

PARLIAMENT OF NEW SOUTH WALES



# **Legislation Review Committee**

## LEGISLATION REVIEW DIGEST

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No 8 of 2006

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2 June 2006

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, 2006, 80 p; 30cm

Chair: Mr Allan Shearan MP

2 June 2006

ISSN 1448-6954

1. Legislation Review Committee—New South Wales
2. Legislation Review Digest No 8 of 2006

I Title.

II Series: New South Wales. Parliament. Legislative Assembly. Legislation Review Committee Digest; no. 8 of 2006

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## FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

### 8A Functions with respect to Bills

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

### 9 Functions with respect to Regulations:

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

## **GUIDE TO THE *LEGISLATION REVIEW DIGEST***

### **Part One – Bills**

#### **Section A: Comment on Bills**

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

#### **Section B: Ministerial correspondence – Bills previously considered**

This section contains the Committee’s reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee’s scrutiny criteria.

### **Part Two – Regulations**

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister’s reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the *Digest*. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the *Digest* drawing the regulation to the Parliament’s “special attention”. The criteria for the Committee’s consideration of regulations is set out in s 9 of the *Legislation Review Act 1987* (see page iii).

#### **Regulations for the special attention of Parliament**

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

#### **Regulations about which the Committee is seeking further information**

This table lists the Regulations about which the Committee is seeking further information from the Minister responsible for the instrument, when that request was made and when any reply was received.

#### **Copies of Correspondence on Regulations**

This part of the *Digest* contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought information. The Committee’s letter to the Minister is published together with the Minister’s reply.

## **Appendix 1: Index of Bills Reported on in 2005**

This table lists the Bills reported on in the calendar year and the *Digests* in which any reports in relation to the Bill appear.

## **Appendix 2: Index of Ministerial Correspondence on Bills for 2005**

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Bill and correspondence appear.

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

This table specifies the action the Committee has taken with respect to Bills that received comment in 2005 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

## **Appendix 4: Index of correspondence on Regulations reported on in 2005**

This table lists the recipient and date on which the Committee sent correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Regulation and correspondence appear.

## SUMMARY OF CONCLUSIONS

### SECTION A: Comment on Bills

#### 1. Children (Detention Centres) Amendment Bill 2006

##### **Solitary confinement: proposed amended s 21**

12. The Committee notes that the Bill provides for a considerable increase in the amount of time for which a young offender may be held in isolation due to misbehaviour, doubling it from 12 to 24 hours for offenders over the age of 16, and quadrupling it from 3 to 12 hours for offenders under the age of 16.
13. The Committee also notes that Art 67 of the United Nations *Rules for the Protection of Juveniles Deprived of their Liberty* expressly forbids the use of solitary confinement for young offenders as a form of cruel, inhuman or degrading punishment.
14. The Committee has written to the Minister for advice as to whether allowing the isolation of juvenile detainees under section 21 is consistent with the requirements of the United Nations *Rules for the Protection of Juveniles Deprived of their Liberty*, and, if it is not consistent with those rules, the justification for the inconsistency.
15. The Committee refers to Parliament whether the increase of the time to which a young offender may be subject to isolation trespasses unduly on the rights of young offenders in detention.

##### **Medical treatment without consent: proposed s 27**

18. The Committee notes that compelling a person to undergo medical treatment in the absence of his or her consent is a significant trespass to that person's rights and liberties.
19. The Committee notes, however, that the medical treatment in question can only be given:
  - if it is necessary for the purpose of saving life or preventing serious damage to health;
  - pursuant to a decision by the Chief Executive Officer, Justice Health; and
  - once the Chief Executive Officer has taken into account the cultural background and religious views of the detainee [proposed new s 27(2)].
20. In the circumstances, the Committee does not consider that such compulsory medical treatment unduly trespasses on personal rights and liberties.

##### **Privacy: proposed s 37J**

27. The Committee notes that mandatory drug and alcohol testing are an invasion of a person's privacy. The Committee also notes that the Bill provides for the collection and testing of urine, which involves a significant breach of a person's privacy.



28. The Committee further notes that as sanctions may be imposed for failing to submit to a drug or alcohol test, a juvenile justice officer cannot be said to freely consent to the testing.
29. The Committee also notes the public interest in ensuring that juvenile justice officers are not under the influence of alcohol and prohibited drugs while working.
30. The Committee refers to Parliament the question whether the Bill unduly trespasses on a juvenile justice officer's right to privacy by providing for mandatory drug and alcohol testing, including urine tests.

## **2. Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill 2006**

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

#### **Retrospectivity: Clause 2**

8. The Committee notes that if the Bill does not receive assent before 1 July 2006, it has the potential to create uncertainty for mine operators and mine employees.
9. The Committee notes that the Minister's office has expressed confidence that the Bill will be passed before 1 July 2006.

## **3. Correctional Services Legislation Amendment Bill 2006**

### **Right to receive medical care: proposed s 72B(2)**

18. The Committee notes that the right to adequate medical care is an internationally-recognised human right.
19. The Committee also notes that this right is expressed in section 72A of the *Crimes (Administration of Sentences) Act 1999*.
20. The Committee notes that it is common medical practice for a post-pubertal male who has been diagnosed with cancer to be offered the option of having semen stored, in case the treatment renders that person sterile, thereby preserving the person's reproductive health as much as possible. The Committee also understands that the ongoing cost of storing sperm is usually a private expense.
21. The Committee considers that the provision in the Bill denying a "serious indictable offender" the right to have his or her reproductive material stored prior to treatment likely to render him or her infertile or when otherwise medically advised is a trespass on the right to adequate medical treatment.
22. The Committee has written to the Minister to seek his advice as to the justification for this trespass.
23. The Committee refers to Parliament the question as to whether this constitutes an undue trespass on the personal rights of "serious indictable offenders".

### **Right to freedom from interference with, and to found, a family: proposed s 72B(2)**

30. The Committee notes that respect for family life and the right to found a family are internationally-recognised human rights.

Summary of Conclusions

31. The Committee also notes that, in considering the application of the respect for family life to prisoners, the European Court of Human Rights has allowed Governments to limit its applicability on a case-by-case basis, having regard to the maintenance of public confidence in the penal system, and the welfare of any child conceived as a result of artificial insemination and, therefore, the general interests of society as a whole.
32. The Committee also notes that the European Court of Human Rights made it clear that there is no place in a system where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for automatic forfeiture of rights by prisoners based purely on what might offend public opinion.
33. The Committee notes that the Bill provides for a blanket restriction on the access of a “serious indictable offender” to artificial insemination facilities, without any consideration of individual circumstances.
34. The Committee considers that this is a trespass on the individual rights of “serious indictable offenders”.
35. The Committee has written to the Minister to seek his advice as to the justification for this trespass.
36. The Committee refers to Parliament the question as to whether this blanket restriction on reproductive rights constitutes an undue trespass on the individual rights of “serious indictable offenders”.

**Double jeopardy: proposed s 72B(3)**

42. The Committee notes the importance of the double jeopardy rule within the common law tradition and as an internationally-recognised human right.
43. The Committee is strongly of the view that any weakening of the double jeopardy rule should only be allowed if overwhelmingly in the public interest.
44. The Committee notes that the Bill’s blanket denial of reproductive rights could be considered as constituting a further punishment in addition to that which the “serious indictable offender” received on judicial sentencing.
45. The Committee refers to Parliament the question as to whether this exposure to a further penalty constitutes an undue trespass on the individual rights of “serious indictable offenders”.

**4. Courts Legislation Further Amendment Bill 2006**

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

**5. Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006**  
**Reversal of onus of proof: Clause 8, Proposed section 23A**

12. The Committee notes that proposed s 23A places the onus of proof regarding whether a child was endangered, which is the essence of the offence, on the defendant.
13. The Committee notes that reversing the onus of proof is inconsistent with the presumption of innocence, which is a fundamental human right.
14. The Committee notes that while reversing the onus of proof may be appropriate in certain circumstances, proposed s 23A appears to fall outside the Commonwealth guidelines for such provisions.
15. The Committee has written to the Minister for advice as to the justification for reversing the onus of proof regarding whether a child was endangered.
16. The Committee refers to Parliament the question whether proposed section 23A trespasses unduly on the right to the presumption of innocence by reversing the onus of proof.

## 6. Fair Trading Amendment Bill 2006

### Right to Silence: Clause 20(1)(c) and (d)

9. The Committee notes that the privilege against self-incrimination is a fundamental right expressed in the International Covenant on Civil and Political Rights and the common law. The Committee considers that a bill should not abrogate the right to silence unless such abrogation is justified by, and in proportion to, an object in the public interest.
10. The Committee notes the importance of consumer protection legislation and ensuring that persons comply with the *Fair Trading Act 1987*.
11. The Committee also notes that the Act makes information compelled to be given by a notice under section 20 inadmissible in criminal proceedings but provides no limitations on the use of that information in civil proceedings or indirectly in criminal proceedings.
12. The Committee has written to the Minister for advice as to why investigating complaints that do not involve breaches of the legislation, or researching and conducting investigations into laws in force, justifies, and is in proportion to, the abrogation of the right to silence under the Bill.
13. The Committee refers to Parliament the question of whether the Bill's abrogation of the right to silence for the purposes of investigating complaints that do not involve breaches of the legislation, or researching and conducting investigations into laws in force, trespasses unduly on personal rights.

### Use of Self-Incriminating Evidence: Proposed s 20(1)(c) and (d)

16. The Committee considers that, unless clearly justified, when a bill abrogates the privilege against self-incrimination, information that would otherwise have been subject to this privilege should not be used in any proceedings (including proceedings of a criminal, civil, administrative or disciplinary nature) against the individual, except for proceedings relating to the falsity of the information provided.

Summary of Conclusions

17. The Committee notes that the Bill provides the power to obtain self-incriminating information in relation to complaints under section 9(1)(c) or investigations under 9(2) but does not provide any restriction on the use of that information in civil proceedings or indirectly in criminal proceedings.
18. The Committee has written to the Minister to seek her advice as to why there is no restriction on the use of such self-incriminating information in civil proceedings or indirectly in criminal proceedings.
19. The Committee refers to parliament the question of whether allowing self-incriminating information compelled to be produced under the Bill to be used against the person providing the information in civil proceedings or indirectly in criminal proceedings trespasses unduly on personal rights and liberties.

## **7. Interpretation Amendment Bill 2006**

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

## **8. Liquor Amendment (2006 FIFA World Cup Hotel Trading) Bill 2006**

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

## **9. Local Government Amendment (Waste Removal Orders) Bill 2006** **Procedural fairness: Schedule 1[3]**

11. The Committee notes the important public interest this Bill seeks to address and the important right of a person to procedural fairness, including the right to be heard.
12. The Committee also notes the advice it has received from the Minister's office on this matter.
13. The Committee refers to Parliament the question whether proposed s 23A unduly trespasses on the personal rights by removing the right to be notified of, and be heard in relation to, a waste removal order.

### **Removal of review rights: Schedule 1[4] & [8]**

18. The Committee is of the view that review of administrative decisions, especially external review, is an important mechanism to ensure the appropriate exercise of executive power. The Committee is of the view that it is especially important if the person who is the subject of the decision has been denied an opportunity to make representations on their own behalf prior to the making of the decision.
19. The Committee notes the purpose of waste removal orders and the important responsibility of local government to protect public health. The Committee also notes the advice in the second reading speech that the current review process under the Act is lengthy and, therefore, may be inappropriate in dealing with urgent matters of public health and safety.

20. The Committee also notes that some appeal rights to the Land and Environment Court remain, including appeal on the ground that a waste removal order was not lawfully made.
21. The Committee refers to Parliament the question whether the Bill unduly trespasses on personal rights by removing all possibility of review of the making of a waste removal order.

## 10. State Revenue Legislation Amendment Bill 2006

### Retrospectivity: Part 12 - Proposed amendment to the Pay-roll Tax Act 1971

6. As the employee share scheme amendments do not appear to have a detrimental affect on any person but are to the benefit of employers, the Committee does not consider that their retrospective application trespasses on personal rights or liberties.

## 11. Statute Law (Miscellaneous Provisions) Bill 2006

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

## 12. Superannuation Legislation Amendment Bill 2006

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

## 13. Sydney Cricket and Sports Ground Amendment Bill 2006

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

## 14. University of Technology (Kuring-gai Campus) Bill 2006\*

### Compulsory acquisition of land not on just terms: Clause 6(5)

7. The Committee is of the view that requiring owners of land and those with an interest in land to be compensated when a government compulsorily acquires that land is an important safeguard for the right to property. Given its importance, the Committee is of the view that it should always apply unless there are exceptional circumstances.
8. The Committee is unclear as to what, if any, exceptional circumstances apply in this case to warrant compulsory acquisition without just compensation.
9. The Committee refers to Parliament the question whether the Bill unduly trespasses on personal rights by providing for compulsory acquisition of land and interests in land without compensation

**15. Young Offenders Amendmnt (Reform of Cautioning and Warning) Bill 2006**

- |   |
|---|
| 3. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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**SECTION B: Ministerial Correspondence — Bills Previously Considered**

**16. Education Legislation Amendment (Staff) Bill 2006**

- |   |
|---|
| 8. The Committee thanks the Minister for her reply. |
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**17. Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006**

- |   |
|---|
| 6. The Committee thanks the Minister for his reply. |
|---|

## Part One – Bills

### SECTION A: COMMENT ON BILLS

# 1. CHILDREN (DETENTION CENTRES) AMENDMENT BILL 2006

Date Introduced:	23 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Tony Kelly MLC
Portfolio:	Juvenile Justice

### Purpose and Description

1. The Bill makes a number of amendments to the *Children (Detention Centres) Act 1987*, as well as minor and consequential amendments to the *Children (Criminal Proceedings) Act 1987*, the *Crimes (Administration of Sentences) Act 1999* and the *Freedom of Information Act 1989*.

### Background

2. According to the second reading speech, the aim of the Bill is to:  
improve the administration of detention centres and the management of detainees, and is for other purposes. The proposals in the bill reflect the Government's recognition of the need to assist with quelling actual serious disturbances or imminent serious disturbances at juvenile detention centres.<sup>1</sup>

### The Bill

3. The Bill makes a number of changes to the organisation of juvenile detention centres and the treatment of detainees. The Bill:
  - enables the Director-General of the Department of Juvenile Justice (the Director-General) to make use of the services of the Commissioner of Corrective Services (the Commissioner) with respect to the handling of riots and disturbances at detention centres [proposed new s 26];
  - makes provision with respect to the transfer of detainees from detention centres to correctional centres [proposed new s 28];
  - increases the time for which detainees may be segregated or isolated from other detainees [proposed new s 19 and s 21];
  - makes provision with respect to the provision of medical treatment to persons who are detained in detention centres [proposed new s 27];
  - makes provision with respect to the functions of Justice Health in relation to the care of persons who are detained in detention centres [proposed new Part 4A Div 1]; and

<sup>1</sup> Mr P E McLeay MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 23 May 2006.

- makes provision with respect to the testing of juvenile justice officers for alcohol and prohibited drugs [proposed new Part 4A Div 2].

## Issues Considered by the Committee

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

#### Solitary confinement: proposed amended s 21

4. At present, s 19 enables detainees to be segregated *for their own protection* for up to 6 hours in any period of 24 hours. The Bill provides that such segregation may be for an indefinite period if the Director-General so approves.
5. Currently, s 21(d) provides that detainees may be excluded from, or confined to, a place for up to 3 hours (in the case of detainees under 16) or 12 hours (in the case of detainees 16 or over) by way of punishment *for misbehaviour*.<sup>2</sup> The Bill increases these maximum periods of isolation to 12 hours and 24 hours, respectively.
6. Articles 66 and 67 of the United Nations *Rules for the Protection of Juveniles Deprived of their Liberty* provide as follows:
  66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.
  67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.<sup>3</sup>
7. In addition, Art 47 provides that:

Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities
8. On 17 February 2006, Lord Carlile QC published a report following his independent inquiry into the use of physical restraints, strip-searching and the segregation of children in detention in the United Kingdom. The Inquiry considered the various ways in which children are treated in detention, which would, “in any other circumstances, trigger a child protection investigation and could even result in criminal charges”.<sup>4</sup>
9. The Report recommended, *inter alia*, that:
  - prison segregation units should not be used for children; and

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<sup>2</sup> “Misbehaviour”, in relation to a detainee, means an offence under s 37A (breaching conditions of leave, failure to return etc) or any breach of the regulations that is committed by the detainee: s 3.

[http://www.unhchr.ch/html/menu3/b/h\\_comp37.htm](http://www.unhchr.ch/html/menu3/b/h_comp37.htm). The Australasian Juvenile Justice Administrators *Standards for Juvenile Custodial Facilities* makes explicit reference to Art 66 and Art 67 in its “Disciplinary Standard”: [http://www.djj.nsw.gov.au/pdf\\_hm/publications/general/Finalstandards.pdf](http://www.djj.nsw.gov.au/pdf_hm/publications/general/Finalstandards.pdf)

<sup>4</sup> The Inquiry was commissioned by the Howard League for Penal Reform.

[http://www.illexjournal.co.uk/legal\\_briefings/article.asp?theid=1241&themode=1](http://www.illexjournal.co.uk/legal_briefings/article.asp?theid=1241&themode=1)



- solitary confinement should never be used as a punishment.
10. Given the vulnerabilities and backgrounds of abuse that many of the young people had experienced prior to custody, the Inquiry was particularly concerned at the impact on them of methods such as segregation.<sup>5</sup>
11. In this regard, it is relevant to note the high level of intellectual disabilities and mental illness among young people in custody in New South Wales. According to a 2003 Department of Juvenile Justice survey:
- 88% reported symptoms consistent with a mild, moderate or severe psychiatric disorder;
  - 30% reported symptoms consistent with Attention Deficit Hyperactivity Disorder;
  - 21% reported symptoms consistent with schizophrenia;
  - 10-13% were assessed as having an intellectual disability;
  - 8% of young men and 12% of young women reported having attempted suicide in the previous 12 months.<sup>6</sup>

- 12. The Committee notes that the Bill provides for a considerable increase in the amount of time for which a young offender may be held in isolation due to misbehaviour, doubling it from 12 to 24 hours for offenders over the age of 16, and quadrupling it from 3 to 12 hours for offenders under the age of 16.**
- 13. The Committee also notes that Art 67 of the United Nations *Rules for the Protection of Juveniles Deprived of their Liberty* expressly forbids the use of solitary confinement for young offenders as a form of cruel, inhuman or degrading punishment.**
- 14. The Committee has written to the Minister for advice as to whether allowing the isolation of juvenile detainees under section 21 is consistent with the requirements of the United Nations *Rules for the Protection of Juveniles Deprived of their Liberty*, and, if it is not consistent with those rules, the justification for the inconsistency.**
- 15. The Committee refers to Parliament whether the increase of the time to which a young offender may be subject to isolation trespasses unduly on the rights of young offenders in detention.**

#### **Medical treatment without consent: proposed s 27**

16. The Bill provides that detainees are to be given medical treatment without their consent, if it is necessary for the purpose of saving life or preventing serious damage to health.
17. While it is accepted that sentenced offenders may be deprived of their liberty, allowing the State to force treatment on a person is a significant trespass on personal

<sup>5</sup> [http://www.ilexjournal.co.uk/legal\\_briefings/article.asp?theid=1241&themode=1](http://www.ilexjournal.co.uk/legal_briefings/article.asp?theid=1241&themode=1)

<sup>6</sup> Department of Juvenile Justice, *Disability Action Plan 2004-2006*, [http://www.djj.nsw.gov.au/pdf\\_htm/publications/general/DisabilityActionPlan2004-2006.pdf](http://www.djj.nsw.gov.au/pdf_htm/publications/general/DisabilityActionPlan2004-2006.pdf)

rights and liberties and has the potential to lead to abuse and severe attacks on personal dignity.

- 18. The Committee notes that compelling a person to undergo medical treatment in the absence of his or her consent is a significant trespass to that person's rights and liberties.**
- 19. The Committee notes, however, that the medical treatment in question can only be given:**
- **if it is necessary for the purpose of saving life or preventing serious damage to health;**
  - **pursuant to a decision by the Chief Executive Officer, Justice Health;<sup>7</sup> and**
  - **once the Chief Executive Officer has taken into account the cultural background and religious views of the detainee [proposed new s 27(2)].**
- 20. In the circumstances, the Committee does not consider that such compulsory medical treatment unduly trespasses on personal rights and liberties.**

#### **Privacy: proposed s 37J**

21. The Bill provides for mandatory random tests of on-duty, or about to go on-duty, juvenile justice officers for alcohol and other drugs. These tests may consist of a breath test or analysis, or the taking of a "non-invasive sample" [proposed s 37J(1)].
22. Also, if an incident occurs in which a person dies or is injured while in the custody of a juvenile justice officer, an authorised person may require any juvenile justice officer involved in the incident to undergo such tests [proposed s 37J(3)].<sup>8</sup>
23. Non-invasive sample is not defined in the Act. However, s 3 of the *Crime (Administration of Sentences) Act 1999* defines it as any of the following samples of human biological material:
- a sample of breath, taken by breath test, breath analysis or otherwise;
  - a sample of urine;
  - a sample of faeces;
  - a sample of saliva taken by buccal swab;
  - a sample of nail;
  - a sample of hair other than pubic hair;
  - a sample of sweat taken by swab or washing from any external part of the body other than:

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<sup>7</sup> If the Chief Executive Officer, Justice Health is not a medical practitioner, the reference to the Chief Executive Officer, Justice Health is taken to be a reference to a person, designated by the Chief Executive Officer for the purposes of s 27(2), who *is* a medical practitioner: proposed new s 27(5).

<sup>8</sup> Similarly, if a juvenile justice officer attends or is admitted to a hospital for examination or treatment because of an incident referred to in s 37J(3), an authorised person may require the juvenile justice officer to provide, or enable to be taken, a sample of blood or a non-invasive sample from the juvenile justice officer in accordance with the directions of a medical practitioner who attends the juvenile justice officer at the hospital.

- the genital or anal area or the buttocks; or
  - the breasts of a female or a transgender person who identifies as a female.
24. According to the Privacy Committee of NSW, urine collected for the purposes of drug testing requires close observation of the collection of the urine, including of the genital area, to ensure that the sample is not tampered with.<sup>9</sup> This is clearly a significant intrusion of a person's physical privacy and can be embarrassing and humiliating. Obviously, breath and hair analysis tests are not as intrusive of privacy.
25. The Committee is of the view that random drug tests intrude on a person's privacy. Whether such intrusion is a breach of the person's privacy depends on whether the person concerned freely consents to the privacy intrusion.
26. The Bill also provides that regulations may make provisions for the consequences of juvenile justice officers:
- refusing to comply with a requirement in respect of drug or alcohol testing under the Act; and
  - testing positive to alcohol or prohibited drugs [proposed s 37M].
- 27. The Committee notes that mandatory drug and alcohol testing are an invasion of a person's privacy. The Committee also notes that the Bill provides for the collection and testing of urine, which involves a significant breach of a person's privacy.**
- 28. The Committee further notes that as sanctions may be imposed for failing to submit to a drug or alcohol test, a juvenile justice officer cannot be said to freely consent to the testing.**
- 29. The Committee also notes the public interest in ensuring that juvenile justice officers are not under the influence of alcohol and prohibited drugs while working.**
- 30. The Committee refers to Parliament the question whether the Bill unduly trespasses on a juvenile justice officer's right to privacy by providing for mandatory drug and alcohol testing, including urine tests.**

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

<sup>9</sup> Privacy Committee of New South Wales, *Drug Testing in the Workplace*, October 1992, [http://www.lawlink.nsw.gov.au/lawlink/privacynsw/ll\\_pnsw.nsf/vwFiles/drug%20testing%20complete.doc/\\$file/drug%20testing%20complete.doc](http://www.lawlink.nsw.gov.au/lawlink/privacynsw/ll_pnsw.nsf/vwFiles/drug%20testing%20complete.doc/$file/drug%20testing%20complete.doc). On the issue generally, see P J Holland and M D Wickham, "The Contentious Issue of Drug Testing in the Workplace: The Case of the South Blackwater Mine", *The Management Case Study Journal*, Vol 1, No 2, 1-17.

## 2. COAL AND OIL SHALE MINE WORKERS (SUPERANNUATION) AMENDMENT BILL 2006

Date Introduced:	23 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Joseph Della Bosca MLC
Portfolio:	Finance

### Purpose and Description

1. The Bill amends the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* to repeal the prohibition of employment of mine workers beyond the age of 60, and to provide for the minimum superannuation contribution to be made by an owner in respect of a mine worker to be 9% of a mine worker's ordinary time earnings.

### Background

2. In relation to the repeal on the prohibition of employment of mine workers beyond the age of 60 the second reading speech provides the following background:

The Coal and Oil Shale Mine Workers (Superannuation) Act 1941 implemented key safety recommendations of the 1940-1941 Royal Commission into Mine Safety. Accordingly, retirement was made compulsory at age 60 and a retirement pension scheme was established for coal mine workers and their widows. Compulsory age retirement still affects most coal mine workers... Because of the broad definition of a mineworker under the Act, this requirement affect industry employees in transport and ancillary operations, as well as those directly engaged in the extraction of coal.

... Abolition of compulsory retirement at age 60 will provide coalmine workers in New South Wales with similar options to the rest of the community... The change is consistent with both State and Commonwealth Government policy for the elimination of age discrimination and encouragement for older workers to remain in the workforce.<sup>10</sup>

3. In relation to the change to mine workers superannuation entitlements, the second reading speech states that:

Unlike most current superannuation payments made on behalf of employees, the resulting contributions [by employers to superannuation] do not reflect or fluctuate with the coal mine worker's individual salary. They produce a standard flat weekly contribution amount of about \$126 per week, which, for many coal mine workers, is below the community standard of 9 per cent of their weekly ordinary time earnings...

... To bring equity to New South Wales' coal mine workers, a statutory safety net is to be placed in the contribution arrangements of the Act equal to the community standard.<sup>11</sup>

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<sup>10</sup> The Hon Kerry Hickey, Minister for Local Government, Legislative Assembly *Hansard*, 23 May 2006.

<sup>11</sup> The Hon Kerry Hickey, Minister for Local Government, Legislative Assembly *Hansard*, 23 May 2006.

## The Bill

### 4. The Bill:

- omits Part 2 of the Principal Act to repeal the prohibition of employment of a mine worker beyond the age of 60;
- amends the Principal Act to provide that if the total superannuation contributions otherwise payable by an owner for a mine worker are less than 9% of a mine worker's ordinary time earnings then the contribution payable by the owner for the mine worker is 9% of the mine worker's ordinary time earnings [proposed s 19(3A)];
- amends the Principal Act to define *ordinary time earnings* as having the same meaning as in section 6(1) of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth [proposed s 19(7)];
- amends the Principal Act to provide for superannuation contributions under the Principal Act to be paid not later than 21 days after the end of each month, instead of after the end of the relevant pay period, as currently provided [proposed s 19(4)(b)];
- amends the Principal Act to provide for information to be provided to the Corporate Trustee by an owner no later than 21 days after the end of each month, instead of after the end of each week, as currently provided [proposed s 19AC].

## Issues Considered by the Committee

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

#### Retrospectivity: Clause 2

5. Clause 2 of the Bill provides for the proposed Act to commence, or be taken to have commenced, on July 1 2006.
6. The Bill was introduced into Parliament on 23 May 2006, and may or may not receive assent before 1 July 2006. The Bill has the potential to operate retrospectively for any period between July 1 2006 and the date of assent.
7. If the Bill does not receive assent before 1 July 2006, the amendments have the potential to create uncertainty for mine operators as to their superannuation liabilities and requirements, and whether they can employ mine workers beyond the age of 60 years.

**8. The Committee notes that if the Bill does not receive assent before 1 July 2006, it has the potential to create uncertainty for mine operators and mine employees.**

**9. The Committee notes that the Minister's office has expressed confidence that the Bill will be passed before 1 July 2006.**

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

## 3. CORRECTIONAL SERVICES LEGISLATION AMENDMENT BILL 2006

Date Introduced:	23 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Tony Kelly MLC
Portfolio:	Justice

### Purpose and Description

1. The Bill's objects are to:
  - prohibit inmates who are serving sentences for serious indictable offences or who are awaiting sentencing for such offences from providing their reproductive material for use, or storage, for reproductive purposes at hospitals and other places, and
  - require inmates who have had their reproductive material stored for reproductive purposes to pay charges for the storage during any period during which they are imprisoned.

### Background

2. Although it is not stated in the second reading speech, it would appear that the Bill has been introduced in response to concerns voiced recently when a convicted gang rapist, aged 22, had a sperm sample frozen before he began chemotherapy for Hodgkin's disease, which would leave him sterile. The man was 17 at the time of the crimes for which he was convicted.<sup>12</sup>
3. This appears to have been referred to in a decision of the NSW Court of Criminal Appeal in *R v Mohammed Skaf*,<sup>13</sup> in which expert evidence was cited to the effect that that:

Hodgkin lymphoma is one of the best characterised malignancies of the lymphatic system and is one of the forms of malignant disease most readily curable by radiotherapy, chemotherapy or a combination of the two.<sup>14</sup>
4. The judgment confirmed that the cancer treatment did in fact render the patient sterile, and that he was receiving further treatment for ensuing depression in respect of his sterility.<sup>15</sup>

### The Bill

5. The Bill inserts proposed s 72B into the *Crimes (Administration of Sentences) Act 1999* [the Act].

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<sup>12</sup> See *The Daily Telegraph*, 12 May 2006.

<sup>13</sup> [2005] NSWCCA 298 per Studdert, Bell and Latham JJ at paragraphs 28 – 41.

<sup>14</sup> At paragraph 34.

<sup>15</sup> At paragraph 34.

6. Under the Bill, no grant of leave of absence to a serious indictable offender will be allowed for the purpose of the offender providing reproductive material for use, or storage, for reproductive purposes at any hospital or other place [proposed s 72B(2)].
7. The Bill makes it an offence for a serious indictable offender to provide reproductive material for use, or storage, for reproductive purposes at any hospital or other place [proposed s 72B(3)]. The maximum penalty is 100 penalty units (currently \$11,000) or imprisonment for 6 months, or both.
8. It was noted in the second reading speech that:

[o]ne hundred penalty units is the maximum penalty applicable under comparable legislation, the Human Tissue Act 1983, for obtaining or using a sperm donor's semen for an improper purpose. A custodial sentence is desirable as an alternative or additional penalty for an inmate who may not be deterred by the prospect of facing only a financial penalty.<sup>16</sup>
9. Prisoners other than serious indictable offenders who have their reproductive material stored for reproductive purposes at hospitals or other places, and serious indictable offenders whose reproductive material was stored for reproductive purposes *before* the commencement of the proposed section are to pay a charge for storage of the material [proposed s 72B(4) & (5)].

## Issues Considered by the Committee

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

#### Right to receive medical care: proposed s 72B(2)

10. Article 25 of the 1948 UN *Declaration of Human Rights* provides that everyone has the right to the provision of medical care adequate for his or her health and well-being.
11. Article 12 of the UN *International Convention on Economic, Social and Cultural Rights*, to which Australia is a signatory, recognises the right of everyone to “the enjoyment of the highest attainable standard of physical and mental health”. The UN’s General Comment on Art 12 states as follows:

The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.<sup>17</sup>
12. In NSW, a prisoner is legally entitled to receive reasonable medical care for his or her medical conditions. Indeed, s 72A of the Act provides that:

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<sup>16</sup> Mr P E McLeay MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 23 May 2006.

<sup>17</sup> [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument). The ICCPR also states that the men and women of marriageable age have the right to marry and to found a family shall be recognised: Art 23.2. According to the UN *General Comment No.19*, the right to found a family “implies, in principle, the possibility to procreate”. Any provisions relating to these rights should be compatible with the provisions of the Covenant and should, in particular, not be discriminatory or compulsory.

An inmate must be supplied with such medical attendance, treatment and medicine as in the opinion of a medical officer is necessary for the preservation of the health of the inmate, or of other inmates and of any other person.

13. Other recent legislation in NSW has accepted the concept that competent professional medical practice includes practice that is widely accepted by a medical practitioner's peers [see s 50 of the *Civil Liability Act 2002*].
14. The Committee understands that it is common medical practice for a post-pubertal male who has been diagnosed with cancer to be offered an option of having semen stored, in case the treatment renders that person sterile.<sup>18</sup> The Committee also understands that the ongoing cost of storing sperm is usually a private expense.
15. Accordingly, in so far as a prisoner who is diagnosed with cancer is offered a medical option of having sperm stored and preserved before cancer therapy is undertaken, this is entirely consistent with standard medical practice offered to any person of reproductive age in Australia.
16. However, the Bill prohibits persons described as "serious indictable offenders" whilst in custody, from being permitted to provide either sperm or eggs for the purpose of being used or stored for reproductive purposes at any hospital or any other place.
17. There would appear to be no Australian precedent to base decisions for treatment on a "moral evaluation" of why the person needed the treatment, eg, persons with emphysema are not deprived from treatment because they developed as a result from smoking. Rather, decisions for health care availability have always been based on the principles of equality of access, depending on clinical need and prognosis.

- 18. The Committee notes that the right to adequate medical care is an internationally-recognised human right.**
- 19. The Committee also notes that this right is expressed in section 72A of the *Crimes (Administration of Sentences) Act 1999*.**
- 20. The Committee notes that it is common medical practice for a post-pubertal male who has been diagnosed with cancer to be offered the option of having semen stored, in case the treatment renders that person sterile, thereby preserving the person's reproductive health as much as possible. The Committee also understands that the ongoing cost of storing sperm is usually a private expense.**
- 21. The Committee considers that the provision in the Bill denying a "serious indictable offender" the right to have his or her reproductive material stored prior to treatment likely to render him or her infertile or when otherwise medically advised is a trespass on the right to adequate medical treatment.**

<sup>18</sup> The Committee notes that the equivalent option is less common for female patients, as there are more technical difficulties in harvesting and freezing eggs than there are in collecting sperm. An additional complication is that to collect eggs requires the commencement of treatment to be delayed until the next monthly ovulation cycle, and many women are understandably reluctant to delay the commencement of necessary treatment in case the cancer progresses in the meantime.



- 22. The Committee has written to the Minister to seek his advice as to the justification for this trespass.**
- 23. The Committee refers to Parliament the question as to whether this constitutes an undue trespass on the personal rights of “serious indictable offenders”.**

**Right to freedom from interference with, and to found, a family: proposed s 72B(2)**

24. Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), to which Australia is also a signatory, provides that:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.<sup>19</sup>

25. Article 23.2 of the (ICCPR) provides that:

The right of men and women of marriageable age to marry and to found a family shall be recognized.

26. Article 8 of the European Convention on Human Rights is the equivalent of Art 17. It provides as follows:

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

27. In interpreting the application of Art 8<sup>20</sup> to prisoners in detention, the recent decision of the European Court of Human Rights in *Dickson v United Kingdom*<sup>21</sup> upheld the validity of a UK policy in relation to prisoners who were not suffering from any relevant illness or disease. The policy that was upheld provided as follows:

Requests for artificial insemination by prisoners are carefully considered on individual merit and will only be granted in exceptional circumstances. In reaching decisions particular attention is given to the following general considerations:

- whether the provision of AI facilities is the only means by which conception is likely to occur

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<sup>19</sup> The term “unlawful” means that no interference can take place except in cases envisaged by the law. Interference authorised by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant. However, in its General Comment on Art 17, the ICCPR Committee has stated that the expression “arbitrary interference” can also extend to interference provided for *under the law*: “The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.” States parties are under a duty themselves not to engage in interferences inconsistent with Art 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons.

<sup>20</sup> Article 12 of the convention provides the right found a family in similar terms to Article 23.2 of the ICCPR. While submissions were also made in relation to the right to found a family in *Dickson*, it was conceded that it was not necessary to consider that right separately from the right to respect for family life.

<sup>21</sup> [2006] ECHR 44362/06.

- whether the prisoner's expected day of release is neither so near that delay would not be excessive nor so distant that he/she would be unable to assume the responsibilities of a parent
- whether both parties want the procedure and the medical authorities both inside and outside the prison are satisfied that the couple are medically fit to proceed with AI
- whether the couple were in a well established and stable relationship prior to imprisonment which is likely to subsist after the prisoner's release
- whether there is any evidence to suggest that the couple's domestic circumstances and the arrangements for the welfare of the child are satisfactory, including the length of time for which the child might expect to be without a father or mother
- whether having regard to the prisoner's history, antecedents and other relevant factors there is evidence to suggest that it would not be in the public interest to provide artificial insemination facilities in a particular case.

28. The majority in the Court said that:

as a matter of general policy, requests by prisoners in the United Kingdom for artificial insemination are only granted by the authorities in exceptional circumstances. In reaching a decision as to whether such circumstances exist in any individual case, particular attention is given by the authorities to a number of general considerations which are set out in the Secretary of State's letter of 28 May 2003. As explained by the respondent Government, and as reflected in the judgments of the *Court of Appeal in R (on the application of Mellor) v Secretary of State for the Home Dept* [2001] EWCA Civ 472 and in the present case, two principal aims underlie the policy: the maintenance of public confidence in the penal system and the welfare of any child conceived as a result of artificial insemination and, therefore, the general interests of society as a whole.

As to the former aim, while reiterating that there is no place under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for automatic forfeiture of rights by prisoners based purely on what might offend public opinion (*Hirst v UK (no 2)* [2004] ECHR 74025/01 at para 70), the Court nevertheless accepts that the maintaining of public confidence in the penal system has a legitimate role to play in the development of penal policy within prisons. The Court also considers valid that, in developing and applying the policy, the authorities retained certain criteria which concerned the interests of any child to be conceived. The very object of a request for artificial insemination is the conception of a child and the State has positive obligations to ensure the effective protection and the moral and material welfare of children.

As to the policy itself, the Court attaches particular importance to the fact that, in contrast to the law which was in issue in *Hirst v UK (no 2)* [2004] ECHR 74025/01, it did not operate to impose a blanket restriction on a prisoner's access to artificial insemination facilities, without any consideration of individual circumstances. On the contrary, as was explained in the letter of the Secretary of State, requests for artificial insemination were carefully considered on individual merit and according to the various criteria set out in the letter. Having examined these criteria, the Court does not find them to be arbitrary or not reasonably related to the underlying aims of the policy. Nor, on the material before the Court, can it be suggested that the examination of an individual case in the light of the considerations set out in the letter is merely theoretical or illusory: the unchallenged evidence before the Court of Appeal was that the Secretary of State had already allowed access to insemination facilities in certain cases, while two applications were struck out by the former Commission when

artificial insemination facilities were granted to the applicants (*PG v UK*, no 10822/84, Commission decision of 7 May 1987; and *G and RS v UK*, no 17142/90, Commission decision of 10 July 1991, both unpublished).

29. It may be inferred from the reasoning of the European Court of Human Rights that it would not be an undue trespass on a serious offender's right to family life to make him or her pay for the storage of reproductive material for the duration of his or her sentence, and to prohibit the use of that material until at or near the end of the sentence. However, a blanket restriction on a "serious indictable offender" providing reproductive material for storage without any consideration of individual circumstances, as provided in the Bill, could be regarded as an unacceptable breach of that right.

- 30. The Committee notes that respect for family life and the right to found a family are internationally-recognised human rights.**
- 31. The Committee also notes that, in considering the application of the respect for family life to prisoners, the European Court of Human Rights has allowed Governments to limit its applicability on a case-by-case basis, having regard to the maintenance of public confidence in the penal system, and the welfare of any child conceived as a result of artificial insemination and, therefore, the general interests of society as a whole.**
- 32. The Committee also notes that the European Court of Human Rights made it clear that there is no place in a system where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for automatic forfeiture of rights by prisoners based purely on what might offend public opinion.**
- 33. The Committee notes that the Bill provides for a blanket restriction on the access of a "serious indictable offender" to artificial insemination facilities, without any consideration of individual circumstances.**
- 34. The Committee considers that this is a trespass on the individual rights of "serious indictable offenders".**
- 35. The Committee has written to the Minister to seek his advice as to the justification for this trespass.**
- 36. The Committee refers to Parliament the question as to whether this blanket restriction on reproductive rights constitutes an undue trespass on the individual rights of "serious indictable offenders".**

#### **Double jeopardy: proposed s 72B(3)**

37. The right not to receive punishment in addition to that ordered by the Court in sentencing is a fundamental human right, recognised under Australian common law,<sup>22</sup> and enshrined in Article 14(7) of the ICCPR.
38. Article 14(7) of the ICCPR provides that:

<sup>22</sup> See, eg, *R v Carroll* [2002] HCA 55.

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

39. In *Pearce v The Queen*, Kirby J referred to the long-standing nature of the concept:

It has been said that the principle that a person should not twice be placed in jeopardy for the same matter is a cardinal rule lying “[a]t the foundation of criminal law”. The rule has been explained as arising from a basic repugnance against the exercise of the state's power to put an accused person in repeated peril of criminal punishment.<sup>23</sup>

40. Insofar as the Bill applies to persons sentenced prior to its commencement, it appears to be adding an additional punishment to that given by the Court at sentencing. Presumably, a Court would have already reflected the severity of the crime of a “serious indictable offender” with a longer sentence or non-parole period than would have applied to persons who had been found guilty of less serious crimes.

41. Given that the punishment has already been reflected in the more serious sentence, there seems little reason that a “serious indictable offender” should invariably be denied any possibility of having his or her semen or eggs stored.

**42. The Committee notes the importance of the double jeopardy rule within the common law tradition and as an internationally-recognised human right.**

**43. The Committee is strongly of the view that any weakening of the double jeopardy rule should only be allowed if overwhelmingly in the public interest.**

**44. The Committee notes that the Bill’s blanket denial of reproductive rights could be considered as constituting a further punishment in addition to that which the “serious indictable offender” received on judicial sentencing.**

**45. The Committee refers to Parliament the question as to whether this exposure to a further penalty constitutes an undue trespass on the individual rights of “serious indictable offenders”.**

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

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<sup>23</sup> *Pearce v The Queen* [1988] HCA 57 at 73. Similarly, in *R v Hoar* (1981) 148 CLR 32 at 38, Gibbs CJ, Mason, Aickin and Brennan JJ stated that there is “a practice, if not a rule of law, that a person should not be twice punished for what is substantially the same act”.

## 4. COURTS LEGISLATION FURTHER AMENDMENT BILL 2006

Date Introduced: 24 May 2006  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Bob Debus MP  
Portfolio: Attorney General

### Purpose and Description

1. The Bill amends the *Civil Procedure Act 2005*; the *Drugs Court Act 1998* and the *Land and Environment Court Act 1979* with respect to courts, court procedures and other matters.

### Background

2. The second reading speech states:  
This bill provides for miscellaneous amendments to courts-related legislation, and is part of the Attorney General's regular legislative review and monitoring program.<sup>24</sup>

### The Bill

3. The Bill:
  - (a) amends the *Civil Procedure Act 2005*:
    - (i) to remove the Crown's exemption from the payment of Sheriff's fees;
    - (ii) to allow a court to order money recovered on behalf of a person under legal incapacity to be paid to another person;
    - (iii) to insert an explanatory note and make other minor amendments of a statute law nature; and
  - (b) amends the *Drug Court Act 1998* with respect to eligible convicted offenders, and
  - (c) amends the *Land and Environment Court Act 1979* to permit third parties to be joined in certain appeals.

### Issues Considered by the Committee

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

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

<sup>24</sup> Mr Neville Newell MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 24 May 2006.

## 5. DRUG MISUSE AND TRAFFICKING AMENDMENT (HYDROPONIC CULTIVATION) BILL 2006

Date Introduced:	25 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

### Purpose and Description

1. The object of this Bill is to make amendments to the *Drug Misuse and Trafficking Act 1985 (the Principal Act)* and other legislation to make further provision relating to the cultivation of prohibited plants (being cannabis, coca and opium poppy plants) by enhanced indoor means (that is, hydroponics and similar indoor cultivation) as set out in the Outline below.

### Background

2. The second reading speech stated:

This Bill addresses the cultivation of prohibited plants by hydroponic or other enhanced indoor means and is directed towards organised commercial production using residential premises.<sup>25</sup>

### The Bill

3. The amendments made by the Bill to the Principal Act include:
  - inserting a definition of “cultivation by enhanced indoor means”;
  - replacing the definition of “prohibited plant” to include “cannabis plant cultivated by enhanced indoor means”;
  - replacing the definition of “drug premises”; and
  - creating new offences of:
    - cultivating prohibited plants by enhanced indoor means of quantities greater than small quantities but less than commercial quantities; and
    - cultivating prohibited plants by enhanced indoor means in the presence of children.

### Issues Considered by the Committee

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

#### Reversal of onus of proof: Clause 8, Proposed section 23A

4. Proposed section 23A creates the new aggravated offence of cultivating a prohibited plant by enhanced indoor means in the presence of children. Specifically, the

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<sup>25</sup> The Hon Carmel Tebbutt MP, Minister for Education & Training, Second Reading Speech, Legislative Assembly Hansard, 25 May 2006.

prosecution must prove that the defendant “exposes” a child to the cultivation process, or to substances being stored for use in that cultivation process. The penalties for an offence under this section are a fine of between 2,400 to 4,200 penalty units or imprisonment for 12 –18 years or both.

5. It is a defence to this offence if the defendant establishes that the exposure of the child to the prohibited plant cultivation process, or to substances being stored for that process, did not endanger the health or safety of the child [proposed subsection 23A(6)].
6. As currently drafted, the new offence is extremely broad. The Bill does not define “expose” or provide any guidance on what the prosecution must prove to make out the aggravated offence. Importantly, the Bill does not require the prosecutor to prove that exposure to a prohibited plant cultivation process has or will endanger a child, but only that the defendant has exposed the child. The offence would appear to encompass a child merely seeing, or being in the presence of, a prohibited plant or substances for the cultivation of that plant.
7. The Committee understands that the essence of the offence is intended to be exposure that endangers a child. However, the offence is drafted so that endangerment does not need to be proven by the prosecution. Rather, the onus is placed on the defendant to disprove this essential element. Given the severity of the penalty and the range of possible circumstances where a child may be exposed to a prohibited plant or substances for the cultivation of a prohibited plant and not be endangered, the Committee questions whether this reversal of the onus of proof is appropriate.
8. Reversing the onus of proof is inconsistent with the presumption of innocence, which is well recognised as a fundamental human right, protected under the common law<sup>26</sup> and under international law.<sup>27</sup> However, the Committee notes that the presumption of innocence is not absolute.
9. It is widely accepted in Australia and in comparable jurisdictions that the presumption of innocence can be qualified in pursuit of legitimate objectives. This is so even in jurisdictions such as Canada where the right to be presumed innocent is constitutionally entrenched.<sup>28</sup> The European Court of Human Rights has ruled that reverse onus offences can, depending on their terms and the seriousness of the penalty associated with the crime in question, be regarded as compatible with the right to be presumed innocent which is protected by Article 6(2) of the European Convention on Human Rights.<sup>29</sup>
10. The Commonwealth Attorney-General’s Department’s *A Guide To Framing Commonwealth Offences, Civil Penalties And Enforcement Powers* states:

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<sup>26</sup> The so-called “golden thread” per Sankey L in *Woolmington v DPP* (1935) AC 462 (HL).

<sup>27</sup> See Article 14(2) of the International Covenant on Civil and Political Rights, which states that: Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

<sup>28</sup> See s 11 of the Canadian Charter of Rights and Freedoms.

<sup>29</sup> See *Salabiaku v France* (1988) 13 EHRR 379.

In general, the prosecution should be required to prove all aspects of a criminal offence beyond reasonable doubt. A matter should be included in a defence, thereby placing the onus on the defendant, only where the matter is peculiarly within the knowledge of the defendant; and is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

...

Placing of an evidential burden on the defendant (or the further step of casting a matter as a legal burden) is more readily justified if:

- the matter in question is not 'central' to the question of culpability for the offence,
- the offence carries a relatively low penalty, or
- the conduct proscribed by the offence poses a grave danger to public health or safety.

11. The Committee notes that:

- the matter is not peculiarly within the knowledge of the defendant;
- the issue of endangerment is central to the question of culpability;
- the offence carries an extremely high penalty; and
- whether the conduct poses a grave danger to health or safety is the issue to be proved.

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| <p>12. <b>The Committee notes that proposed s 23A places the onus of proof regarding whether a child was endangered, which is the essence of the offence, on the defendant.</b></p> <p>13. <b>The Committee notes that reversing the onus of proof is inconsistent with the presumption of innocence, which is a fundamental human right.</b></p> <p>14. <b>The Committee notes that while reversing the onus of proof may be appropriate in certain circumstances, proposed s 23A appears to fall outside the Commonwealth guidelines for such provisions.</b></p> <p>15. <b>The Committee has written to the Minister for advice as to the justification for reversing the onus of proof regarding whether a child was endangered.</b></p> <p>16. <b>The Committee refers to Parliament the question whether proposed section 23A trespasses unduly on the right to the presumption of innocence by reversing the onus of proof.</b></p> |
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***The Committee makes no further comment on this Bill.***



## 6. FAIR TRADING AMENDMENT BILL 2006

Date Introduced:	24 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Diane Beamer MP
Portfolio:	Fair Trading

### Purpose and Description

1. The Bill amends the *Fair Trading Act 1987* to make further provision with respect to extraterritorial application of that Act, advertising, false billing, and the powers of the Commissioner for Fair Trading and Advisory Councils.

### The Bill

2. The Bill:
  - Makes it clear that the Principal Act is intended to have extraterritorial application in so far as the legislative powers of the State permit. The proposed section makes it clear that the Principal Act extends to conduct either in or outside the State that:
    - (a) is in connection with goods or services supplied in the State, or
    - (b) affects a person in the State, or
    - (c) results in loss or damage in the State [proposed s 5A],
  - Amends the Principal Act to provide that the Director-General may order that anything seized by an investigator under the authority of a search warrant issued under section 19A be sold, destroyed or otherwise disposed of, if:
    - (a) the thing is no longer required to be retained as evidence in proceedings for an offence against the Principal Act or any other Act, and
    - (b) the person who had lawful possession of the thing before it was seized cannot be found or does not wish to have the thing returned.

If the thing is disposed of by way of sale, the proceeds of sale are to be paid to the Treasurer for payment into the Consolidated Fund [proposed s 19A(6A)],

- Amends section 20 (Power to obtain information, documents and evidence) of the Principal Act to provide that the power in that section to obtain information, documents and evidence may be used in relation to matters that are the subject of a complaint received by the Director-General and matters that are the subject of an investigation by the Director-General,
- Reduces the number and membership of Advisory Councils for the Fair Trading Portfolio [proposed amendments to ss 25B, 25E, 25H, 25N and Part 2 Division 6],
- Provides provisions to regulate advertising and false billing [proposed ss 58, 58(5A), 58(A)].

## Issues Considered by the Committee

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

#### Right to Silence: Clause 20(1)(c) and (d)

3. The proposed amendments extend the Director General's power to obtain information, documents and evidence to include:
  - (a) investigating complaints from persons relating to the supply of goods or services, or the acquisition of land, and
  - (b) researching and conduct investigations into laws in force, and other matters, relating to consumers.<sup>30</sup>

These are much broader powers than those currently available.<sup>31</sup>

4. A person is not excused from giving information or producing a document, or from giving evidence, on the ground that the information, document or evidence may tend to incriminate the person.<sup>32</sup> Any information or document obtained from a person in response to a notice under this section is inadmissible against the person in criminal proceedings.<sup>33</sup>
5. The second reading speech states:

The amendment will increase the efficiency and effectiveness of the work of the Office of Fair Trading with respect to investigating and solving complaints and disputes that do not involve breaches of legislation, monitoring compliance with legislation, investigating matters that affect the interest of consumers, conducting reviews of current legislation and assessing the impact of regulatory proposals.<sup>34</sup>
6. The Committee will always be concerned with legislation that removes or restricts a person's right against self-incrimination (or "right to silence"). The Committee notes that Article 14(3)(g) of the International Covenant on Civil and Political Rights states that a person has the right "[n]ot to be compelled to testify against himself or to confess guilt". The Committee notes that the right has been held by the High Court to apply to civil proceedings.<sup>35</sup>
7. The Committee is of the view that a bill should not abrogate the right to silence unless such abrogation is justified by, and in proportion to, an object in the public interest.
8. The Committee recognises the importance of consumer protection legislation and ensuring that persons comply with the *Fair Trading Act 1987*. However, it is difficult

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<sup>30</sup> Section 9, *Fair Trading Act 1987*.

<sup>31</sup> These include investigating a possible contravention of the Act, or a matter that may lead to the reference of a question to the Products Safety Committee or an advisory committee - Section 20(1), *Fair Trading Act 1987*.

<sup>32</sup> Section 20(4), *Fair Trading Act 1987*

<sup>33</sup> Section 20(5), *Fair Trading Act 1987*.

<sup>34</sup> The Hon Diane Beamer, Minister for Fair Trading, Legislative Assembly *Hansard*, 24 May 2006.

<sup>35</sup> In *EPA v Caltex* (1993) 178 CLR 447, Mason CJ and Toohey J stated that:

the privilege against self-incrimination protects an accused person who is required by process of law to produce documents which tend to implicate that person in the commission of the offence charged. The privilege likewise protects a person from producing in other proceedings, including civil proceedings, documents which might tend to incriminate that person.

to see how the public interest in investigating complaints that do not involve breaches of the legislation, or researching and conducting investigations into laws in force justifies, and is proportion to, the abrogation of the right to silence.

- 9. The Committee notes that the privilege against self-incrimination is a fundamental right expressed in the International Covenant on Civil and Political Rights and the common law. The Committee considers that a bill should not abrogate the right to silence unless such abrogation is justified by, and in proportion to, an object in the public interest.**
- 10. The Committee notes the importance of consumer protection legislation and ensuring that persons comply with the *Fair Trading Act 1987*.**
- 11. The Committee also notes that the Act makes information compelled to be given by a notice under section 20 inadmissible in criminal proceedings but provides no limitations on the use of that information in civil proceedings or indirectly in criminal proceedings.**
- 12. The Committee has written to the Minister for advice as to why investigating complaints that do not involve breaches of the legislation, or researching and conducting investigations into laws in force, justifies, and is in proportion to, the abrogation of the right to silence under the Bill.**
- 13. The Committee refers to Parliament the question of whether the Bill's abrogation of the right to silence for the purposes of investigating complaints that do not involve breaches of the legislation, or researching and conducting investigations into laws in force, trespasses unduly on personal rights.**

#### **Use of Self-Incriminating Evidence: Proposed s 20(1)(c) and (d)**

14. As discussed above, the Bill extends the power to compel the production of self-incriminating information in relation to the Director-General investigating complaints from persons relating to the supply of goods or services, or the acquisition of land (s 9(1)(c)), and researching and making investigations into laws in force, and other matters, relating to the interests of consumers (s 9(2)) [Proposed s 20(1)(c) and (d)].
15. The power to obtain information in s 20 of the Act provides no limits on the use of compelled self-incriminating information in civil proceedings or indirectly in criminal proceedings.

- 16. The Committee considers that, unless clearly justified, when a bill abrogates the privilege against self-incrimination, information that would otherwise have been subject to this privilege should not be used in any proceedings (including proceedings of a criminal, civil, administrative or disciplinary nature) against the individual, except for proceedings relating to the falsity of the information provided.**
- 17. The Committee notes that the Bill provides the power to obtain self-incriminating information in relation to complaints under section 9(1)(c) or investigations under 9(2) but does not provide any restriction on the use of that information in civil proceedings or indirectly in criminal proceedings.**

- 18. The Committee has written to the Minister to seek her advice as to why there is no restriction on the use of such self-incriminating information in civil proceedings or indirectly in criminal proceedings.**
- 19. The Committee refers to parliament the question of whether allowing self-incriminating information compelled to be produced under the Bill to be used against the person providing the information in civil proceedings or indirectly in criminal proceedings trespasses unduly on personal rights and liberties.**

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

## 7. INTERPRETATION AMENDMENT BILL 2006

Date Introduced:	23 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Morris Iemma MP
Portfolio:	Premier

### Purpose and Description

1. The Bill amends the *Interpretation Act 1987*:
  - (a) to confirm that statutory bodies that are declared by an Act to represent the Crown have the status, privileges and immunities of the Crown;
  - (b) to provide a statutory basis for the NSW legislation website maintained by the Parliamentary Counsel for the electronic publication of legislation; and
  - (c) to provide for the official publication on that website of new statutory rules, proclamations that commence or amend legislation, and progressively other miscellaneous statutory instruments, to improve public access to those instruments (publication each Friday will be continued except in urgent cases and publication in the Gazette and in pamphlet form will follow to maintain public access to printed legislation).
2. The Bill also:
  - (a) transfers the provisions relating to the paper reprinting of legislation from the *Reprints Act 1972* to the *Interpretation Act 1987* and repeals that Act as a consequence; and
  - (b) makes other minor or consequential amendments to the *Interpretation Act 1987* and certain other legislation (including to the *Environmental Planning and Assessment Act 1979* to provide for the official on-line publication of new environmental planning instruments).

### Issues Considered by the Committee

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| <p>3. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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*The Committee makes no further comment on this Bill.*

## 8. LIQUOR AMENDMENT (2006 FIFA WORLD CUP HOTEL TRADING) BILL 2006

Date Introduced:	23 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Grant McBride MP
Portfolio:	Gaming and Racing

### Purpose and Description

1. The Bill amends the Liquor Act 1982 to allow hotels to trade until 1 am on certain nights during the 2006 FIFA World Cup.

### Background

2. The second reading speech states:

[t]he time difference between Germany and Australia will result in match telecasts beginning late at night or in the early morning hours. Telecasts for World Cup stage 1 group matches to be held from 10 to 24 June 2006 will begin at 11.00 p.m., midnight, 2.00 a.m., and 5.00 a.m. New South Wales time... Many people will choose to watch those telecasts in licensed venues, principally hotels and registered clubs... Under the Liquor Act, standard hotel trading is limited to midnight closing on Monday to Saturday, and 10.00 p.m. closing on Sundays.

There are concerns that some matches, particularly those commencing at 11.00 p.m., will be part-way through when many hotels are required to close for the evening at midnight. Closing hotels part-way through matches will create difficulties for licensees in asking patrons to leave and in dispersing them from the immediate surrounds of the hotel. To reduce the likelihood of these issues, the Government supports a limited general extension of hotel trading hours for those matches beginning at 11.00 p.m. only. This will allow patrons to view the entirety of these matches.<sup>36</sup>

### The Bill

3. The Bill allows hotels to trade until 1 am on certain nights during the early stages of the 2006 FIFA World Cup to be held in Germany.
4. The nights on which extended hotel trading will be permitted coincide with a number of Stage 1 matches (held during the period between 10 June and 19 June) that will start at 11pm (local time) but not finish until approximately 1 am.
5. The extended hotel trading permitted by the proposed Act will only apply to the sale or supply of liquor for consumption on the licensed premises.

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<sup>36</sup> The Hon Grant McBride MP, Minister for Gaming and Racing, Legislative Assembly *Hansard*, 23 May 2006.

## Issues Considered by the Committee

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| <p>6. The Committee did not identify any issues arising under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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*The Committee makes no further comment on this Bill.*

## 9. LOCAL GOVERNMENT AMENDMENT (WASTE REMOVAL ORDERS) BILL 2006

Date Introduced:	23 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Kerry Hickey MP
Portfolio:	Local Government

### Purpose and Description

1. The object of this Bill is to amend the *Local Government Act 1993 (the Principal Act)* to allow local councils to give orders (**waste removal orders**) to owners or occupiers of residential premises for the removal or disposal of waste on those premises, or to refrain from keeping waste on those premises, where the waste is a threat to public health or the health of any individual.

### Background

2. According to the Minister in his second reading speech:

The *Local Government Act* currently allows councils to issue an order to landowners and occupiers in a number of situations to preserve healthy conditions... The current powers to issue orders cannot always allow a council to get a landowner to make their land safe and healthy as quickly as is needed. This is because before serving an order under current arrangements, a council is required to give notice of its intention to serve the order so that the recipient has an opportunity to make representations to the council about the order. These representations may be both written and oral, and legal representation may be used. If, after hearing the representations, the council decides to go ahead and issue the order, the recipient can appeal to the Land and Environment Court.

There is an existing order relating to the conduct of an activity on premises that constitutes a life threatening hazard or threat to public health or safety. This order can be given in an emergency, which would mean that the council would not have to give notice of the order or hear representations. However, the recipient can still appeal to the Land and Environment Court against the making of the order. This can mean delays of as many as 18 months or more before the clean-up can be achieved. ... The Bill will allow councils to issue a new order on an owner or occupier of residential premises requiring them to remove and dispose of waste that constitutes a threat to public health or the health of an individual.<sup>37</sup>

### The Bill

3. Amongst other things, the Bill amends the Principal Act:
  - to allow a council to make a waste removal order requiring a resident to remove or dispose of waste from their premises or to refrain from keeping waste on their premises;

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<sup>37</sup> The Hon Kerry Hickey MP, Minister for Local Government, Second Reading Speech, Legislative Assembly Hansard, 23 May 2006.



- to require the protection of public health to be the paramount consideration in the giving of a waste removal order;
  - to provide that a waste removal order may be made if, in the opinion of an environmental health officer, the waste is causing or is likely to cause a threat to public health or the health of any individual;
  - to provide that a waste disposal order may remain in force for up to 5 years, during which time, if there is a failure to comply with the terms of the order, the council, after having notified the owner or occupier of the premises, may enter and clean up the land or premises without the need to serve a further waste removal order;
  - to exempt a council from complying with certain procedural requirements for the giving of orders (including the giving of prior notice and the making and hearing of representations) in relation to the giving of a waste removal order;
  - if an order will or is likely to have the effect of making a resident homeless, to require the council concerned to consider whether the resident is able to arrange satisfactory alternative accommodation; and
  - provide that certain appeal rights will not apply to waste removal orders (including appeals to the Land and Environment Court).
4. Under s 128 of the Act, a person who fails to comply with a waste removal order will be guilty of an offence (maximum penalty \$2,200). Further, if they fail to comply, a council employee may enter the residential premises to remove or dispose of the waste, as long as appropriate notice is given (except in the case of urgency or because of the existence or reasonable likelihood of a serious risk to health or safety) (ss. 191-201).

## Issues Considered by the Committee

### Procedural fairness: Schedule 1[3]

5. The Act requires a council making various orders to follow certain procedural requirements, including giving notice to the person concerned that an order is proposed to be given, allowing for the person to make representations or be represented by a legal representative and to be heard [Part 2, Division 2]. Section 130 provides that
- A council that complies with this Division is taken to have observed the rules of natural justice (the rules of procedural fairness).
6. Section 129 currently provides for 2 exemptions from these procedural requirements, including “an order given, and expressed to be given, in an emergency”. The Bill amends s 129 to add another exemption in relation to a waste removal order.
7. The Committee notes that in giving a waste removal order, the paramount consideration is the protection of public health, clearly an important matter of public interest. The Committee also notes the statement in the second reading speech on the need for councils to be able to act quickly to remove waste from premises to protect public health without having to wait for conclusion of lengthy notification and hearing processes.

8. Despite the important public interest objective of this Bill, the Committee is of the view that the right of a person to procedural fairness, including the right to be heard, is a fundamental right that should not be restricted or removed other than in exceptional circumstances.
9. The Minister's office has advised the Committee that, in drafting the Bill, careful consideration was given to the right of an individual to be heard before the issuing of an order and this was weighed against the wider implications for public health where public health or the health of an individual was threatened or likely to be threatened. The right of an individual to make representations was balanced against the public right to have a risk to public health removed expeditiously.
10. The Minister's office further advised that the assessment of the risk will be done by a health inspector. This will mean that if the order is issued there is a threat, or likely to be a threat, to public health or an individual's health in the opinion of someone who is qualified to make that assessment. For these reasons, the Minister's office advised, it was not unreasonable to remove the right to make representations. Further, the right to appeal against an order issued without proper grounds has been retained. This is considered to be adequate protection for the rights of individuals in all the circumstances.

11. **The Committee notes the important public interest this Bill seeks to address and the important right of a person to procedural fairness, including the right to be heard.**
12. **The Committee also notes the advice it has received from the Minister's office on this matter.**
13. **The Committee refers to Parliament the question whether proposed s 23A unduly trespasses on the personal rights by removing the right to be notified of, and be heard in relation to, a waste removal order.**

#### **Non-reviewable decisions [s 8A(1)(b)(iii) *LRA*]**

#### **Removal of review rights: Schedule 1[4] & [8]**

14. Clause 4 exempts a council giving a waste removal order from the requirement under s 138 to notify a person of their right to appeal the giving of the order to the Land and Environment Court.
15. Clause 8 has the effect of removing the right of a person who is given a waste removal order to appeal that order to the Land and Environment Court.
16. The Committee is of the view that review of administrative decisions, especially external review, is an important mechanism to ensure the appropriate exercise of executive power. It also allows a person aggrieved by a decision to seek review of that decision from an independent authority with power to determine whether the decision was properly, fairly or lawfully made. Where a person has been denied an opportunity to make representations on their own behalf prior to the making of the decision, the importance of providing for external review is even greater. The Committee notes that the Bill does not allow a person who is the subject of a waste removal order to make representations and be heard before the order is made.

17. The Committee notes that the second reading speech stated that not all appeal rights are removed under the Bill. Specifically, it stated:

The Bill removes some appeal rights that relate to the process of issuing clean-up orders but does not remove the right of a person to bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the Act. This means that when a person believes that a council had no grounds to issue [a waste removal order] they can ask the court to review the decision. For example, if a person did not believe the waste on their premises constituted, or was likely to constitute, a threat to public health, they could ask the court to set aside the order. When a person has complied with the terms of the order but believes that the order should not have been made, they can seek compensation for expenses incurred. This can occur only if the court finds that the giving of the order was unsubstantiated or the terms of the order were unreasonable [s 181].<sup>38</sup>

- 18. The Committee is of the view that review of administrative decisions, especially external review, is an important mechanism to ensure the appropriate exercise of executive power. The Committee is of the view that it is especially important if the person who is the subject of the decision has been denied an opportunity to make representations on their own behalf prior to the making of the decision.**
- 19. The Committee notes the purpose of waste removal orders and the important responsibility of local government to protect public health. The Committee also notes the advice in the second reading speech that the current review process under the Act is lengthy and, therefore, may be inappropriate in dealing with urgent matters of public health and safety.**
- 20. The Committee also notes that some appeal rights to the Land and Environment Court remain, including appeal on the ground that a waste removal order was not lawfully made.**
- 21. The Committee refers to Parliament the question whether the Bill unduly trespasses on personal rights by removing all possibility of review of the making of a waste removal order.**

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

<sup>38</sup> Second reading speech.

## 10. STATE REVENUE LEGISLATION AMENDMENT BILL 2006

Date Introduced:	23 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Michael Costa MLC
Portfolio:	Treasurer

### Purpose and Description

1. The Bill makes miscellaneous amendments to state revenue legislation.

### Background

2. The second reading speech states:

The State Revenue Legislation Amendment Bill 2006 is part of the Government's ongoing program of maintaining State legislation to ensure it's provisions are clear and effective.<sup>39</sup>

### The Bill

3. The Bill:
  - (a) amends the *Duties Act 1997*:
    - (i) to include certain improvements made to land in the calculation of the unencumbered value of the land for duty purposes, and
    - (ii) to extend a concession relating to cancelled transfers, and
    - (iii) to extend a concession for transfers made between an apparent purchaser and a real purchaser, and
    - (iv) to change the eligibility criteria for the First Home Plus scheme, and
    - (v) to confirm that decisions made by the Chief Commissioner of State Revenue under the Act are reviewable, and
    - (vi) to change reporting requirements with respect to transactions relating to certain land rich entities, and
    - (vii) to clarify the method for charging mortgage duty on debenture issues that were previously the subject of a duty concession, and
    - (viii) to make further provision with respect to insurance duty, and
  - (b) amends the *Land Tax Management Act 1956*:
    - (i) to extend various land tax exemptions and concessions, and
    - (ii) to clarify the application of the principal place of residence exemption in respect of land owned or partly owned by companies, and
  - (c) amends the *Pay-roll Tax Act 1971* to make further provision with respect to the tax payable on grants of shares or options to employees, and

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<sup>39</sup> Mr Parl McLeay, Parliamentary Secretary, Legislative Assembly *Hansard*, 23 May 2006.

- (d) repeals the *Petroleum Products Subsidy Act 1965* and the regulations under that Act, and
- (e) amends the *Taxation Administration Act 1996* with respect to permitted disclosures of taxation information.

## Issues Considered by the Committee

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

#### Retrospectivity: Part 12 - Proposed amendment to the Pay-roll Tax Act 1971

- 4. Part 12 provides that the employee share scheme amendments have effect as if they had commenced on 1 July 2005.<sup>40</sup>
- 5. These amendments amend the *Pay-roll Tax Act 1971* to allow employees to elect the date on which tax is payable in relation to share scheme benefits as either on the date on which the share is acquired by, or the date on which the share vests in, the employee. It also clarifies some terms without making any apparent substantive change.

**6. As the employee share scheme amendments do not appear to have a detrimental affect on any person but are to the benefit of employers, the Committee does not consider that their retrospective application trespasses on personal rights or liberties.**

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

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<sup>40</sup> This is subject to the following clauses:

(2) An employer who included the grant of a share in the taxable wages for the employer for the financial year commencing 1 July 2005 is taken to have elected to treat the grant date of the share as the date on which the wages constituted by the grant of that share are paid or payable.

(3) Liability for pay-roll tax in respect of any shares or options granted by an employer on or after 1 July 2003, but before 1 July 2005, is to be determined in accordance with this Act as amended by the employee share scheme amendments, if the employer so elects.

(4) Anything done or omitted to be done on or after 1 July 2003 and before the date of assent to the *State Revenue Legislation Amendment Act 2006*, that would have been validly done or omitted if the employee share scheme amendments had been in force at the time that it was done or omitted, is taken to have been validly done or omitted.

# 11. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2006

Date Introduced:	23 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Morris Iemma MP
Portfolio:	Premier

## Purpose and Description

1. The Bill's objects are to:
  - make minor amendments to various Acts;
  - to amend certain other Acts and instruments for the purpose of effecting statute law revision;
  - repeal certain Acts and provisions of Acts ; and
  - make other provisions of a consequential or ancillary nature.

## Background

2. It was noted in the second reading speech noted that the Bill:

continues the well-established statute law revision program that is recognised by honourable members as a cost-effective and efficient method for dealing with amendments of the kind included in the bill.<sup>41</sup>

## The Bill

3. The Bill amends the following Acts:
  - *Agricultural Scientific Collections Trust Act 1983;*
  - *Centenary Institute of Cancer Medicine and Cell Biology Act 1985;*
  - *Coal Mine Health and Safety Act 2002;*
  - *Commercial Agents and Private Inquiry Agents Act 2004;*
  - *Companion Animals Act 1998;*
  - *Conveyancing Act 1919;*
  - *Co-operatives Act 1992;*
  - *Crimes (Administration of Sentences) Act 1999;*
  - *Crown Lands Act 1989;*
  - *Environmental Planning and Assessment Act 1979;*
  - *Game and Feral Animal Control Act 2002;*
  - *Garvan Institute of Medical Research Act 1984;*

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<sup>41</sup> Mr P E McLeay, MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 23 May 2006.

- *Gene Technology (GM Crop Moratorium) Act 2003;*
- *Higher Education (Amalgamation) Act 1989;*
- *Holiday Parks (Long-term Casual Occupation) Act 2002;*
- *Independent Commission Against Corruption Act 1988;*
- *Liquor Act 1982;*
- *Mine Health and Safety Act 2004;*
- *Non-Indigenous Animals Act 1987;*
- *Passenger Transport Act 1990;*
- *Plant Diseases Act 1924;*
- *Ports Corporatisation and Waterways Management Act 1995;*
- *Property Legislation Amendment Act 2005;*
- *Protection of the Environment Operations Act 1997;*
- *Public Sector Employment and Management Act 2002;*
- *Real Property Act 1900;*
- *Registered Clubs Act 1976;*
- *Restricted Premises Act 1943;*
- *Retail Leases Act 1994;*
- *Security Interests in Goods Act 2005;*
- *State Records Act 1998;*
- *Subordinate Legislation Act 1989;*
- *Superannuation Act 1916;*
- *Surveying Act 2002;*
- *Teaching Service Act 1980;*
- *Terrorism (Police Powers) Act 2002;*
- *Threatened Species Conservation Act 1995;*
- *Transport Administration Act 1988;*
- *University of Sydney Act 1989; and*
- *Water Management Act 2000.*

## **Issues Considered by the Committee**

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

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

## 12. SUPERANNUATION LEGISLATION AMENDMENT BILL 2006

Date Introduced:	24 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Della Bosca MLC
Portfolio:	Finance

### Purpose and Description

1. The Bill amends various public sector and parliamentary superannuation Acts with respect to police hurt on duty benefits, police superannuation benefits, the making of salary sacrifice contributions, the determination of salary for superannuation purposes and the nomination of the commencement of the payment of pensions.

### The Bill

2. The object of the Bill is to amend various public sector superannuation Acts:
  - (a) to make it clear that, despite the judicial decision in *Berrick Boland v SAS Trustee Corporation* [1999] NSWIRComm 488, in determining, for the purposes of the *Police Regulation (Superannuation) Act 1906*, whether members of the police force hurt on duty are incapable of discharging their duties, those duties include the general duties imposed on all police officers (and, as a consequence, to validate previous certificates given on that basis),
  - (b) to impose mutual obligations on NSW Police and injured police officers to whom the *Police Regulation (Superannuation) Act 1906* applies in relation to an injury management program,
  - (c) to make it clear that hurt on duty benefits are payable to a former member of the police force under the *Police Regulation (Superannuation) Act 1906* only if the former member actually was incapable of discharging the duties of the member's office at the time of the member's resignation or retirement,
  - (d) to provide that a hurt on duty superannuation allowance or additional amount under that Act is not payable unless an application is made before the member reaches the age of 60 years or not later than 5 years after the member resign or retires, whichever is the later, and to provide for when the allowance is first payable,
  - (e) to provide for certain superannuation allowance commutations under the *Police Regulation (Superannuation) Act 1906* to be able to be made after a member reaches the age of 55 years (rather than the current age requirement of 60 years),
  - (f) to provide for the partial commutation of certain superannuation allowances payable under the *Police Regulation (Superannuation) Act 1906*,



- (g) to amend the *State Authorities Superannuation Act 1987* to provide for the employer of a contributor to the State Authorities Superannuation Fund to be able to make salary sacrifice contributions to that Fund on the employee's behalf,
- (h) to amend Acts regulating the New South Wales public sector defined benefit superannuation schemes and the Parliamentary Contributory Superannuation Scheme to enable a person entitled to a pension under the relevant scheme to nominate a date that is later than that on which payment would otherwise commence as the date on which payment commences,
- (i) to amend the *Superannuation Act 1916*, the *State Authorities Superannuation Act 1987* and the *State Authorities Non-contributory Superannuation Act 1987* to enable the regulations under the relevant Act to provide that the salary of an employee or class of employees (other than an executive officer) for the purposes of that Act is to be determined in the manner prescribed by the regulations if the basis on which the remuneration of the employee or class of employees is determined has been changed to an annualised basis.

### **Issues Considered by the Committee**

<p><b>3. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</b></p>
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*The Committee makes no further comment on this Bill.*

## 13. SYDNEY CRICKET AND SPORTS GROUND AMENDMENT BILL 2006

Date Introduced: 25 May 2006  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Sandra Nori MP  
Portfolio: Tourism and Sport and Recreation

### Purpose and Description

1. This Bill amends the *Sydney Cricket and Sports Ground Act 1978* in relation to the purposes for which the scheduled lands under the Act may be used.

### The Bill

2. This Bill amends the *Sydney Cricket and Sports Ground Act 1978* to:
  - enable the lands defined as scheduled lands under the principal Act, which are dedicated for public recreation, to be used for additional purposes in accordance with a State environmental planning policy;
  - place certain restrictions on the use of that land; and
  - update references in the principal Act to provisions of the *Crown Lands Consolidation Act 1913* as a consequence of the replacement of that Act with the *Crown Lands Act 1989*.

### Issues Considered by the Committee

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

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

## 14. UNIVERSITY OF TECHNOLOGY (KURING-GAI CAMPUS) BILL 2006\*

Date Introduced: 25 May 2006  
House Introduced: Legislative Assembly  
Member Responsible: Mr B R O'Farrell MP

### Purpose and Description

1. The object of this Bill is to ensure that the Kuring-gai Campus of the University of Technology, Sydney, continues to be used for educational purposes.

### Background

2. The second reading speech stated:

The University of Technology (Kuring-gai Campus) Bill has a clear and simple purpose: it will ensure the Lindfield site continues to be used for educational purposes.<sup>42</sup>

### The Bill

3. The Bill:
  - declares that the Kuring-gai Campus of the University of Technology, Sydney, cannot be lawfully sold, leased, mortgaged, charged or otherwise alienated or encumbered, except as provided by the Bill;
  - precludes the Kuring-gai Campus being developed for purposes other than educational facilities;
  - provides that the local council is the consent authority in relation to any development application relating to the campus;
  - precludes development of the campus being made a "major infrastructure project" to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies;
  - enables the Minister to compulsorily acquire the Kuring-gai Campus and requires the Minister to take all reasonable steps to ensure that the campus, if so acquired, is used solely for the provision of education; and
  - provides that the *Land Acquisition (Just Terms Compensation) Act 1991* does not apply to or in respect of any such acquisition.

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<sup>42</sup> Mr B.R. O'Farrell, MP, Second reading speech, Legislative Assembly Hansard, 25 May 2006.

## Issues Considered by the Committee

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

#### Compulsory acquisition of land not on just terms: Clause 6(5)

4. This proposed subsection provides that the *Land Acquisition (Just Terms Compensation) Act 1991* does not apply if the Minister compulsorily acquires the Kuring-gai campus under the Bill.
5. The Bill also provides that once acquired, the land is:

[F]reed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land [cl. 6(3)(b)].
6. The Committee is of the view that the acquisition of land on just terms is an important safeguard for individual rights to property. Not only does the Bill remove this safeguard in respect of the owners of the land comprising the Kuring-gai campus, it also does so in relation to third parties who may have an interest in that land.

7. **The Committee is of the view that requiring owners of land and those with an interest in land to be compensated when a government compulsorily acquires that land is an important safeguard for the right to property. Given its importance, the Committee is of the view that it should always apply unless there are exceptional circumstances.**
8. **The Committee is unclear as to what, if any, exceptional circumstances apply in this case to warrant compulsory acquisition without just compensation.**
9. **The Committee refers to Parliament the question whether the Bill unduly trespasses on personal rights by providing for compulsory acquisition of land and interests in land without compensation**

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

## 15. YOUNG OFFENDERS AMENDMENT (REFORM OF CAUTIONING AND WARNING) BILL 2006

Date Introduced: 25 May 2006  
House Introduced: Legislative Assembly  
Member Responsible: Mr Andrew Stoner MP

### Purpose and Description

1. The Bill amends the *Young Offenders Act 1997* (the Act) as set out below.

### The Bill

2. The Bill amends the Act so as to:

- provide that young offenders who have previously been convicted or found guilty of an offence by a court or who have previously been dealt with under the Act are not entitled to be warned or cautioned under the Act [proposed new s 14(2)(c), s 14(2)(d) & s 20(2A)];
- require that a parent of a young offender be given notice when the offender is warned under Part 3, or cautioned under Part 4, of the Act [proposed new s 17A, s 24(1) & s 30(3)]
- provide for a more expeditious application of the scheme established by the Act by:
  - requiring that a warning, caution or conference be given or held as close as possible to the date when the offence to which it relates was committed [proposed new s 7(h)];
  - depriving the child, or a person responsible for the child, of the opportunity to delay the matter by refusing to choose an adult to be present at the time of admission, caution, giving of explanation or conference [proposed amended 28(e)];
  - giving the investigating official, person giving the caution, specialist youth officer or conference convenor the power to appoint a respected member of the community to be present at the times referred to in the preceding subparagraph if the child, or a person responsible for the child, refuses to choose an adult or if the investigating official or specialist youth officer is satisfied that no other person will be present [proposed amended 29];
  - removing the discretion of specialist youth officers, conference administrators and the Director of Public Prosecutions to overturn referrals for conferences in favour of cautions [proposed amended s 37, s 38, s41 & s 44]; and

- removing the requirement that a child must consent to the giving of a formal caution by a police officer or the Director of Public Prosecutions [proposed amended s 19 & s 23].

## **Issues Considered by the Committee**

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

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

## SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

# 16. EDUCATION LEGISLATION AMENDMENT (STAFF) BILL 2006

Date Introduced:	3 May 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carmel Tebbutt MP
Portfolio:	Education and Training

### Background

1. The Committee reported on this Bill in the Legislation Review Digest No 6 of 2006.
2. The Committee wrote to the Minister raising concerns with the Bill in respect to the following matters:
  - not specifying that the Director-General's procedural guidelines must be consistent with the rules for procedural fairness;
  - no scrutiny of the guidelines by the legislature (delegation of legislative power);
  - forfeiting salary of a suspended teacher before a final determination is made in relation to the reasons for their suspension;
  - restoration of salary of a suspended teacher withheld where the teacher is found not guilty, or where no disciplinary action against the person is taken;
  - restoration of salary of a suspended teacher if their conviction is overturned on appeal or quashed;
  - definition of misconduct is circular and has no content; and
  - matters relating to the entitlements of people who are reinstated or reemployed ought to be dealt with in the primary legislation and not in regulations.

### Minister's Reply

3. In a letter received on 23 May 2006, the Minister advised that, in relation to the Committee's concerns about the Director-General's procedural guidelines, the Bill was amended in the Legislative Assembly to explicitly require those guidelines to be consistent with procedural fairness.
4. On the question of the salary forfeiture of a suspended teacher before finalisation of a prosecution for a serious criminal offence or disciplinary proceedings against them, the Minister also advised the Committee that:

The power to withhold salary under s.49(3)(b) of the [Public Sector Employment and Management Act 2002] relies on the person being convicted of the offence. This has the consequence that where a person who is found (or pleads) guilty of an offence but

no conviction is recorded (i.e. receives a "section 10" under the Crimes (Sentencing Procedure) Act) they will have their salary restored.

The amended section (s.93L of the TS Act) is designed to give the Director-General discretion to forfeit to the Crown the salary of a person who is found guilty of a criminal offence but where no conviction is recorded.

This is consistent with the impact of the "prohibited persons" provisions where child protection legislation specifies that conviction includes being found guilty of the offence concerned.

The Director-General would exercise this power consistent with the Premier's Memorandum which provide that the power to suspend without pay can be exercised only in exceptional circumstances. Those guidelines provide that agencies are to give priority to placing employees facing criminal charges or disciplinary proceedings on alternative duties.

5. She further advised that:

The section does not require a decision to be made before any final determination of the disciplinary action or criminal charge. Section 93L provides the Director-General with discretion.

No decision of this kind could reasonably be made until the disciplinary action has been completed or a decision has been made about what if any disciplinary action is to be taken in response to an officer being found guilty of a criminal charge.

6. In relation to the question of whether the legislation provides for forfeited salary to be restored to a person who is subsequently found not guilty of an offence with which they have been charged, where the charge is dropped or where no disciplinary action is taken against the person, the Minister advised that

The legislation makes no such express provision. However it would ordinarily be expected that salary that has been withheld would be repaid to the officer at the direction of the Director-General. There may be reasonable grounds to withhold salary in exceptional circumstances. Such a decision is reviewable if made unreasonably. The review could occur in the NSW Industrial Relations Commission, the Government & Related Appeals Tribunal or the Supreme Court.

7. In answer to the Committee's concern that the definition of misconduct is circular, the Minister advised:

The Government rejects the Committee's assertion that the definition is circular. As has been acknowledged it is impracticable to comprehensively define what constitutes misconduct. Any attempt to narrowly define this term undermines the Department's attempts to discharge its child protection responsibilities.

## Committee's Response

<b>8. The Committee thanks the Minister for her reply.</b>
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PARLIAMENT OF NEW SOUTH WALES  
LEGISLATION REVIEW COMMITTEE

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia

9 May 2006

Our Ref:LRC 1827

The Hon Carmel Tebbutt MP  
Minister for Education  
Level 33 Governor Macquarie Tower  
1 Farrer Place,  
SYDNEY NSW 2000

Dear Minister

### **Education Legislation Amendment (Staff) Bill 2006**

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 6 of 2006*.

The Committee has resolved to write to you for advice in relation to the following matters of concern.

#### **Director-General's Procedural Guidelines: Procedural Fairness**

The Committee notes that the Bill provides that action taken in accordance with any procedural guidelines the Director-General may issue is taken to have observed the rules of procedural fairness (proposed s. 93D(3) and cognate clauses 22F(3) and 30(3)). However, the Bill does not require the procedural guidelines to be consistent with the rules of fairness, other than to ensure that the right to be heard is provided to an officer facing an allegation of misconduct.

The Committee notes the equivalent provision in the *Public Sector Employment and Management Act 2002*, which does require procedural guidelines issued under that Act to be consistent with the rules for procedural fairness (s. 45(1)).

The Committee seeks your advice as to:

- (1) why the Bill does not include a provision equivalent to s. 45(1) of the *Public Sector Employment and Management Act 2002* expressly requiring the guidelines to be consistent with the rules for procedural fairness; and
- (2) whether the Bill can be amended to so provide?

### **Director-General's Procedural Guidelines: Delegation of Legislative Power**

The Committee notes that, subject only to the limitation that the procedural guidelines ensure the right to be heard, the Bill delegates the task of determining the content of natural justice for the purposes of the legislation to the Director General with no Parliamentary oversight.

The Committee further notes the importance of these procedural guidelines and their potential to impact on a person's right to procedural fairness.

The Committee seeks your advice as to:

- (3) why the Director-General's procedural guidelines are not disallowable by Parliament or otherwise subject to oversight by the legislature?

### **Forfeiture of withheld salary**

The Committee notes that under the Bill the Director-General has the discretion to direct that salary that is withheld pending determination of a disciplinary matter or a criminal charge not be forfeited to the State.

The Committee is of the view that it would be an unfair incursion into a person's property rights for their salary to be forfeited before a final determination is made in relation to allegations of misconduct or criminal charges against them.

The Committee notes the alternative formulation under the *Public Sector Employment and Management Act 2002* (see s. 49), which makes forfeiture dependent on the outcome of the matter; either a finding of misconduct by the Director-General or a conviction of a serious offence after a criminal trial.

The Committee considers this approach to be much fairer and to better protect a person's property rights.

The Committee seeks your advice as to:

- (4) why the formulation under s. 49 of the *Public Sector Employment and Management Act 2002* was not followed in this Bill;
- (5) why the Bill requires the Director-General to make a decision **not** to forfeit salary rather than a decision to forfeit salary;
- (6) why such a decision is to be made before any final determination of the disciplinary action or criminal charge;
- (7) whether the Bill can be amended to ensure that any salary withheld can only be forfeited to the State if the suspended person concerned is actually convicted of a criminal offence or subjected to disciplinary action;
- (8) whether the legislation provides for restoration of forfeited salary to a person who is subsequently found not guilty of the offence with which they were charged or the charge is dropped, or where no disciplinary action is taken against the person concerned, as the case may be; and

- (9) whether the legislation provides for restoration of forfeited salary in the case of a person who is convicted of a serious offence but whose conviction is subsequently overturned on appeal or quashed?

### **Definition of “misconduct”**

The Committee notes that the definition of “*misconduct*” includes:

- (b) engaging in, or having engaged in, any conduct that justifies the taking of disciplinary action.

The Committee also notes that under proposed s 93F (and ss 22H & 32) the Director-General may deal with allegations that “an officer may have engaged in misconduct” as a “disciplinary matter” or by way of remedial action.

The effect of proposed sections 93C(1)(b) and 93F (and counterparts under the other amended Acts) is that “*misconduct*” is, in part, defined as conduct that justifies dismissal, or a fine etc. As such it is circular and conveys no content as to what actually constitutes misconduct.

The Committee is of the view that, even if it were possible, it would not be appropriate to attempt to define in the Bill every form of conduct that might amount to misconduct. However, because the content of “misconduct” is central to the scheme established under the Bill and serious consequences flow from a finding of misconduct, the Committee is of the view that the definition should be as clear and unambiguous as possible. Officers should be able to determine from the legislation what conduct amounts to “misconduct”.

The Committee seeks your advice as to:

- (10) how the definition of “misconduct” can be amended to remove the circularity and provide clearer content?

### **Regulation making power**

The Committee notes proposed subsection 93W(5) provides for regulations to be made with respect to the entitlements of people who are reinstated or reemployed, and that under the Bill the regulations are given supremacy over any other legislation in the field.

The Committee is of the view that entitlements relating to employment amount to personal property and therefore considers that, to avoid an undue delegation of legislative power, it may be appropriate to make provision for such matters in the principal legislation and not in regulations.

Furthermore, the Committee notes that there may be other general statutes dealing with leave and superannuation, for example, which should not be excluded by subordinate legislation under these Acts as amended by the Bill.

For these reasons the Committee is of the view such matters should be provided for in the primary legislation.

The Committee seeks your advice as to:

- (11) why matters relating to the entitlements of people who are reinstated or reemployed are not included in the primary legislation; and

(12) whether the Bill can be amended to so include them.

Yours sincerely

Allan Shearan MP  
Chairman



New South Wales  
Government

**Carmel Tebbutt MP**  
Minister for Education and Training



11 May 2006  
Allan Shearan MP  
Chairman  
Legislation Review Committee  
Parliament House  
Macquarie St  
SYDNEY NSW 2000

Dear Chairman *Allan*

**Education Legislation Amendment (Staff) Bill 2006**

I write in response to your correspondence of 9 May 2006 regarding the Committee's consideration of the above bill, which has been passed by the Parliament.

The Committee does not appear to have an accurate understanding of several aspects of the bill's operation. In order to clarify the situation, please find responses to the questions raised by the Committee.

**Questions 1 & 2**

*Why the Bill does not include a provision equivalent to s 45(1) of the Public Sector Employment and Management Act 2002 expressly requiring the guidelines to be consistent with the rules of procedural fairness.*

**Answer**

The Government amended the bill in the Legislative Assembly to provide a parallel section to 45(1) of the Public Sector Employment and Management Act 2002 (PSEM Act) in relation to each of the Acts being amended. It was always the intention of the Government to accord procedural fairness in the guidelines, and the original bill made such provision.

Nevertheless, in order to put this issue beyond any doubt, the Government amended the bill accordingly.

**Question 3**

*Why the Director-General's procedural guidelines are not disallowable by Parliament or otherwise subject to oversight by the legislature.*

**Answer**

It is presumed that this question arises out of the concern as to whether the guidelines will be required to comply with the principles of procedural fairness. This issue has now been addressed by the amendment.

It ought to be noted that s.93D of the Teaching Service Act (TS Act) gives the Director-General of the Department of Education and Training essentially the same power as granted to the Director of Public Employment to issue guidelines in s.44 of the PSEM Act. The Public Employment guidelines are not overseen by Parliament.

The guidelines are meant to be operational procedures to be used in workplaces. Therefore they ought to be expressed in a manner that is not unduly legalistic as would be likely if made as a regulation.

**Question 4**

*Forfeiture of Salary – why the formulation under s49 of the PSEM Act was not followed in the Bill*

**Answer**

The Government has decided to remove a defect in the TS Act relating to the power to suspend employees facing criminal charges.

That defect is an inappropriate, and probably unintended, limitation in the power to suspend, and the consequent power to withhold salary.

It is desirable, and necessary having regard to the need to protect children, to continue a suspension in circumstances that the Act does not currently allow.

Currently s.87(1) (b) of the TS Act provides that an officer or temporary employee may be suspended until the [criminal] charge has been dealt with. A criminal charge is dealt when the relevant Court imposes a sentence.

The problem is that the Director-General's power to suspend an officer is exhausted immediately when the officer is convicted, found guilty with no conviction recorded or exonerated by a court. The employee is then able to return to duty before any departmental disciplinary process can be imposed.

Further if the Director-General only finds out that an officer has been charged with a criminal offence after their conviction there is no power to suspend at all.

Section 93L of the bill provides that the officer remains suspended until such time as the Director-General decides to lift the suspension.

**Power to withhold salary**

The power to withhold salary under s.49 (3) (b) of the PSEM Act relies on the person being convicted of the offence. This has the consequence that where a person who is found (or pleads) guilty of an offence but no conviction is recorded (i.e. receives a

“section 10” under the Crimes (Sentencing Procedure) Act) they will have their salary restored.

The amended section (s.93L of the TS Act) is designed to give the Director-General discretion to forfeit to the Crown the salary of a person who is found guilty of a criminal offence but where no conviction is recorded.

This is consistent with the impact of the “prohibited persons” provisions where child protection legislation specifies that conviction includes being found guilty of the offence concerned.

The Director-General would exercise this power consistent with the Premier’s Memorandum which provide that the power to suspend without pay can be exercised only in exceptional circumstances.

Those guidelines provide that agencies are to give priority to placing employees facing criminal charges or disciplinary proceedings on alternative duties.

**Question 5**

*Why the Bill requires the Director-General to make a decision not to forfeit salary rather than a decision to forfeit salary?*

**Answer**

The Committee’s assumption is incorrect.

This formulation in s.93L (3) of the TS Act is exactly the same as the equivalent provision in the PSEM Act in section 49 (2).

The suspension only occurs if the Director-General makes a deliberate decision to do so. So the forfeiture only occurs as a result of deliberate decision-making by the Director-General.

As mentioned in relation to question 4 above, the Director-General’s decisions are subject to the Premier’s Memorandum which indicates that it will only occur in exceptional circumstances.

**Question 6**

*Why such a decision is to be made before any final determination of the disciplinary action or criminal charge?*

**Answer**

The Committee’s assumption is incorrect.

The section does not require a decision to be made before any final determination of the disciplinary action or criminal charge. Section 93L provides the Director-General with discretion.

No decision of this kind could reasonably be made until the disciplinary action has been completed or a decision has been made about what if any disciplinary action is to be taken in response to an officer being found guilty of a criminal charge.

**Question 7**

*Whether the Bill can be amended to ensure that any salary withheld can only be forfeited to the State if the suspended person concerned is actually convicted of a criminal offence or subjected to disciplinary action?*

**Answer**

See the answers to questions 4-6.

**Question 8**

*Whether the legislation provides for restoration of forfeited salary to a person who is subsequently found not guilty of an offence with which they have been charged or the charge is dropped or where no disciplinary action is taken against the person concerned as the case may be?*

**Answer**

The legislation makes no such express provision. However it would ordinarily be expected that salary that has been withheld would be repaid to the officer at the direction of the Director-General.

There may be reasonable grounds to withhold salary in exceptional circumstances. Such a decision is reviewable if made unreasonably. The review could occur in the NSW Industrial Relations Commission, the Government & Related Appeals Tribunal or the Supreme Court.

**Question 9**

*Whether the legislation provides for the restoration of forfeited salary in the case of a person who is convicted of a serious offence but whose conviction is subsequently overturned on appeal or quashed? (s.93L)*

**Answer**

The legislation makes no such express provision, nor is it made in the PSEM Act. Suspension, including without pay, only occurs if the Director-General makes a deliberate decision to do so. Matters relating to suspension without pay will be dealt with consistent with Premier's Memorandum that provide that the power to suspend without pay can be exercised only in exceptional circumstances.



**Question 10 – Definition of misconduct**

*The Committee notes that the definition of “misconduct” includes:*

*(b) engaging in, or having engaged in any conduct that justifies the taking of disciplinary action.*

*The Committee also notes that under the proposed s93F (and ss22H and 32) the Director-General may deal with allegations that “an officer may have engaged in misconduct” as a disciplinary matter or by way of remedial action.*

*The effect of proposed 93C(1)(b) and 93F (and counterparts under the other amended Acts) is that “misconduct” is, in part, defined as conduct that justifies dismissal or a fine etc. As such it is circular and conveys no content as to what actually constitutes misconduct.*

*The Committee is of the view that, even if it were possible, it would not be appropriate to attempt to define in the Bill every form of conduct that might amount to misconduct. However because misconduct is central to the scheme established under the Bill and serious consequences flow from a finding of misconduct, the Committee is of the view that the definition should be as clear and unambiguous as possible. Officers should be able to determine from the legislation what conduct amounts to “misconduct”.*

*The Committee seeks your advice as to who the definition of misconduct can be amended to remove the circularity and provide clearer content?*

**Answer**

The Government rejects the Committee’s assertion that the definition is circular.

As has been acknowledged it is impracticable to comprehensively define what constitutes misconduct. Any attempt to narrowly define this term undermines the Department’s attempts to discharge its child protection responsibilities.

The Bill provides the following definition of misconduct:

**93C Meaning of “misconduct”**

- (1) For the purposes of this Part, **misconduct** includes, but is not limited to, any of the following:
- (a) a contravention of any provision of this Act or the regulations,
  - (b) engaging in, or having engaged in, any conduct that justifies the taking of disciplinary action,
  - (c) taking any detrimental action (within the meaning of the Protected Disclosures Act 1994) against a person that is substantially in reprisal for the person making a protected disclosure within the meaning of that Act,
  - (d) taking any action against a person that is substantially in reprisal

*for an internal disclosure made by that person.*

Sub-section 93C (1) (b) requires a reasonable person to ask themselves would the conduct result in disciplinary action (dismissal or demotion). This is a question that can be answered through the application of common sense.

In addition, the Department of Education & Training's Code of Conduct makes clear what is inappropriate conduct for staff.

**Questions 11 & 12 Regulation making power**

*The Committee notes proposed subsection 93W(5) provides for regulations to be made with respect to the entitlements of people who are reinstated or reemployed and that under the Bill the regulations are given supremacy over any other legislation in the field.*

*The Committee is of the view that entitlements relating to employment amount to personal property and therefore considers that, to avoid undue delegation of legislative power, it may be appropriate to make provision for such matters in the principal legislation and not in regulations.*

*Furthermore the Committee notes that there may be other general statutes dealing with leave and superannuation which should not be excluded by subordinate legislation under these Acts as amended by the Bill.*

*For these reasons the Committee seeks your advice as to:*

11. *Why matters relating to the entitlements of people who are reinstated or employed are not included in the primary legislation; and*
12. *Whether the Bill can be amended to include them?*

**Answer**

A myriad of legislation could feasibly apply to the situation where an employee terminated under these provisions is re-instated or re-reemployed.

For example at least three separate superannuation schemes operate to cover persons employed in the Department of Education and Training. Individual factors like age, elections made under the schemes or membership rules can impact on this situation.

Nor can there be certainty about what legislative schemes may be created in the future which could impact on a person in these circumstances.

The Regulation making power enables a process to be established to meet the individual circumstances of the particular person who has been reemployed or reinstated as they arise. This would not delay their return to the workforce or payroll and would be a process that would be undertaken under the supervision of Parliament.

I hope these issues are clarified. For the future, I would be prepared to make staff from my office or the Department available to assist the Committee's deliberations on proposed legislation in relation to my portfolio.

Yours Sincerely



Carmel Tebbutt MP  
**Minister for Education and Training**

## 17. TOTALIZATOR LEGISLATION AMENDMENT (INTER-JURISDICTIONAL PROCESSING OF BETS) BILL 2006

Date Introduced: 2 May 2006  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Grant McBride MP  
Portfolio: Gaming and Racing

### Background

1. The Committee reported on the *Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006* in the Legislation Review Digest No 6 of 2006.
2. The Committee wrote to the Minister on 9 May 2006 noting that while the Bill is designed to allow Tabcorp to integrate its New South Wales and Victorian administrative operations, it has the potential to impact on other wagering operators.
3. The Committee sought the Minister's advice as to the reasons for the Bill not including any criteria for the exercise of the powers to nominate and appoint persons under proposed sections 9A and 9B.

### Minister's Reply

4. In a letter dated 23 May 2006 the Minister advised the Committee that:

The dynamic nature of commercial arrangements between wagering organisations involve constant change. That is why this legislation, in enabling this integration process, gives the Minister the power to determine an approved person (ie. wagering organisation) without restrictive criteria.
5. The Minister also advised that:

It is consistent with the protections contained in [the *Unlawful Gambling Act*; the *Racing Administration Act*, and the *Totalizator Act*], and with existing provisions relating to the issue of licences and authorities relating to the conduct of betting, that the Minister be given broad power to approve of any non-NSW licensed wagering operator that will effectively be undertaking bet processing operations which are currently restricted to licensees under the *Totalizator Act*.

This will enable the Minister to ensure that any integrated bet processing arrangement does not conflict with the objects of NSW wagering legislation, and importantly, is not detrimental to the interests of the NSW betting public and the NSW racing industry.

### Committee's Response

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

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



LEGISLATIVE ASSEMBLY  
LEGISLATION REVIEW COMMITTEE

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia

9 May 2006

Our Ref:LRC1824

The Hon Grant McBride MP  
Minister for Gaming and Racing  
Room 803

Dear Minister

**TOTALIZATOR LEGISLATION AMENDMENT (INTER-JURISDICTIONAL PROCESSING OF BETS) BILL 2006**

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 6 of 2006*.

The Committee notes that while the Bill is designed to allow Tabcorp to integrate its New South Wales and Victorian administrative operations, it has the potential to impact on other wagering operators.

The Committee seeks your advice as to the reasons for the Bill not including any criteria for the exercise of the powers to nominate and appoint persons under proposed sections 9A and 9B.

Yours sincerely

Allan Shearan MP  
Chairman



Minister for Gaming and Racing  
Minister for the Central Coast

Mr Allan Shearan MP  
Chairman  
Legislation Review Committee  
Parliament of New South Wales  
SYDNEY NSW 2000

23 May 2006

Dear Mr Shearan



**Totalizator Legislation Amendment  
(Inter-jurisdictional Processing of Bets) Bill 2006**

I refer to your letter dated 9 May 2006 seeking advice as to the reasons for the above Bill not including any criteria for the exercise of the powers to nominate and appoint persons under proposed sections 9A and 9B.

As you are aware, the main purpose of the Bill is to make provision for an authorised wagering operator in another jurisdiction to either use the systems or technology of a New South Wales totalizator licensee, or to arrange for a New South Wales totalizator licensee on its behalf, to process in New South Wales bets placed with the wagering operator.

It similarly provides for a New South Wales totalizator licensee to either use the systems or technology of an authorised wagering operator in another jurisdiction, or to arrange for an authorised wagering operator on its behalf, to process in another jurisdiction bets placed with the NSW totalizator licensee.

The proposed legislation facilitates the implementation of Tabcorp's integration proposals. However, rather than specifically restrict the inter-jurisdictional processing of bets to TAB Limited and its parent company Tabcorp, the decision was taken to provide flexibility in the legislation to give any future new licence holder under the *Totalizator Act 1997* the opportunity to make application to similarly integrate its bet processing operations with an authorised wagering operator in another jurisdiction.

In taking this position, the Government was mindful that TAB Limited's exclusive licence under the *Totalizator Act* expires in 2013 and a new licence might ultimately be issued to another wagering company. Similarly, it was recognised that a NSW totalizator licence holder may seek to integrate its bet processing operations with a body other than Tabcorp.

To summarise, the legislation is designed to provide a platform where a NSW licensed wagering operator, whether TAB Limited or any future totalizator licensee, can enter into arrangements with other non-NSW licensed wagering operators for the integration of bet processing operations.

The integration proposals essentially relate to commercial arrangements between wagering organisations. It is important to note that a licence under the *Totalizator Act* may only be granted to a company incorporated under the Corporations Act 2001 of the Commonwealth or a racing club.

The dynamic nature of commercial arrangements between wagering organisations involve constant change. That is why this legislation, in enabling this integration process, gives the Minister the power to determine an approved person (i.e. wagering organisation) without restrictive criteria. It is this broad power that has allowed the Government to effectively protect the interests of punters and the NSW racing industry.

It is important to consider this Bill in the context of previous legislation that has established important protections for all participants and the public interest.

The conduct of betting on racing and sporting events in New South Wales is generally prohibited under the provisions of the *Unlawful Gambling Act 1998* unless specifically exempted under that Act. In effect, betting may only be conducted by bookmakers authorised under the *Racing Administration Act 1998* while fielding at racecourses licensed under that Act, and by TAB Limited and race clubs as the holders of Totalizator Licenses issued under the *Totalizator Act*.

**The objects of the *Unlawful Gambling Act* are:**

- to prohibit, in the public interest, certain forms of gambling,
- to prevent the loss of public revenue that is derived from lawful forms of gambling, and
- to deter criminal influence and exploitation in connection with gambling activities.

**The objects of the *Racing Administration Act* are:**

- to ensure the integrity of racing in the public interest,
- to ensure that certain betting activities by licensed bookmakers are conducted properly,
- to minimise the adverse social effects of lawful gambling, and
- to protect a source of public revenue that is derived from lawful gambling.

**The objects of the *Totalizator Act* are:**

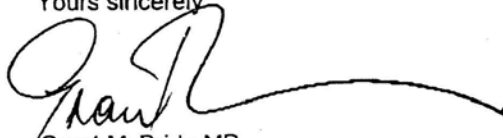
- to make provision for the proper conduct of totalizator betting in the public interest and to minimise any harm associated with such betting, and
- to ensure that revenue derived from the conduct of totalizator betting is accounted for in a proper manner.

It is consistent with the protections contained in these Acts, and with existing provisions relating to the issuing of licences and authorities relating to the conduct of betting, that the Minister be given the broad power to approve of any non-NSW licensed wagering operator that will effectively be undertaking bet processing operations which are currently restricted to licensees under the *Totalizator Act*.

This will enable the Minister to ensure that any integrated bet processing arrangement does not conflict with the objects of NSW wagering legislation and importantly, is not detrimental to the interests of the NSW betting public and the NSW racing industry.

I trust this information is of assistance to your Committee.

Yours sincerely



Grant McBride MP  
Minister for Gaming and Racing



## Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Electricity (Consumer Safety) Regulation 2006	03/02/06	537	28/04/06	
Health Records and Information Privacy Regulation 2006	10/03/06	1160	28/04/06	
Motor Accidents Compensation Regulation 2005	26/08/05	5609	28/04/06	
Photo Card Regulation 2005	09/12/05	10042	28/04/06	

## Appendix 1: Index of Bills Reported on in 2006

	Digest Number
Air Transport Amendment Bill 2006	2
Appropriation (Budget Variations) Bill 2006	6
Careel Bay Protection Bill 2006*	2
Child Protection (International Measures) Bill 2006	2
Children and Young Persons (Care and Protection) Bill 2006	7
Children (Detention Centres) Amendment Bill 2006	8
Civil Liability Amendment Bill 2006	7
Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill 2006	8
Constitution Amendment (Governor) Bill 2006	7
Conveyancers Licensing Amendment Bill 2006	7
Correctional Services Legislation Amendment Bill 2006	8
Courts Legislation Amendment Bill 2006	4
Courts Legislation Further Amendment Bill 2006	8
Crimes and Courts Legislation Amendment Bill 2005	1
Crimes Amendment (Murder of Police Officers) Bill 2006*	7
Crimes Amendment (Organised Car and Boat theft) Bill 2006	4
Crimes (Serious Sex Offenders) Bill 2006	5
Crimes (Sentencing Procedure) Amendment Bill 2006	5
Crimes (Sentencing Procedure) Amendment (Gang Leaders) Bill 2006*	3
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	8
Education Legislation Amendment (Staff) Bill 2006	6
Electricity Supply Amendment (Protection of Electricity Works) Bill 2006	6
Environmental Planning and Assessment Amendment Bill 2006	2
Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Bill 2006	4
Fair Trading Amendment Bill 2006	8
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	2
Firearms Amendment (Good Behaviour Bonds) Bill 2006*	2
Fisheries Management Amendment Bill 2006	2
Freedom of Information Amendment (Open Government-Disclosure of Contracts) Bill 2005	1
Independent Commission Against Corruption Amendment (Operations Review Committee) Bill 2006	5
Industrial Relations Amendment Bill 2006	3

	Digest Number
Interpretation Amendment Bill 2006	8
James Hardie (Civil Liability) Bill 2005	1
James Hardie (Civil Penalty Compensation Release) Bill 2005	1
James Hardie Former Subsidiaries (Winding up and Administration) Bill 2005	1
Judicial Officers Amendment Bill 2006	6
Jury Amendment (Verdicts) Bill 2006	5
Land Tax Management Amendment (Tax Threshold) Bill 2006	2
Law Enforcement (Controlled Operations) Amendment Bill 2006	3
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	1
Legal Profession Amendment Bill 2006	5
Liquor Amendment (2006 FIFA World Cup Hotel Trading) Bill 2006	8
Local Government Amendment (Miscellaneous) Bill 2006	6
Local Government Amendment (Waste Removal Orders) Bill 2006	8
Motor Accidents Compensation Amendment Bill 2006	3
Motor Accidents (Lifetime Care and Support) Bill 2006	3
Motor Vehicle Repairs (Anti-steering) Bill 2006*	4
National Parks and Wildlife (Adjustment of Areas) Bill 2006	2
Pharmacy Practice Bill 2006	7
Pipelines Amendment Bill 2006	7
Police Amendment (Death and Disability) Bill 2005	1
Protection of the Environment Operations Amendment (Waste Reduction) Bill 2006	3
Public Sector Employment Legislation Amendment Bill 2006	3
Royal Rehabilitation Centre Sydney Site Protection Bill 2006*	3
Security Industry Amendment (Patron Protection) Bill 2006*	7
Smoke-free Environment Amendment (Removal of Exemptions) Bill 2006*	4
State Property Authority Bill 2006	7
State Revenue Legislation Amendment Bill 2006	8
Statute Law (Miscellaneous Provisions) Bill 2006	8
Summary Offences Amendment (Display of Spray Cans) Bill 2006	7
Superannuation Legislation Amendment Bill 2006	8
Sydney Cricket and Sports Ground Amendment Bill 2006	8
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006	6
University of Technology (Kuring-gai Campus) Bill 2006*	8
Valuation of land Amendment Bill 2006	7

	Digest Number
Water Management Amendment (Water Property Rights Compensation) Bill 2006	5
Workers Compensation Legislation Amendment Bill 2006	4
Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill 2005	1
Young Offenders Amendment (Reform of Cautioning and Warning) Bill 2006*	8

## Appendix 2: Index of Ministerial Correspondence on Bills for 2005

Bill	Minister/Member	Letter sent	Reply received	Digest 2005	Digest 2006
Commission for Children and Young People Amendment Bill 2005	Minister for Community Services	25/11/05		15	
Companion Animals Amendment Bill 2005	Minister for Local Government	25/11/05	15/12/05		1
Confiscation of Proceeds of Crime Amendment Bill 2005	Attorney General	10/10/05	23/11/05	11	1
Correctional Services Legislation Amendment Bill 2006	Minister for Justice	02/06/06			8
Crimes Amendment (Road Accidents) Bill 2005	Attorney General	10/10/05	12/12/05	11	1
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05	19/04/06	6	5
Crimes (Serious Sex Offenders) Bill 2006	Minister for Justice	28/04/06			5
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	Attorney General	02/06/06			8
Education Legislation Amendment (Staff) Bill 2006	Minister for Education and Training	09/05/06	23/05/06		6,8
Fair Trading Amendment Bill 2006	Minister for Fair Trading	02/06/06			8
Motor Accidents Compensation Amendment Bill 2006 and Motor Accidents (Lifetime Care and Support) Bill 2006	Minister for Commerce	24/03/06	26/04/06		3,5
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/05	12/01/06		2
State Revenue Legislation Amendment Bill 2005	Treasurer	20/06/05	03/01/05	8	1
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005	Attorney General	25/11/05	16/05/06	15	7
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006	Minister for Gaming and Racing	09/05/06	24/05/06		6,8
Transport Administration Amendment (Public Transport Ticketing Corporation) Bill 2005	Minister for Transport	25/11/05 28/04/06	05/04/06	15	5
Vocational Education and Training Bill 2005	Minister for Education and Training	04/11/05	28/11/05	13	1
Water Management Amendment Bill 2005	Minister for Natural Resources	25/11/05		15	

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

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Careel Bay Protection Bill 2006*	R				
Children (Detention Centres) Amendment Bill 2006	R, C				
Correctional Services Legislation Amendment Bill 2006	R, C				
Crimes Amendment (Murder of Police Officers) Bill 2006*	R				
Crimes (Sentencing Procedure) Amendment Bill 2006	R				
Crimes (Serious Sex Offenders) Bill 2006	R, C				
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	R, C				
Education Legislation Amendment (Staff) Bill 2006	R, C	R, C	R, C	R, C	R, C
Electricity Supply Amendment (Protection of Electricity Works) Bill 2006	R				
Environmental Planning and Assessment Amendment Bill 2006	R				
Fair Trading Amendment Bill	R, C				
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	N				
Fisheries Management Amendment Bill 2006	R				
Jury Amendment (Verdicts) Bill 2006	R				
Law Enforcement (Controlled Operations) Amendment Bill 2006	R				
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	R				
Local Government Amendment (Waste removal Orders) Bill 2006	R		R		

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Motor Accidents (Lifetime Care and Support) Bill 2006	R, C		R, C	R	R
Motor Accidents Compensation Amendment Bill 2006	R, C		R, C		
Motor Vehicles Repairs (Anti-steering) Bill 2006	R				
Pipelines Amendment Bill 2006			R		R
Royal Rehabilitation Centre Sydney Site Protection Bill 2006*	R				
Security Industry Amendment (Patron Protection) Bill 2006*	R				
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006		R, C			
University of Technology (Kuring-gai Campus) Bill 2006*	R				

**Key**

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

## Appendix 4: Index of correspondence on regulations reported on in 2006

<b>Regulation</b>	<b>Minister/Correspondent</b>	<b>Letter sent</b>	<b>Reply</b>	<b>Digest 2006</b>
Centennial Park and Moore Park Trust Regulation 2004	Minister for Tourism and Sport and Recreation	29/04/05	19/01/06	1
Companion Animals Amendment (Penalty Notices) Regulation 2005	Minister for Local Government	12/09/05	21/12/05	1
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005	Minister for Planning	12/09/05	24/12/06	3
Hunter Water (General) Regulation 2005	Minister for Utilities	04/11/05	09/01/06	1
Protection of the Environment Operations (Waste) Regulation 2005	Minister for the Environment	04/11/05	29/11/05	1
Stock Diseases (General) Amendment Regulation 2005	Minister for Primary Industries	12/09/05	07/02/06	1
Workers Compensation Amendment (Advertising) Regulation 2005	Minister for Commerce	12/09/05	28/11/05	1