negotiation [cl 16].

### ***Pharmacy Act 1964***

16. This Act is amended to remove restrictions on the number of pharmacy businesses that pharmacists may carry on or in which they may have a pecuniary interest [omit s 26], and on the ability of friendly societies to carry on pharmacy businesses [new s 27A].

### ***Farm Debt Mediation Act 1994***

17. The *Farm Debt Mediation Act 1994* is amended to:
- remove a provision that prohibits action under the Act being taken within the 12 months following the Rural Assistance Authority's refusal of an application for a certificate declaring that the Act does not apply to a particular farm mortgage [omit s 11(3)<sup>23</sup>]; and
  - remove a provision that makes certain decisions of the Rural Assistance Authority reviewable by the Administrative Decisions Tribunal [omit s 29A<sup>24</sup>].
18. The Bill also makes ancillary and consequential amendments to the above Acts.

## **Issues Considered by the Committee**

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

***The Committee makes no further comment on this Bill.***

---

<sup>23</sup> Currently, s 11 of the *Farm Debt Mediation Act 1994* allows the Rural Assistance Authority to issue a certificate to the creditor to the effect that the Act does not apply to the farm mortgage. Section 11 (3) provides that, if the Authority fails to issue such a certificate because it is not satisfied that the creditor has attempted to mediate in good faith, the creditor is prohibited from attempting further mediation, and therefore from enforcing the farm debt, for the next 12 months. Although the Bill omits s 11(3), the section continues to apply to a farm mortgage in respect of which the Rural Assistance Authority had, before the repeal of s 11(3) by the Bill, failed to issue a certificate under s 11, as if s 11(3) had not been repealed: new Sch 1 cl 8(2) *Farm Debt Mediation Act 1994*.

<sup>24</sup> An application to the Administrative Decisions Tribunal that had been made under s 29A before the repeal of the section by the Bill is to be heard and determined, and the decision of the Tribunal on the application is to be given effect to, as if s 29A had not been repealed: new Sch 1 cl 8(3) *Farm Debt Mediation Act 1994*.

## 5. PUBLIC LOTTERIES LEGISLATION AMENDMENT BILL 2004

Date Introduced:	18 February 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Grant McBride MP
Portfolio:	Gaming and Racing

### Purpose and Description

1. The object of this Bill is to make a number of miscellaneous amendments to the *Public Lotteries Act 1996* [the Act] with respect to the conduct of public lotteries and offences in relation to public lotteries.

The Bill also makes a number of ancillary and consequential amendments to that Act and repeals certain redundant provisions of the *New South Wales Lotteries Corporatisation Act 1996*.

2. The amendments in the Bill:
  - clarify a number of provisions of the Act;
  - create some offences regarding unauthorised sale and promotion of lotteries;
  - extend the jurisdiction of the Administrative Decisions Tribunal; and
  - allow regulations to provide a time limit on unclaimed prizes.

### Background

3. According to the Minister's second reading speech:

The Bill provides for amendments arising from reviews of the *Public Lotteries Act 1996* and the *New South Wales Lotteries Corporatisation Act 1996*. These reviews were conducted during 2002 and 2003 and identified a need for refinement of both Acts. The proposed amendments were developed in consultation with all key stakeholders, following the release of an issues paper during the review process.<sup>25</sup>

### The Bill

4. The Bill makes it clear that:
  - licences to conduct public lotteries may include conditions relating to the authorisation of licensees' agents to charge subscribers for providing ancillary services approved by the Minister [amendment to s 13];

---

<sup>25</sup> The Hon Grant McBride MP, Minister for Gaming and Racing, *NSW Parliamentary Debates (Hansard)*, Legislative Assembly, 18 February 2004.

- lottery licensees are able to enter into agreements with their interstate counterparts, on terms approved by the Minister, with respect to the joint administration of the conduct of public lotteries [proposed s 37A];
- separate prize funds are required for each kind of public lottery that a licensee is licensed to conduct [proposed s 25A];
- lottery agents are allowed to pay prizes up to the amount prescribed by regulations directly to lottery subscribers [proposed s 39A]; and
- lottery licensees may promote or form betting syndicates [proposed s 40(1A)].

5. The Bill creates the offences of:

- unauthorised selling of entries in or subscriptions to public lotteries [proposed s 43A];
- unauthorised promotion of marketing of public lotteries [proposed s 43B];
- entering or subscribing to public lotteries for or on behalf of another for fee or reward [proposed s 43C]; and
- lodging false claims for prizes in public lotteries [proposed s 43A].

Each of these offences carries a maximum penalty of 100 penalty units (currently \$11,000).

6. The Bill also extends the jurisdiction of the Administrative Decision Tribunal so that a person will be able to apply to the Tribunal for a review of ministerial decisions to withdraw the approval or appointment of an agent of a public lottery licensee.

7. The Bill allows regulations to be made to provide for the introduction of a time limit on unclaimed prizes.

## Issues Considered by the Committee

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

#### Commencement: Clause 2

8. The Bill is to commence on a day or days to be proclaimed.

9. The Committee understands from the Department that it is intended that the Act is to be commenced very soon after assent.

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

#### Unclaimed prizes: Amendment to s 27(9)

10. The Bill amends s 27(9) of the Act to enable regulations to be made to prescribe the time within which claims for unclaimed prizes must be made.

11. The Bill inserts the following definition of *unclaimed prize* into s 4(1) of the Act:



***unclaimed prize*** means a prize that remains unclaimed by the prizewinner for a period of one year after the date on which the public lottery to which the prize relates was conducted.

12. The regulation making power extends to prizes that are unclaimed on the commencement of the Bill [proposed sch 2, pt 3, cl 30].

13. In his second reading speech, the Minister stated:

Under current circumstances the liability for unclaimed prizes is open-ended. It is estimated that, for New South Wales Lotteries alone, the exposure currently amounts to at least \$115 million. Furthermore, as the vast majority of unclaimed prizes are of minor value, and as few claims are received relating to lotteries drawn more than three years ago, the cost of maintaining open-ended verification systems for such prizes is difficult to justify...

It is important to understand that there is no intention to arbitrarily remove the current unlimited right of public lottery subscribers to lodge their claim for winnings. It is proposed that the limit on the time for lodging prize claims will be introduced gradually, and will not be fully in place for up to 15 years from the date of commencement of the relevant regulation. Hence, there will be more than adequate time for lottery subscribers to check if they have an old, potentially prize-winning lottery ticket lying around ... before the new limits are fully implemented. So it is clear that the introduction of this limit will significantly reduce the exposure of licensees to the unclaimed prize liability without abruptly depriving lottery subscribers of an accustomed right.<sup>26</sup>

14. Allowing regulations to prescribe the time within which claims for unclaimed prizes must be made is a significant delegation of legislative power as it has the potential to deprive prizewinners of large amounts of money.

15. The Committee notes that any regulations made could only affect prizes unclaimed for at least a year after the date on which the lottery was conducted.

16. The Committee further notes the Minister's intention to introduce time limits for claims gradually over 15 years.

17. The Committee understands from the Minister's office that the time limits have not been included in the Bill but are to be prescribed by regulation to allow further time for consultation on the most appropriate time limit for unclaimed prizes and the scheme for phasing in such limits. It further understands that it is expected that the time limit will eventually be 5 years.

**18. The Committee considers that, as a general rule, flexibility in statutory time limits is not desirable. It is, therefore, preferable that such limits be prescribed by Act rather than by regulation.**

<sup>26</sup> The Hon Grant McBride MP, Minister for Gaming and Racing, *NSW Parliamentary Debates (Hansard)*, Legislative Assembly, 18 February 2004.

- 19. However, in this case, given the need for further consultation to ensure the introduction of time limits has as little adverse impact on prizewinners as possible, the Committee does not consider allowing the time limits for unclaimed prizes to be prescribed by regulations to be an inappropriate delegation of legislative power.**

*The Committee makes no further comment on this Bill.*

## 6. THE SYNOD OF EASTERN AUSTRALIA PROPERTY AMENDMENT BILL 2004

Date Introduced:	18 February 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

### Purpose and Description

1. The Bill's object is to amend *The Synod of Eastern Australia Property Act 1918* [the Act] to provide for the Moderator, the clerk and the treasurer of the Synod of Eastern Australia, in exercising certain functions in good faith and in accordance with the Act, to be entitled to be indemnified out of property vested in the trustees against expenses and liabilities that the person has incurred in connection with the exercise of those functions.

### Background

2. The Synod of Eastern Australia is the governing body of the Presbyterian Church of Eastern Australia.

The Church was formed in 1846 when three ministers and three elders withdrew from what is now the Presbyterian Church in New South Wales. The Church comprises 12 "charges" or parishes in New South Wales, Queensland, Victoria and Tasmania.

3. The Act established a property trust for the Church. However, the Act did not make provision to reimburse the trustees for moneys expended on behalf of the trust, or to indemnify the trustees for activities carried out on behalf of the trust.
4. On 8 May 2003, the Synod of the Church agreed to request the Government to amend the Act to address the issues of the liability and remuneration of the trustees. Notice of the proposed motion to request amendments to the Act was given to the two Synod representatives in each charge, approximately three weeks prior to the Synod being convened.
5. Twenty-three Synod representatives passed the motion, with no representatives opposing the motion. All 14 representatives from the seven New South Wales charges supported the motion.<sup>27</sup>

### The Bill

6. The Bill inserts proposed s 2A into the Act to provide that the Moderator, the clerk, and the treasurer of the Synod are entitled to be indemnified out of property vested in

---

<sup>27</sup> Mr J G Tripodi MP, Parliamentary Secretary, *NSW Parliamentary Papers (Hansard)*, Legislative Assembly, 18 February 2004.

the trustees against all expenses and liabilities that they have incurred in good faith in connection with the exercise of their functions in relation to that property.

7. In the Bill's second reading speech, the Parliamentary Secretary noted that the amendment is similar to the indemnification provisions used in other church property trust legislation, eg, s 23 of the *Methodist Church of Samoa in Australia Property Trust Act 1998*, and continues the government policy of assisting churches to organise their financial and property affairs by sponsoring legislation in relation to corporate property trusts.<sup>28</sup>

## **Issues Considered by the Committee**

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

***The Committee makes no further comment on this Bill.***

---

<sup>28</sup> Mr J G Tripodi MP, Parliamentary Secretary, *NSW Parliamentary Papers (Hansard)*, Legislative Assembly, 18 February 2004.

## 7. WOOL, HIDE AND SKIN DEALERS BILL 2004

Date Introduced:	18 February 2004
House Introduced:	Legislative Assembly
Minister Responsible:	Hon John Watkins MP
Portfolio:	Police

### Purpose and Description

1. The Bill's object is to regulate persons who carry on the business of buying or selling the wool, hides or skins of cows, sheep and certain other animals.

### Background

2. The *Wool, Hide and Skin Dealers Act 1935* [the Act] was introduced to assist police in responding to stock theft. The Act established a licensing regime for businesses dealing in unprocessed wool hide and skins, and provided police with the power to enter and search premises used for storing wool, hides and skins.
3. The Pastoral and Agricultural Crime Working Party—with representatives from the New South Wales Farmers Association, the Rural Lands Protection Boards, NSW Agriculture and NSW Police—was established in 2000 to investigate means of addressing crime in the bush.
4. The working party's October 2000 Report made recommendations concerning stock identification, police powers, training, specialist rural crime investigators, as well as the regulation of wool, hide and skin dealers. The working party recommended that the Act be remodelled along the lines of the *Pawnbrokers and Second-hand Dealers Act 1996*, and that licensing criteria and record-keeping requirements be strengthened as an improved crime-fighting tool for police.
5. Currently under the Act, licences are issued by the Local Court and are required by any person buying or selling wool, hides or skins of various animals (although there are certain exemptions). The Bill requires only those in the business of buying and selling wool, hides or skins to be licensed by the Commissioner of Police [the Commissioner].
6. The Bill also contains provisions arising as a result of a Departmental review of the Act conducted in the context of a National Competition Policy review.
7. In the Bill's second reading speech, the Minister for Police noted that:

[t]he Government is committed to fighting crime in country and regional areas. This bill reflects the recommendations of the Pastoral and Agricultural Crime Working Party's 2000 report and the recommendations of the 2002 National Competition Policy Review. The objectives of the bill are consistent with the Government's commitment and strategies to fight rural crime. The bill relates to bovine and ovine animals—essentially cattle and sheep—and there is provision in the regulations to add other animals should it become apparent that there is significant illegal trade in

the skins of any other animal sufficient to warrant its inclusion in the licensing scheme.

...The Government has endeavoured to balance the need for a minimum of regulation with the need for effective crime-fighting measures, including the requirement of suppliers to show proof of their identity and record keeping required of dealers. I believe we have achieved such a balance through the consultation process. The Wool, Hide and Skin Dealers Bill will provide NSW Police with the tools they need to investigate illegal trade in wool hide and skins.<sup>29</sup>

## The Bill

8. The Bill consists of 7 Parts and 3 Schedules:

- Part 1 Preliminary provisions, including definitions in the Bill;
- Part 2 Licensing of wool, hide and skin dealers;
- Part 3 Obligations and duties of licensees;
- Part 4 Record-keeping by licensees;
- Part 5 Action against licensees;
- Part 6 Police powers;
- Part 7 Miscellaneous provisions, including the repeal of the *Wool, Hide and Skin Dealers Act 1935*;
- Schedule 1 Evidence of identity;
- Schedule 2 Consequential amendment of Acts; and
- Schedule 3 Savings and transitional provisions.

## Definitions

9. Clause 3 sets the ambit of the Bill by establishing definitions, eg:

- **hide** and **skin** are defined as meaning the hide or skin of any bovine animal, any ovine animal or any other animal prescribed by the regulations before treatment in any process of manufacture;
- **wool** is defined as meaning the fleece of any ovine animal or any other animal prescribed by the regulations before treatment in any process of manufacture (but does not include fellmongered wool).
- **Buy** and **sell** are given broad definitions.<sup>30</sup>

---

<sup>29</sup> Hon J A Watkins MP, Minister for Police, *NSW Parliamentary Papers (Hansard)*, Legislative Assembly 18 February 2004.

<sup>30</sup> Thus, eg, **sell** includes any of the following:

- (a) sell, barter or exchange;
- (b) agree to sell, barter or exchange;
- (c) offer, expose, store, have in possession, send, consign, or deliver for or on sale,
- (d) receive for sale;
- (e) cause or suffer to be sold, bartered or exchanged, or to be agreed to be sold, bartered or exchanged;
- (f) cause or suffer to be offered, exposed, stored, had in possession, sent, consigned, or delivered for or on sale;

10. A **dealer** is defined as a person who buys wool, hides or skins for the purpose of selling that wool or those hides or skins, or in connection with the person's business of selling wool, hides or skins, except where the wool, hide or skin:
- (a) is bought by an overseas wool buyer at auction; or
  - (b) is bought by a co-operative society registered under the *Cooperatives Act 1992* for the purposes of carrying out classing, repacking, weight adjusting, pooling or otherwise treating the wool, hide or skin for sale by an auctioneer accredited under the *Property, Stock and Business Agents Act 2002*; or
  - (c) is sold at public auction or after offer at public auction; or
  - (d) is bought or sold for the purposes of education or research; or
  - (e) is bought or sold in any other circumstances prescribed by the regulations [cl 5].
11. The proposed Act does not apply so as to affect any activities conducted in accordance with a licence, permit or other authority under another Act, eg, the *Property, Stock and Business Agents Act 2002* [cl 6].

### Licensing

12. Clause 7 makes it makes it an offence to carry on the business of a wool, hide or skin dealer unless licensed to do so [maximum penalty 100 penalty units (currently \$11,000), or 12 months imprisonment, or both].<sup>31</sup>
13. Clause 9 sets out the circumstances in which a natural person or a corporation is *not* entitled to be issued with a licence under the proposed Act, eg, where a person:
- has a conviction in New South Wales or elsewhere for an offence involving dishonesty that was recorded in the last 10 years [cl 9(1)(a)]; or
  - is not entitled to be issued with a licence, certificate of registration or other authority under a corresponding law or is the holder of such a licence, certificate of registration or other authority that is suspended [cl 9(1)(h)].<sup>32</sup>
14. However, the Commissioner may determine that such an offence should be ignored for the purposes of proposed s 9 on one or more of the following grounds:
- (a) the triviality of the acts or omissions giving rise to the offence;
  - (b) the time that has passed since the offence was committed;
  - (c) the offence was committed by the offender as a minor;
  - (d) the subsequent good behaviour of the offender; or

---

(g) cause or suffer to be received for sale,

(h) attempt to do any such acts or things: cl 3 of the *Wool, Hide and Skin Dealers Bill 2004*.

<sup>31</sup> Similarly, it is it an offence for a person who is *not* a licensee to pretend to be a licensee or to take, use or exhibit any title or term that may be construed to mean that the person is licensed to carry on the business of buying or selling wool, hides or skins: cl 8 of the *Wool, Hide and Skin Dealers Bill 2004*.

<sup>32</sup> In cl 9, **corresponding law** means a law of another Australian jurisdiction that is declared by the Minister from time to time by order published in the Gazette to be a law that corresponds to this Act: cl 9(5) of the *Wool, Hide and Skin Dealers Bill 2004*.

- (e) any other ground prescribed by the regulations [cl 9(3)].
15. The Commissioner must grant a licence to an applicant unless of the opinion that the applicant is not entitled to be issued with a licence, or that the applicant has not provided satisfactory evidence of identity [cl 12(2)].<sup>33</sup>
16. Clause 11 provides that a licensee must nominate all premises that are intended to be used regularly, whether as business premises or storage premises or both, for the purposes of carrying on the proposed licensed business. Failure to advise the Commissioner of changes to these premises is an offence under cl 11(2) [maximum penalty 50 penalty units, currently \$5,500].

### Obligations and duties

17. Prior to accepting any wool hides or skins offered for sale, a licensee must:
- obtain evidence of consent to the sale by the person offering the wool, hides or skins for sale;<sup>34</sup> and
  - inspect documentary evidence of the identity of the person delivering the wool, hides or skins<sup>35</sup> [cl 19].
18. In the Bill's second reading speech, the Minister noted that these identification requirements are:
- key provisions of the bill aimed at limiting the ability of those who have stolen wool, hide or skins from off-loading those stolen goods.<sup>36</sup>
19. A licensee must comply with any written order from the Commissioner, or a police officer authorised by the Commissioner, requiring the licensee to:
- refrain, during a specified period not exceeding 5 days, from disposing of any wool, hides or skins (including any containers) that are specified in the order; and
  - to retain during that period the wool, hides or skins and containers to which the order relates without altering or obliterating any brand, marking or writing on them [cl 20].
20. A licensee is under a duty to:
- refuse suspicious wool, hides or skins;

---

<sup>33</sup> A licence remains in force for 3 years, unless cancelled or suspended under the proposed Act: cl 13 of the *Wool, Hide and Skin Dealers Bill 2004*. Failure to display licence details on all premises used for the business is an offence under cl 17 [Maximum penalty 10 penalty units, currently \$110].

<sup>34</sup> Such evidence consists of the signature of the person or a statement signed by the person consenting to the sale, or a statement signed by an executive officer of the corporation, or an employee authorised in writing by an executive officer of the corporation, consenting to the sale; cl 19(1) of the *Wool, Hide and Skin Dealers Bill 2004*.

<sup>35</sup> Such evidence consists of a document that shows a photograph, date of birth and the residential address of the person [cl 19(2)]. This need only be done once in respect of the sale of wool, hide or skins: cl 19(4) of the *Wool, Hide and Skin Dealers Bill 2004*.

<sup>36</sup> Hon J A Watkins MP, Minister for Police, *NSW Parliamentary Papers (Hansard)*, Legislative Assembly 18 February 2004.



- report suspicious wool, hides or skins offered for sale;
  - report suspicious wool, hides or skins in the licensee's custody; and
  - report disentitlement to being issued with a licence [cl 21- cl 24].
21. The maximum penalty for failing to comply with any of the provisions of Part 3 is 50 penalty units, currently \$5,500.

### Records

22. Record-keeping requirements under the Bill apply to *any* buying or selling of wool, hides or skins regardless of whether or not they are bought or sold in the actual course of the dealer's business<sup>37</sup> [cl 25]. Clause 26 lists the transaction records that must be so maintained.
23. Clause 27 provides that all such records must be kept for a period of 5 years after they were made [maximum penalty 50 penalty units].

### Action against licensees

24. The Commissioner may serve a show cause notice on a licensee requiring the licensee to show cause, within a specified period of time (being not less than 14 days) as to why the licensee's licence should not be cancelled<sup>38</sup> [cl 28].
25. If, after investigating the matters to which the show cause notice relates, the Commissioner is satisfied that the grounds thereof have been substantiated, the Commissioner may:
- cancel or suspend the licence;<sup>39</sup>
  - attach conditions to the licence; or
  - determine that no future licence is to be granted to the licensee, unless with conditions attached [cl 30].<sup>40</sup>

### Police powers

26. Clause 34 provides that a search warrant for premises may be obtained by a police officer if the officer believes on reasonable grounds that:
- (a) a provision of this Act or the regulations is being or has been contravened on the premises; or

---

<sup>37</sup> Pursuant to cl 3 of the Bill, *record* means a documentary record; a record made by an electronic, electromagnetic, photographic or optical process; or any other kind of record.

<sup>38</sup> The bases for such a show cause notice are where the licensee has become not entitled to be issued with a licence; or made false or misleading statements in or in connection with an application for the licence; or has contravened a provision of this Act, or the regulations; or is considered, in light of evidence acceptable to the Commissioner, probably receiving or dealing in stolen wool, hides or skins; or who has failed to comply with a condition of the licence: cl 28(a)–(e) of the *Wool, Hide and Skin Dealers Bill 2004*.

<sup>39</sup> A cancelled licence must be immediately surrendered to the Commissioner: cl 33 of the *Wool, Hide and Skin Dealers Bill 2004*.

<sup>40</sup> However, even in the matters *are* substantiated, the Commissioner may at any time determine to take no further action: cl 32 of the *Wool, Hide and Skin Dealers Bill 2004*.

- (b) there is on the premises evidence of a contravention of a provision of this Act or the regulations.

27. The balance of Part 6 of the Bill:

- sets out the powers of a police officer regarding entry and search of premises, the stopping and searching of vehicles and the inspection of wool, hides or skins [cl 35];
- empowers a police officer to enter premises where a licensed business is carried on to inspect records [cl 36];
- empowers a police officer to require the production of certain records including records required to be kept under the proposed Act, also empowering a police officer to require a person to identify and locate records that correspond to particular wool, hides or skins or to identify and locate wool, hides or skins that correspond to particular records [cl 37]; and
- provides for the seizure of records produced to a police officer [cl 38].

## Issues Considered by the Committee

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

#### Commencement: Clause 2

28. The Bill provides that the Act is to commence on a day to be appointed by proclamation.
29. The Committee is advised by the Minister's office that the delay in commencement of the Bill is due to the need to create the necessary forms and IT infrastructure to implement the new system of licensing, and to consult with the stakeholders on the practical operation of the Bill's provisions. Also, the effective introduction of a new licensing role for wool, hide and skin dealers requires a process of training for police in the aims of, and procedures, under the Bill
30. The Committee is further advised by the Minister's office that it is hoped that the Bill will commence operation in approximately 6 months.

<p><b>31. The Committee considers that the infrastructure, consultation and training needed for the effective implementation of the Bill is an appropriate reason to delay commencement.</b></p>
--

*The Committee makes no further comment on this Bill.*

## SECTION B: RESPONSES TO PREVIOUS DIGESTS

# 8. MINISTERIAL CORRESPONDENCE — ELECTRICITY CONSUMER SAFETY BILL 2004

Date Introduced:	4 December 2003
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Reba Meagher MP
Portfolio:	Fair Trading

### Background

1. The Committee reported on the *Electricity Consumer Safety Bill 2004* in Legislation Review Digest No 1 of February 2004.
2. On 13 February 2004, the Committee wrote to the Minister for Fair Trading requesting clarification of the need for amending the definition of “electrical installation” by Regulation, and expressing its concerns that such change to the definition had the potential to add costs to consumers.

### Minister’s Reply

3. By letter dated 18 February 2004, the Minister replied to the Committee, advising that the Bill seeks to “improve clarity in the delineation between the electricity distribution ownership framework and the electrical installation framework, via a regulation-making power setting out criteria for defining an electrical installation”. She advised that the definition of an electrical installation, is separate to, and has no impact on, the definition for distribution system under the *Electricity Supply Act 1995*.
4. The Minister also stated that in no way will the power to amend the definition by Regulation impose any costs or responsibilities on consumers where they do not currently apply.
5. In her letter, the Minister also responded to concerns of the Committee in relation to the admissibility of evidence gained in the course of investigations under the proposed Act [proposed s 44]. She confirmed that “while such evidence may be admissible in civil proceedings, these proceedings do not involve punitive penalties”.
6. The Minister also advised that the rationale for cl 44 is that it is necessary to ensure that safety can be maintained. She noted that “the operation of the clause is likely to involve commercial or industrial settings in which it is crucial to achieve public interest outcomes of safety and protection of the public”.

## **Committee's Response**

**7. The Committee thanks the Minister for her reply.**

*The Committee makes no further comment on this Bill.*



PARLIAMENT OF NEW SOUTH WALES  
LEGISLATION REVIEW COMMITTEE

13 February 2004

Our Ref:LRC539/3788

The Hon Reba Meagher MP  
Minister for Fair Trading  
Level 37  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Minister

***Electricity (Consumer Safety) Bill 2003***

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 1 of 2004*.

The Committee notes that cl 3 of the Bill provides that the regulations under the proposed *Electricity (Consumer Safety) Act* may make provision as to the circumstances in which electrical equipment is taken to form part of an electrical installation in a place, for the purposes of that definition.

The Committee would be grateful for your advice as to the potential for additional costs to consumers arising from amending the definition of "electricity installation" so that the part of a power line of an electricity authority supplying electricity to an electrical installation that is located on land owned or occupied by a consumer of electricity forms part of the consumer's electrical installation.

The Committee notes that allowing the definition of electrical installation in the proposed Act to be amended by regulation reduces parliamentary oversight of a matter that may determine the very ambit of the Act.

The Committee seeks your advice as to the need for being able to amend the definition of "electrical installation" regulation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barry Collier', written over a large, stylized flourish.

**BARRY COLLIER MP  
CHAIRPERSON**



Minister for Fair Trading  
Minister Assisting the Minister for Commerce

RECEIVED

20 FEB 2004

LEGISLATION REVIEW  
COMMITTEE

Min 04/392

Mr Barry Collier MP  
Chairman  
Legislation Review Committee  
Parliament of NSW

Dear Mr Collier

I refer to your correspondence concerning the *Electricity (Consumer Safety) Bill 2003*, as well as the *Legislation Review Digest* recently published in respect of this Bill.

In relation to the Bill's proposed regulation-making power to amend the definition of electrical installation, I note that this is not intended to apply retrospectively. That is, it will in no way impose costs or responsibilities on a consumer where they do not currently apply.

As background, I note that the existing demarcation of responsibility in respect of distribution power lines between customers and network operators has been in place since 1996, through the *Electricity Safety Act 1945*, the *Electricity Supply Act 1995* and the "Service and Installation Rules".

For pre-existing electrical installations, the demarcation point is determined by the standards or rules in place at the time of construction, or alternatively, by agreement between the parties. Over time, changes in the electricity industry, its legislation, and property ownership have given rise to some disputation.

This Bill seeks to improve clarity in the delineation between the electricity distribution ownership framework and the electrical installation framework, via a regulation-making power setting out criteria for defining an electrical installation. The definition of an electrical installation, is separate to, and has no impact on, the definition for distribution system under the *Electricity Supply Act 1995*.

The details and extent of the proposed regulation-making power will be subject to public debate when a regulatory impact statement is released this year, including a cost/benefit analysis.

In relation to the Bill's proposed clause 44, I note firstly that the provision is the same as that in the existing *Electricity Safety Act 1945*. The Bill also continues the existing Act's protection that a person can remain silent with reasonable excuse. I would add that these powers and protections parallel several pieces of legislation already in existence across a number of portfolios.

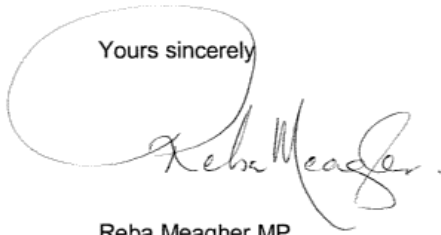
Level 37, Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Phone: 02 9228 3555  
Fax: 02 9228 3585  
Email: rmeagher@meagher.minister.nsw.gov.au

The clause provides that evidence gained under it is not admissible in most criminal proceedings. I note that while such evidence may be admissible in civil proceedings, these proceedings do not involve punitive penalties. The rationale for the clause is that it is necessary to ensure that safety can be maintained. The operation of the clause likely would involve commercial or industrial settings in which it is crucial to achieve public interest outcomes of safety and protection of the public.

I trust the above addresses your concerns.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Reba Meagher", is written over a large, hand-drawn oval scribble.

Reba Meagher MP  
**Minister**

18 FEB 2004

## Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Inclosed Lands Protection Regulation 2002	06/12/02	10370	29/05/03 16/09/03	
Road Transport (General) Amendment (Impounding Fee) Regulation 2003	17/10/03	10045	13/02/04	



## Appendix 1: Index of Bills Reported on in 2004

	Digest Number
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	2
Community Protection (Closure of Illegal Brothels) Bill 2003*	1
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003	1
Education Amendment (Non-Government Schools Registration) Bill 2004	2
Electricity (Consumer Safety) Bill 2003	1,2
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	2
Legal Profession Legislation Amendment (Advertising) Bill 2003	1
National Competition Policy Amendment (Commonwealth Financial Penalties) Bill 2004	2
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	1
Public Lotteries Legislation Amendment Bill 2004	2
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	1
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	1
Strata Schemes Management Amendment Bill 2003	1
Superannuation Administration Amendment Bill 2003	1
The Synod of Eastern Australia Property Amendment Bill 2004	2

## Appendix 2: Index of Ministerial Correspondence on Bills from September 2003

<b>Bill</b>	<b>Minister/Member</b>	<b>Letter sent</b>	<b>Reply</b>	<b>Digests 2003</b>	<b>Digest 2004</b>
Child Protection Legislation Amendment Bill 2003	Minister for Community Services	12/09/03	07/11/03	2,5	
Powers of Attorney Bill 2003	Attorney General	12/09/03	07/10/03	2,4	
Gaming Machines Amendment (Miscellaneous) Bill 2003	Minister for Gaming and Racing	10/10/03	26/11/03	3,7	
Environmental Planning and Assessment (Development Consents) Bill 2003	Minister for Infrastructure and Planning	24/10/03		4	
Privacy and Personal Information Protection Amendment Bill 2003	Attorney General	24/10/03		4	
Sydney Water Amendment (Water Restrictions) Bill 2003	Minister for Energy and Utilities	24/10/03	27/10/03	4,5	
Coroners Amendment Bill 2003	Attorney General	07/11/03	27/11/03	5,7	
Courts Legislation Amendment Bill 2003	Attorney General	07/11/03	25/11/03	5,7	
Independent Commission Against Corruption Amendment (Ethics Committee) Bill 2003	Premier	07/11/03	27/11/03	5,7	
Lord Howe Island Amendment Bill 2003	Minister for the Environment	07/11/03	28/11/03	5	1
National Parks and Wildlife Amendment (Kosciuszko National Park Roads) Bill 2003	Minister for the Environment	07/11/03	08/12/03	5	1
Transport Legislation Amendment (Safety and Reliability) Bill 2003	Minister for Transport Services	07/11/03	21/11/03	5,7	
Veterinary Practice Bill 2003	Minister for Agriculture and Fisheries	07/11/03	03/11/03	5	1
Catchment Management Authorities Bill 2003; Natural Resources Bill 2003 and Native Vegetation Bill 2003	Minister for Infrastructure, Planning and Natural Resources	18/11/03		6	
Environmental Planning and Assessment (Quality of Construction) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	18/11/03		6	
Motor Accidents Legislation Amendment Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1
Police Legislation Amendment (Civil Liability) Bill 2003	Minister for Police	18/11/03	24/12/03	6	1
Transport Administration Amendment (Rail Agencies) Bill 2003	Minister for Transport Services	18/11/03		6	

<b>Bill</b>	<b>Minister/Member</b>	<b>Letter sent</b>	<b>Reply</b>	<b>Digests 2003</b>	<b>Digest 2004</b>
Workers Compensation Amendment (Insurance Reforms) Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1
Bail Amendment (Firearms and Property Offences) Bill 2003	Attorney General	28/11/03	12/01/04	7	1
Civil Liability Amendment Bill 2003	Minister for Health	28/11/03	22/12/03	7	1
Crimes Legislation Further Amendment Bill 2003	Attorney General	28/11/03	16/12/03	7	1
Environmental Planning and Assessment Amendment (Planning Agreements) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	28/11/03		7	
Local Government Amendment Bill 2003	Minister for Local Government	28/11/03		7	
Registered Clubs Amendment Bill 2003	Minister for Gaming and Racing	28/11/03		7	
State Revenue Legislation Further Amendment Bill 2003	Treasurer	28/11/03	15/12/03	7	1
Electricity (Consumer Safety) Bill 2003	Minister for Fair Trading	13/02/04	18/02/04		1,2
Legal Profession Legislation Amendment (Advertising) Bill 2003	Attorney General	13/02/04			1
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	Minister for Roads	13/02/04			1
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	Minister for Roads	13/02/04			1
Strata Schemes Management Amendment Bill 2003	Minister for Roads	13/02/04			1
Superannuation Administration Amendment Bill 2003	Treasurer	13/02/04			1

## Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2004

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	N				
Community Protection (Closure of Illegal Brothels) Bill 2003	R				
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003				N	
Education Amendment (Non-Government Schools Registration) Bill 2004				N	
Electricity (Consumer Safety) Bill 2003	N,R				C
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	N			N	
Legal Profession Legislation Amendment (Advertising) Bill 2003	C, R		C, R	N	
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	N				
Public Lotteries Legislation Amendment Bill 2004				N	
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	N,C				
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003				C	
Strata Schemes Management Amendment Bill 2003				N,C	
Superannuation Administration Amendment Bill 2003	N			C	
Wool, Hide and Skin Dealers Bill 2004				N	

### Key

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