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Legislation Review Committee

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* Denotes Private Member's Bill

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations:

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

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CRIMES AMENDMENT (CHILD PORNOGRAPHY) BILL 2004

Date Introduced:	11 November 2004
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 amend the *Crimes Act 1900* in relation to child pornography offences. Among other things, the Bill:
 - (a) increases the maximum penalty for certain child pornography offences;
 - (b) makes the possession of child pornography an indictable offence;
 - (c) revises the definition of *child pornography* to remove the requirement that the material be classified as refused classification (RC); and
 - (d) extends the offences relating to child pornography and use of children for pornographic purposes to cases of torture, cruelty or physical abuse (whether or not in a sexual context).
2. The Bill also removes any doubt as to the timing of the classification of material in connection with existing offences relating to child pornography.

Background

3. The second reading speech states that:

The main purpose of the bill is to increase the maximum penalties for child pornography offences. It is important that courts give effect to the principles of general deterrence and denunciation in cases involving child pornography by imposing substantial sentences, and the bill gives them the capacity to do so. If the courts can provide effective deterrence to people who possess child pornography, this market may be eliminated, and the impetus to produce child pornography, and to abuse children in its production, will be reduced.¹

¹ Mr Bob Debus MP, second reading speech, *Legislative Assembly Hansard*, 12 November 2004.

The Bill

Child pornography—Transfer of provisions

4. The Bill makes the production, dissemination or possession of child pornography indictable offences (proposed s 91H). Currently they are summary offences. The Bill transfers the provisions of the Act creating these offences from Part 16 (summary offences) to Part 3 of Division 15 (relating to indictable child prostitution and pornography offences).²

Child pornography—Definition of child pornography

5. Proposed section 91H(1) redefines child pornography as:

[M]aterial that depicts or describes, in a manner that would in all the circumstances cause offence to reasonable persons, a person under (or apparently under) the age of 16 years:

- (a) engaged in sexual activity, or
 - (b) in a sexual context, or
 - (c) as the victim of torture, cruelty or physical abuse (whether or not in a sexual context).
6. The definition does not include a requirement that the material be classified RC under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, or be material that would, if classified, be classified RC.
 7. Under proposed s 91H, “disseminate” includes:
 - (a) send, supply, exhibit, transmit or communicate it to another person, or
 - (b) make it available for access by another person, or
 - (c) enter into any agreement or arrangement to do so.
 8. The Bill increases the penalties for these offences. The proposed maximum penalty for production or dissemination of child pornography is imprisonment for 10 years. The proposed maximum penalty for possession of child pornography is imprisonment for 5 years.

The current penalty for production or dissemination under section 578C(2A) is 1,000 penalty units (\$110,000) or imprisonment for 5 years (or both), or in the case of a corporation 2,000 penalty units (\$220,000). The current penalty for the offence of possession of child pornography under section 578B is 100 penalty units (\$11,000) or imprisonment for 2 years (or both).

Child pornography—Defences

9. Proposed section 91H (4) provides for certain defences to charges for the offences of production, dissemination or possession of child pornography. These include:

² Schedule 1[5] and [8] omit sections 578B (possession of child pornography) and section 578C (publishing child pornography) respectively. These offences are inserted into Part 3 of Division 15 by schedule 1[4] in proposed section 91H.

- (a) that the defendant did not know, and could not reasonably be expected to have known, that he or she produced, disseminated or possessed (as the case requires) child pornography,
 - (b) that the material concerned was classified (whether before or after the commission of the alleged offence) under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, other than as refused classification (RC),
 - (c) that the defendant was acting for a genuine child protection, scientific, medical, legal, artistic or other public benefit purpose, and the defendant's conduct was reasonable for that purpose,
 - (d) that the defendant was a law enforcement officer acting in the course of his or her official duties, or
 - (e) that the defendant was acting in the course of his or her official duties in connection with the classification of the material concerned under the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.
10. It is also a defence to a charge of possession of child pornography that the material concerned came into the defendant's possession unsolicited and the defendant, as soon as he or she became aware of its pornographic nature, took reasonable steps to get rid of it (proposed s 91H(5)).

Children not to be used for pornographic purposes

11. Proposed section 91G prohibits the use of children for pornographic purposes. The penalty for this offence involving a child under the age of 14 years, is a maximum term of imprisonment of 14 years. Where the child is over the age of 14 years, the maximum penalty is imprisonment for 10 years. These are significant increases in penalty.
12. In line with the new definition of child pornography to be used in relation to the production, dissemination or possession of child pornography, and with the inclusion of material regarding torture, cruelty or physical abuse (whether or not in a sexual context), the proposed section also provides that a child is "used by a person for pornographic purposes" if:
- (a) the child is engaged in sexual activity, or
 - (b) the child is placed in a sexual context, or
 - (c) the child is subjected to torture, cruelty or physical abuse (whether or not in a sexual context), for the purposes of the production of pornographic material by that person.

Classification of films, publications or computer games

13. Current section 578B(4)(b) provides that proceedings for the offence of possessing child pornography under that section:
- (b) in the case of a film, publication or computer game that is unclassified at the time of the alleged offence, are not to be commenced until the film, publication or computer game concerned has been classified.
14. The Bill makes clear that, in respect of an alleged offence against section 578B(4)(b), that section does not prevent (and is taken never to have prevented):
- (a) a court attendance notice or other process being issued, or

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- (b) a court attendance notice or other process being served, or
- (c) a person pleading guilty or a plea of guilty being accepted, or
- (d) sentence being passed for the offence on an offender who has pleaded guilty to the offence (schedule 1[11]).

Issues Considered by the Committee

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

Issue: Commencement by proclamation, Clause 2

15. Clause 2 provides that the Bill commences on a day or days to be appointed by proclamation, with the exception Schedule 1[11], Schedule 2.3[1] and [2], which commence on assent.
16. Schedule 1[11] provides section 578B(4)(b) does not prevent a court attendance notice or other process being issued or served, a person pleading guilty or a person pleading guilty being sentenced.
17. Section 58 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* provides that a certificate issued by Director of the Classification Board stating that a publication has a specific classification is admissible and is prima facie evidence of the matters stated in the certificate. Schedule 2.3[1] makes an amendment that applies section 58 to offences under the *Crimes Act*.
18. Schedule 2.3[2] amends section 58 of the *Classification (Publications, Films and Computer Games) Enforcement Act* to make it clear that the provision extends also to a certificate that states a matter at the time the certificate is given, or at any other earlier specified time, or in respect of any specified period before the certificate is given.
19. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
20. The Attorney General's Office has advised the Committee that the Bill, except for Schedule 1[11] and Schedule 2.3[1] and [2], is commencing on proclamation to allow sufficient time to inform the legal profession about the changes made in the Bill and to ensure that the Police have appropriate training procedures in place. The Attorney General's Office anticipates that the Bill will be fully commenced within the next couple of months.

The Committee makes no further comment on this Bill.

2. DUTIES AMENDMENT (LAND RICH) BILL 2004

Date Introduced:	10 November 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Michael Egan MLC
Portfolio:	Treasurer

Purpose and Description

1. The Bill amends the *Duties Act 1997* (the Act) to:
 - (a) impose duty on certain disposals by persons in land rich entities, so that duty is chargeable in a similar manner to the vendor duty chargeable on a transfer of land-related property, and make other changes to the land rich provisions of the Act; and
 - (b) make other miscellaneous changes relating to the duty chargeable under the Act, in connection with:
 - (i) premium property duty;
 - (ii) the assessment of, and exemptions from, vendor duty;
 - (iii) transactions by charitable and benevolent bodies; and
 - (iv) interim assessment of duty.

Background

2. According to the second reading speech:

[t]he principal aim of this bill is to implement the Government's intention, foreshadowed last May, to include indirect as well as direct disposals of land-related property in the tax base. This is necessary because the Government recognises that the transfer of shares in companies or units in trusts that are land rich is generally regarded by business as similar to a transfer of the land itself.

The bill achieves its objective by introducing disposal duty on the disposal of indirect interests in unlisted companies and trusts. As a result of consultations with industry bodies and professional groups, the bill also makes some improvements to acquisition duty—the current tax on the acquisition of significant indirect interests in land. Just as acquisition duty is necessary to protect the transfer duty tax base, it is necessary to tax the indirect disposal of interests in land to protect the vendor duty tax base. Without this measure there will be a clear tax incentive to acquire indirect interests in land rather than direct interests as their subsequent disposal would not be liable for vendor duty, whereas disposal of direct interests would be liable. As a result the measure introduced by this bill will not increase revenue from vendor duty. It will, however, reduce the incidence of erosion of the tax base.³

³ Mr G J West, Parliamentary Secretary, Legislative Assembly *Hansard*, 10 November 2004.

The Bill

Imposition of duty on land rich disposals

3. The Bill repeals the Act's existing land rich provisions and replaces them with a proposed new Ch 4A to cover both land rich acquisitions and land rich disposals.
4. The Act currently provides for the imposition of duty on an acquisition of an interest in an entity, such as a private unit trust scheme, if the assets of the entity are principally land holdings. Such an entity is referred to as a *land rich landholder*.⁴
5. For the purposes of proposed Ch 4A a land holding is an interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor or a *profit à prendre*.⁵
6. This acquisition duty is payable if a person acquires a significant interest⁶ in a land rich landholder or, having a significant interest, makes a further acquisition in the land rich landholder.⁷ The person making the acquisition must pay the duty [proposed s 163J].
7. Earlier this year, the *State Revenue Legislation Amendment Act 2004* amended the Act⁸ to provide for an additional duty on a transfer of land (or other land-related property), payable by the vendor or transferor, rather than the purchaser, and known as vendor duty.
8. The Bill extends the Act's existing land rich provisions so that duty is payable on a *disposal* of an interest in a land rich landholder by a person who has a significant interest in that landholder, in addition to any duty payable on the acquisition of that

⁴ A landholder is land rich if it has land holdings in New South Wales with an unencumbered value of \$2,000,000 or more; and its land holdings in all places, whether within or outside Australia, comprise 60% or more of the unencumbered value of all its property: s 106 & proposed s 163B of the *Duties Act 1997*.

⁵ However, an interest in land is *not*:

- (a) a land holding of a unit trust scheme unless the interest is held by the trustees in their capacity as trustees of the scheme; and
- (b) a land holding of a private company unless the interest of the private company in the land is a beneficial interest: proposed s 163C of the *Duties Act 1997*.

A profit à prendre is a type of encumbrance giving a person the revocable right to take away part of the land of another, as well as that which the land may produce.

⁶ A person has an interest in a landholder if the person has an entitlement (otherwise than as a creditor or other person to whom the landholder is liable) to a distribution of property from the landholder on a winding up of the landholder or otherwise; a person who has an interest in a landholder has a significant interest in the landholder if the person, in the event of a distribution of all the property of the landholder immediately after the interest was acquired, would be entitled to:

- (a) in the case of a private unit trust scheme—20% or more of the property distributed, or
- (b) in the case of a landholder other than a private unit trust scheme—50% or more of the property distributed: s 111 and proposed s 163D of the *Duties Act 1997*.

There is an exception for acquisitions made in a landholder that is a *primary producer* where the landholder's landholding comprise less than 80% of the unencumbered value of all its property: proposed s 163L of the *Duties Act 1997*.

⁷ The duty is charged at the same rate as purchaser duty on a transfer of land under Chapter 2 of the *Duties Act 1997*.

⁸ The *State Revenue Legislation Amendment Act 2004* inserted Ch 4 into the *Duties Act 1997*.

interest. This disposal duty is charged at the same rate as vendor duty, and must be paid by the person making the disposal [proposed s 163R].

9. Disposal duty is payable on any disposal of an interest in a land rich landholder by a person who has a significant interest in the land rich landholder, or who had such an interest within the period of 3 years before the disposal [proposed s 163N].⁹

Registration of unit trust schemes

10. Under the current provisions of the Act relating to acquisition duty, a unit trust scheme may be treated as a *public unit trust scheme* or *wholesale unit trust scheme* if the Chief Commissioner of State Revenue (Chief Commissioner) is satisfied that it will become such a scheme within 12 months (an *imminent public trust*) [the Act's Dictionary].¹⁰
11. The Bill requires such imminent public unit trust schemes and imminent wholesale unit trust schemes, together with wholesale unit trust schemes, to be registered under the Act [proposed s 163ZS – s 163ZZB].

Without registration, the unit trust schemes will be treated as *private* unit trust schemes under the Act and, accordingly, an acquisition of an interest in such a scheme may be dutiable as an acquisition in a private unit trust scheme.

12. Imminent public unit trust schemes and imminent wholesale unit trust schemes do not receive any concessions in relation to *disposal* duty (ie, they are treated as private unit trust schemes), so registration under the new provisions will not affect liability for disposal duty.
13. However, wholesale unit trust schemes (other than imminent ones) must be registered under the new provisions in order to receive the benefit of the concessions that apply in respect of wholesale unit trust schemes under the disposal duty provisions.¹¹
14. The Bill includes transitional provisions that provide for the phasing-in of the changes in respect of wholesale unit trust schemes, and other unit trust schemes that have been the subject of a previous assessment by the Chief Commissioner [proposed Sch 1[47]].

Definition of wholesale unit trust scheme

15. The Bill extends the list of qualifying investors who may hold units in a wholesale unit trust scheme to include certain public authorities, and custodians and trustees of certain investor directed portfolio services [proposed s 163ZU(2)].

⁹ A person disposes of an interest in a land rich landholder if the person ceases to have an interest in the land rich landholder, or the person's interest decreases, regardless of how that happens.

¹⁰ The determination as to whether a unit trust scheme is a public unit trust scheme or wholesale unit trust scheme affects whether duty is payable on an acquisition of an interest in the unit trust scheme.

¹¹ The Chief Commissioner of State Revenue will be required to keep a public register of wholesale unit trust schemes that are registered under the new provisions.

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16. A *listed trust* is not considered to be a wholesale unit trust scheme [proposed s 163ZU(3)].

Concession for buy-back arrangements

17. The Bill introduces a concession for certain buy-back arrangements engaged in by widely held trusts that might otherwise render acquisitions or disposals in the trust scheme liable to duty [proposed s 163ZE].

Premium property duty on large parcels of residential land

18. Currently, when *premium property duty* (ie, the higher rate of duty on the purchase of residential land having a dutiable value that exceeds \$3,000,000) is charged on a large parcel of vacant residential land, it is charged only on that proportion of the dutiable value of the land that is referable to 2 hectares of the land.
19. The Bill applies this same apportionment rule to *all* large parcels of residential land, regardless of whether the land is vacant [proposed amended s 32C(1)]. Existing apportionment provisions will continue to apply to land that is used partly for residential and partly for non-residential purposes [proposed s 32C(4A)].¹²

Calculation of dutiable value of land-related property for vendor duty

20. The Bill requires that, when calculating the dutiable value of land-related property for the purpose of charging vendor duty, any amount payable by the purchaser for vendor duty that exceeds 2.25% of the monetary consideration must be disregarded. Any amount payable for GST in respect of a vendor duty transaction that exceeds 10% of the monetary consideration for the transaction must also be disregarded [proposed s 158(3)].¹³

Aggregation of transactions for vendor duty

21. The Bill provides that aggregation principles that apply to dutiable transactions under Ch 2 of the Act do *not* apply to vendor duty transactions [proposed s 158(4)].¹⁴

Principal place of residence exemption for vendor duty

22. The Act provides for an exemption from vendor duty in respect of land that is used and occupied by the vendor as his or her *principal place of residence* [s 162B].

¹² The Bill provides that premium property duty will not apply to a dutiable transaction that results from an option granted before 7 May 2004: proposed Sch 1[39(3) & (4)] to the *Duties Act 1997*.

¹³ As both vendor duty and GST are calculated by reference to the total consideration payable in respect of a transaction, the provisions are intended to prevent a cascading effect that is produced if the amount payable for the 2 taxes is added to the consideration payable, and each tax then increases by reference to the other.

¹⁴ Dutiable transactions relating to separate items of dutiable property, or separate parts of, or interests in, dutiable property are aggregated and treated as a single dutiable transaction if:

- (a) they occur within 12 months;
- (b) the transferee is the same or the transferees are associated persons; and
- (c) the dutiable transactions together form, evidence, give effect to or arise from what is, substantially, one arrangement relating to all of the items or parts of, or interests in, the dutiable property: s 25 of the *Duties Act 1997*.

23. The Bill makes it clear that to obtain the benefit of this exemption in relation to vendor duty, the vendor must be a natural person who owns, or partly owns, the land concerned, or the land use entitlement to which the land is subject [proposed s 162D(1)].

If land is owned by 2 or more persons, the person or persons occupying the land as a principal place of residence must have a significant interest in the land [proposed s 162D(2)].

24. The Bill also makes it clear that a part owner of land (including a corporate part owner) may claim the principal place of residence exemption in respect of land, if the land is used and occupied as a principal place of residence by *another* part owner who is a natural person and who holds a significant interest in the land [proposed s 162D(3)].

25. Currently, the Act allows the Chief Commissioner to apply the principal place of residence exemption in relation to a vendor duty transaction in circumstances where the Chief Commissioner considers it *fair and reasonable to do so* [s 162B(4)].

26. The Bill removes this broad discretion, substituting it with specific exemptions where:

- a person was unable to occupy land as a principal place of residence for the required period because the vendor's residence was being constructed on the land during part of that period (provided that the vendor has actually used and occupied the land as a principal place of residence for at least 6 months) [Sch 2 [9]];
- a person who marries or enters a de facto relationship disposes of a residence he or she started to occupy before the marriage or relationship, and the principal place of residence exemption has already been claimed by his or her spouse in respect of a residence that the spouse started to occupy before the marriage or relationship (that is, as an exception to the general rule that only one principal place of residence can be claimed by members of the same family) [proposed s 162DB(3)];or
- land is used and occupied by a person under a legal disability who does not own the land [Sch 2 [10]].

27. Other amendments to the principal place of residence exemption:

- clarify that the exemption applies in respect of land that has been owned and occupied by a person for a period of less than 2 years only if the person has not, during that period, occupied other land for residential purposes [proposed Sch 2[9(3)]];
- extend an existing concession for land used primarily for residential purposes that is also used for incidental business purposes, so that it is no longer required, in order to obtain the benefit of the exemption, to establish that the business conducted at the residence is primarily conducted elsewhere [proposed amended Sch 2[3(1)]]; and

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- transfer various existing provisions that restrict the operation of the exemption so that those provisions appear in the same part of the Act as the exemption itself [proposed amended Sch 2[5(5)].

Concession for land-related property that has not significantly increased in value

28. The Bill makes it clear that if a vendor acquired a beneficial interest in land-related property before acquiring a legal interest in the property, the vendor is considered to have acquired the property at the time of the acquisition of the beneficial interest [proposed new s 162(2)].¹⁵
29. If a vendor otherwise acquires separate interests in land-related property on separate occasions, the vendor acquisition date in relation to that property is considered to be the earliest date on which the vendor acquired any interest in the property, other than an interest that has already been transferred by the vendor [proposed s 162OA].
30. However, if the vendor disposes of the vendor's *entire* interest in the land-related property, the vendor duty transaction may be assessed as if the vendor had disposed of separate interests in separate transactions.¹⁶

Exemption for sale of new or substantially new buildings

31. Currently, under the Act, a sale or transfer, or transfer, of land on which there is a vendor constructed building that is new or substantially new is exempt from vendor duty [s 162P and s 162Q].
32. The Bill makes it clear that, if the building contains strata lots, these restrictions apply if the strata lot the subject of the sale or transfer has previously been occupied or transferred, ie, it is immaterial if *other* parts of the building have been occupied or sold [proposed s 162P].¹⁷

Exemption for improved vacant land

33. The sale or transfer of *improved* vacant land is exempt from vendor duty. The Bill provides that rehabilitation works (in addition to remediation works) required under a development consent and carried out at the vendor's expense are considered to be an improvement to vacant land [proposed amended s 162S(3)].

¹⁵ The Bill's Explanatory Note provides the example of this situation where a person acquires a beneficial interest in land-related property by entering into an agreement for sale or transfer of the land-related property as purchaser or transferee, and subsequently acquires the land-related property by transfer. In such a case, the person will be taken to have acquired the land-related property when the agreement for sale or transfer was entered into. The dutiable value of the land-related property at that date will be the relevant value for the purpose of applying the vendor duty exemption provision.

¹⁶ The Bill also makes it clear that if a person acquires land, and the form or description of the person's title to the land changes (eg, due to a subdivision), that change is to be disregarded, ie, the date on which the person acquired the land is to be determined as if the vendor's title had not changed: proposed s 162N(6) and (7) of the *Duties Act 1997*.

¹⁷ Additional amendments ensure that a reference to the completion date in respect of a building is, in relation to a building containing strata lots, a reference to the completion date of the strata lot the subject of the sale or transfer [proposed s 162QB of the *Duties Act 1997*].

34. The Bill makes it clear that the continuing presence on land of certain structures that have been preserved for their heritage significance does *not* prevent the land from being regarded as vacant land, if the Chief Commissioner is satisfied that the land is substantially vacant [proposed s 162QA(3)].

Exemption for compulsory acquisitions of land

35. Currently, a vendor duty transaction that gives effect to an acquisition of land by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* is exempt from vendor duty.

36. The Bill extends this exemption to the following:

- a transaction that gives effect to an acquisition of land by agreement, if the *Land Acquisition (Just Terms Compensation) Act 1991* applies in respect of the acquisition;
- a transaction that gives effect to a dedication of land required by a consent authority under s 94 (Payment towards provision or improvement of amenities or services) or s 94F (Conditions requiring land or contributions for affordable housing) of the *Environmental Planning and Assessment Act 1979*;
- an agreement for the sale or transfer, or transfer, of land that is intended to be used for affordable housing, if the transaction is of a kind approved by the Minister administering Part 4 of the *Environmental Planning and Assessment Act 1979* after consultation with the Treasurer [proposed new s 162U].

Exemption for land subject to conservation agreements

37. The Bill exempts from vendor duty the sale or transfer of land if the land is subject to a conservation agreement under the *National Parks and Wildlife Act 1974* or a trust agreement under the *Nature Conservation Trust Act 2001* [proposed amended s 162V].

Such agreements must be expressed to remain in force in perpetuity.

38. According to the second reading speech, this is “consistent with the Government’s undertakings earlier this year”.¹⁸

Interim payment of duty

39. The amendments extend to vendor duty transactions existing arrangements for the interim payment of duty in cases where the Chief Commissioner is unable to immediately ascertain the duty payable in respect of a transaction [proposed s 162ZCA].

¹⁸ Mr G J West, Parliamentary Secretary, Legislative Assembly *Hansard*, 10 November 2004.

Duties Amendment (Land Rich) Bill 2004

Exemptions for charitable and benevolent bodies

40. Currently, certain transactions in favour of charitable and benevolent bodies are exempt from duty. The Bill extends this exemption to certain trust instruments relating to unidentified property and non-dutiable property [proposed s 275(1A)].
41. The Bill also allows a *partial* exemption to be claimed in respect of land that is used or to be used partly for an exempt purpose and partly for other purposes [proposed s 275A].

Issues Considered by the Committee

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

Clause 2(2) Commencement

42. Clause 2(2) of the Bill provides that Sch 1 is taken to have commenced on the date the Bill for this Act is introduced in the Legislative Assembly.
43. Schedule 1 provides for:
 - imposition of duty on land rich disposals;
 - registration of unit trust schemes;
 - definition of wholesale unit trust scheme; and
 - concession for buy-back arrangements.
44. This means in effect, that the Bill is not only retrospective, but is treated by its proposer as being the law from the time the intention to introduce it is made public.
45. The Senate Scrutiny of Bills Committee has held that legislation of this nature:

carries with it the assumption that citizens should arrange their affairs in accordance with announcements made by the Executive rather than in accordance with the laws made by the Parliament. It treats the passage of the necessary retrospective legislation 'ratifying' the announcement as a pure formality. It places the Parliament in the invidious position of either agreeing to the legislation without significant amendment or bearing the odium of overturning the arrangements which many people may have made in reliance on the Ministerial announcement.¹⁹
46. At the same time, the Committee acknowledges that not providing that taxation legislation applies from the date of introduction of the Bill can result in persons arranging their affairs in anticipation of the legislation and thereby undermine the intent of the legislation. This may not only deprive the Government of revenue but can, in some circumstances, have other undesired consequences.

47. The Committee will always be concerned to identify the retrospective effects of legislation which may impact adversely on any person.

¹⁹ Senate Scrutiny of Bills Committee, *Annual Report 1986-87*, pp 12-13.

48. The Committee also notes that allowing a period of time between the introduction of a Bill to change taxation laws and the commencement of those laws can, in some circumstances, undermine the intent of those laws and have other adverse consequences.
49. The Committee refers to Parliament the question of whether the retrospective effect of the amendments to the Duties Act 1997 to the date which they were introduced into the Legislative Assembly unduly trespasses on personal rights and liberties.

The Committee makes no further comment on this Bill.

3. FORESTRY (DARLING MILLS STATE FOREST REVOCATION) BILL 2004

Date Introduced:	10 November 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Ian Macdonald MLC
Portfolio:	Primary Industries

Purpose and Description

1. The objects of this Bill are:
 - (a) to revoke the dedication of Darling Mills State Forest as a State forest (and part of a national forest) pursuant to section 19A of the Forestry Act 1916 (the Forestry Act), and
 - (b) to dedicate that land as part of the Bidjigal Reserve.

Background

2. The Darling Mills State Forest is approximately 36 hectares of Crown land, which forms part of the Cumberland National Forest near Baulkham Hills.²⁰
3. In December 2003, the NSW Government reached agreement with a representative of the descendants of the Darug people to establish Bidjigal Reserve and dedicate its use for the preservation of Aboriginal cultural heritage, the preservation of flora and fauna, and public recreation.²¹
4. The Agreement requires, among other matters, that the Darling Mills State Forest be dedicated as part of the Bidjigal Reserve. An abstract of the proposed dedication of land has been tabled in both Houses of Parliament.
5. In the second reading speech, the Attorney General and Minister for the Environment states that the Bill is required because:

... [s]ection 19A of the *Forestry Act 1916* requires the revocation of the dedication as a State forest of any national forest be effected by an Act of Parliament... In accordance with the agreement of December 2003, this Government has prepared a bill that revokes the dedication of Darling Mills State Forest as a State forest and then dedicates that land as part of the Bidjigal Reserve.²²

²⁰ The Hon Bob Debus MP, Attorney General and Minister for the Environment, *Legislative Assembly Hansard*, 10 November 2004.

²¹ The Hon Bob Debus MP, Attorney General and Minister for the Environment, *Legislative Assembly Hansard*, 10 November 2004. The Bidjigal Reserve Deed of Agreement was executed on 4 December 2003: Explanatory Note.

²² *Legislative Assembly Hansard*, 10 November 2004

The Bill

Revocation of Darling Mills land as a forestry area

6. The Bill revokes the dedication of Darling Mills State Forest (the area of land described in Schedule 1 to the Bill) as a State forest [cl 4(1)].²³
7. The Bill also revokes any area within the Darling Mills State Forest that has been notified as a “national forest” under s 19A of the Forestry Act [cl 4(2)].

Vesting of Darling Mills land in the Crown and its dedication as part of the Bidjigal Reserve

8. The Bill vests the Darling Mills land in the Crown, making it subject to the *Crown Lands Act 1989* (Crown Lands Act), except as provided by cl 7 [cl 5]. The Bill dedicates this land under the Crown Lands Act as part of the Bidjigal Reserve [cl 6(1)].
9. The Crown Lands Act provides for the Minister of Lands to dedicate Crown land for a public purpose by notification in the Gazette, subject to the tabling of an abstract of the proposal before both Houses of Parliament at least 10 sitting days before the dedication is to take effect [ss 80 and 82].
10. The Bill provides that the dedication of the Bidjigal Reserve is to have effect, despite the existence in the Crown Lands Act of a different procedure for the dedication of Crown lands [cl 9(2)].
11. The Bill deems the requirements of s 82 of the Crown Lands Act to have been satisfied [cl 6(2)]. This responds to the inadvertent exclusion of the Darling Mills area from the description of the land proposed for dedication in the abstract initially tabled in Parliament on 31 August 2004. An errata notice was tabled in Parliament on 19 October 2004.²⁴

Preservation of existing legal interests granted in relation to Darling Mills land

12. The Bill preserves any existing interest granted under the Forestry Act in relation to the Darling Mills land [s 7(1)]. Existing interests are defined broadly and include leases, timber and other licences and grazing permits [s 7(4)].
13. The Minister for Lands is to be responsible for the administration of existing interests, but is to have the powers, functions, authorities and duties of the Minister administering the Forestry Act [s 7(2) and (3)].

²³ Proposed cl 3 of the Bill defines “State forest” to mean “lands dedicated under the *Forestry Act 1916* (or under the former *Forestry Act 1909*) as a State forest, being a dedication that is in force”.

²⁴ Explanatory Note to the Bill, p 1.

Issues Considered by the Committee

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

Commencement by proclamation: Clause 2

14. The amendments to the principal Act are to commence on proclamation [cl 2].
15. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
16. While there are often good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to concerns about an inappropriate delegation of legislative power.
17. The Department for Primary Industries has advised the Committee that the Bill is to commence on proclamation to ensure that all necessary legal requirements under the Crown Lands Act in relation to the dedication of the Bidjigal Reserve have occurred. This includes the expiry of the period of Parliamentary scrutiny of the dedication proposal mandated by s 82 of the Crown Lands Act. The Department anticipates that the Bill will be proclaimed in December 2004.

The Committee makes no further comment on this Bill.

4. GAMING MACHINES AMENDMENT BILL 2004

Date Introduced:	10 November 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Grant McBride MP
Portfolio:	Gaming and Racing

Purpose and Description

1. This Bill makes the necessary amendments to the *Gaming Machines Act 2001* (the Act) in consequence of a requirement, made in connection with the acquisition of TAB Limited (TAB) by Tabcorp Holdings Limited, that TAB divest itself of certain exclusive licences that it holds under the Act. That Act, as amended by this Bill, will no longer provide that the TAB is entitled to those exclusive licences and will permit the transfer of the licences (other than one form of licence that is abolished by the Bill).
2. The Bill also:
 - (a) removes the requirements for the holders of certain of the licences concerned to have in place, and give effect to, certain commercial arrangements with the racing industry;
 - (b) repeals the provisions dealing with investment licences under the Act;
 - (c) repeals and re-enacts a provision to reflect the fact that links licences under the Act are held, not by individual hoteliers and registered clubs, but by a single licensee; and
 - (d) inserts savings and transitional provisions.

Background

3. The second reading speech states that:

In November 2003, a subsidiary of Melbourne-based Tabcorp Holdings Limited made an offer to buy all of TAB Limited's shares. This offer succeeded in mid-2004, over a rival offer from Brisbane-based UNiTAB Limited. The Government stated during the early stages of the offer that, if either bidder acquired more than 50% of TAB's shares, TAB would be required to divest the business arm operating under the Centralised Monitoring System [CMS] and linked gaming system licences within 18 months.

This timing was required to remove any potential conflicts of interest. Tabcorp currently owns and operates poker machines at Star City Casino and throughout Victoria. The CMS links all gaming machines in clubs, hotels and the Casino and provides daily data on the usage and turnover of each machine. It is the basis for monitoring gaming machines and the collection of tax by the Government.

Tabcorp subsequently entered into a Deed with me as Minister, which committed it to divest the business within the 18 month timeframe. The Government also indicated during the early stages of the offer that the investment licence would be withdrawn, subject to Tabcorp completing its contractual obligations for gaming machines provided under this licence.

During the offer period, Tabcorp agreed to the sale of the CMS and linked gaming system business to UNiTAB. The sale is subject to Tabcorp and UNiTAB concluding

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contractual arrangements, which is currently expected to occur before the end of December 2004.

In December 2003, Parliament passed the *Totalizator Legislation Amendment Act* to facilitate the takeover offers being considered at that time.

This Bill follows on from that initial step. The amendments are required to enable completion of the commercial arrangements regarding the divestment of the TAB gaming licences to UNITAB to take place.²⁵

4. The Minister noted that the amendments are not of a policy nature and make no changes either to the exclusivity arrangements for the licences or to the way gaming machines will be monitored through the CMS. According to the Minister:

The Bill contains only machinery amendments to allow the finalisation of a commercial agreement between Tabcorp and UNITAB regarding the ownership and operation of the CMS and linked gaming system businesses.

The Bill seeks to remove the specific references in the current legislation to TAB Limited as the holder of the exclusive licences for the CMS and linked gaming systems...The references to TAB are to be replaced with a more generic expression that allows these provisions to apply to UNITAB, and any other future owner of the CMS and linked gaming systems licences.

The amendments also enable the transfer of the exclusive licences from TAB Limited. This will allow the CMS and linked gaming system businesses to be transferred to UNITAB.²⁶

The Bill

Licences for centralised monitoring systems (CMS Licences)

5. The TAB is currently entitled to an exclusive licence, for the period up to 1 December 2016, to operate a centralised monitoring system for gaming machines in hotels and clubs (*a CMS licence*) [s 137].
6. The Bill preserves the exclusive CMS licence granted to TAB for that period but it does not name the licensee. It provides, instead, for the transfer of the exclusive licence with the written consent of the Minister and subject to such terms and conditions as the Minister may determine [Schedule 1[6]].
7. The Bill also repeals a CMS licence condition that the licensee must have in place, and must give effect to, certain commercial arrangements with the racing industry [Schedule 1[4]].

Linked gaming systems

8. A linked gaming system is a system in which two or more specially approved gaming machines are linked electronically to contribute a percentage of the money wagered on the gaming machines to a separate jackpot pool.

²⁵ The Hon Grant McBride MP, Minister for Gaming and Racing, Second Reading Speech, Legislative Assembly Hansard, 10 November 2004.

²⁶ Ibid.

9. Currently, the TAB is entitled to an exclusive licence (*an inter-hotel links licence*), for the period up to 17 October 2017, to operate a linked inter-hotel gaming system. This is a linked gaming system that operates in a hotel but includes specially approved gaming machines that are kept in other hotels [s 147]. The TAB has a similar exclusive *inter-club links licence* relating to registered clubs for the same period [s 152].
10. The Bill provides for the transfer of the exclusive licences with the written consent of the Minister and subject to such terms and conditions as the Minister may determine [Schedule 1[7] & [8]].

Investment licence

11. Schedule 1[10] repeals Part 11 (Investment licences) of the Act. That Part provides for the granting of licences that authorise the sale or supply of gaming machines to hotels and the sharing in the profits from the operation of those machines. Current section 73 of the Act prohibits hoteliers and registered clubs from sharing those profits otherwise than as provided for in Part 11 or as part of a linked gaming system.
12. According to the Minister, withdrawing TAB's investment licence was a condition of the takeover. The Minister stated:

Few hotels took up contracts under the investment licence with TAB and all but one of these contracts have expired. The proposed legislation is drafted to remove all references to an investment licence, but includes a savings provision which allows the one remaining investment licence contract to continue until its expiry date and to prevent any extension of this contract.²⁷

Savings and transitional provisions

13. The Bill adds savings and transitional provisions in the Act which:
 - (a) provide that any direct debit arrangements in force for the collection of the monitoring fee payable to the holder of a CMS licence, or for the collection of amounts payable to the holder of a links licence in connection with the operation of an authorised linked gaming system, continue to operate for the benefit of any persons to whom the relevant licences are transferred;
 - (b) prevent the withholding of any consents required to permit the assignment or novation of contracts necessary for the continued operation of the authorised centralised monitoring system or authorised linked gaming system from the holders of the licences to the persons to whom the relevant licences are transferred;
 - (c) cancel the investment licence held by TAB; and
 - (d) provide for the completion of contracts and other arrangements entered into under the investment licence [Schedule 1[18]].

²⁷ The Hon Grant McBride MP, Minister for Gaming and Racing, Second Reading Speech, Legislative Assembly Hansard, 10 November 2004.

Issues Considered by the Committee

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

Issue: Commencement by proclamation, Clause 2

14. Clause 2 provides that the Bill is to commence on a day or days to be appointed by proclamation.
15. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
16. The Minister's office advised the Committee that the Bill is commencing on proclamation as the transfer by the Minister of the licences (CMS, linked gaming systems and investment licences) needs to coincide with the finalisation of the commercial agreement between UNiTAB and Tabcorp. The Minister's office anticipate this will happen in December 2004, however, they advise that it may be delayed until January 2005.

The Committee makes no further comment on this Bill.

5. GOVERNMENT SCHOOL ASSETS REGISTER BILL 2004*

Date Introduced: 11 November 2004
House Introduced: Legislative Council
Member Responsible: The Hon Catherine Cusack MLC

Purpose and Description

1. The object of this Bill is to require the Director-General of the Department of Education and Training (the Director-General) to keep a register of government school assets (the Register) and to describe the information it is to contain.

Background

2. The second reading speech refers to the findings of the Vinson Inquiry into the provision of public education in NSW in relation to the maintenance and refurbishment of capital assets in government schools. It states that the Bill is required to improve the transparency of decision-making about capital improvement and maintenance work in government schools.²⁸

The Bill

3. This Bill is to commence on the date of assent [proposed s 2].

Register of government school assets to be kept

4. The Bill requires the Director-General to keep a Register comprising:
 - reports on the status of the capital assets²⁹ of government schools (school status reports); and
 - plans on building and maintenance work in government schools (school building plans) [proposed s 4(1)].
5. The Register is to be made publicly available on the website of the Department of Education and Training (Department) [proposed s 4(2)].

School status reports and school building plans to be prepared annually

6. The Bill also requires the Director-General to prepare and submit to the Minister, within four months after the end of each financial year:
 - a school status report detailing certain matters in relation to that year, including the state of repair of capital assets, the costs of maintenance work on

²⁸ The Hon Catherine Cusack MLC, second reading speech, Legislative Council Hansard, 11 November 2004.

²⁹ The Bill defines "capital assets" to include demountables and buildings that are not demountables [proposed s 3].

Government School Assets Register Bill 2004*

these assets and the particulars of funding requests for urgent maintenance work [proposed s 5(1) and (2)]; and

- a plan for building and maintenance work for the next three financial years detailing certain matters in relation to the three-year period, including the funding allocated for carrying out such work and the criteria for the allocation of this funding [proposed s 6(1) and (2)].

7. The Department's annual report is to contain a copy of each school status report and building plan [proposed s 5(3) and s 6(3)].

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

6. HOME BUILDING AMENDMENT BILL 2004

Date Introduced:	10 November 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Reba Meagher MP
Portfolio:	Fair Trading

Purpose and Description

1. The Bill amends to the *Home Building Act 1989* (the Act) to:
 - underpin the requirements relating to the provision of home warranty insurance contained in Part 6 of the Act in various respects so as to facilitate the provision of such insurance;
 - enhance the licensing and certification provisions concerning the issue, renewal and restoration of contractor licences and other authorities under the Act so that the Commissioner for Fair Trading, Department of Commerce (who in the Act is called the Director-General) can better prevent inappropriate persons from holding authorities;
 - expand the grounds for the taking of disciplinary action against holders of contractor licences and other authorities under the Act, to enable the Director-General to suspend such authorities pending disciplinary action and to increase the amount of the penalty that may be imposed by the Director-General if the Director-General is satisfied a ground for disciplinary action has been established;
 - increase the maximum penalties for offences under the Act and regulations and to increase the monetary penalty that may be imposed against a corporation by way of disciplinary action;
 - enable proceedings for a breach of the Act to be dealt with summarily either before a Local Court or the Supreme Court;
 - create new offences relating to unlicensed contracting and supplying of kit homes and the lending of authorities;
 - require persons in control of work at a building site to supply the names and addresses of persons undertaking work at the site at the request of an authorised officer;
 - constitute a Home Warranty Insurance Scheme Board;
 - reconstitute the Home Building Advisory Council;
 - modify provisions enabling a contract of sale for the sale of land on which residential building work is, or is to be, done to be voided if a certificate of insurance evidencing a contract of insurance required under Part 6 of the Act is not attached to the contract of sale at the time it is entered into;

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- enable the Director-General to remove false, erroneous, misleading or unfairly prejudicial particulars about the holders of authorities from, or to otherwise amend the particulars in, the register kept under s 120 of the Act; and
 - provide for the service of documents by post in the same manner as they may be served under the *Fair Trading Act 1987*.
2. The Bill also makes consequential amendments to the *Home Building Regulation 2004* and the *Fair Trading Act 1987*.

Background

3. The second reading speech notes that:

[i]n May 2003 the Minister for Commerce announced an inquiry into the Home Warranty Insurance Scheme. The inquiry, which was chaired by Mr Richard Grellman, was asked to consider a range of options for the delivery of this important product and to make recommendations on the best way forward. The inquiry consulted extensively with builders, consumers and other parties. The inquiry submitted its final report in September 2003. Among its recommendations were the establishment of a scheme board and advisory council and a system to regulate insurers, the creation of an Industry Deed to assist the entry of insurers and the strengthening of the building licensing processes. Following the release of the inquiry's report, an Interim Scheme Board was established to provide advice on the implementation of the recommendations.³⁰

The Bill

Insurance

4. Currently, Part 6 of the Act protects consumers of residential building services and subsequent purchasers by requiring builders, owner-builders, developers and persons supplying or erecting kit homes to take out home warranty insurance in respect of certain work.
5. The Bill bolsters these requirements, by providing that:
- the Minister may enter into an insurance industry deed with insurers approved, or seeking approval, as insurers under Part 6 [proposed s 103A(7)];³¹
 - the Minister may only approve a kind of insurance, or an insurer, for the purposes of Part 6 or revoke or vary an approval after consultation with the Home Warranty Insurance Scheme Board [proposed amended s 103A];
 - the Director-General may require an insurer to give the Director-General information about particular claimants and insured persons, whether or not the claimants or insured persons consent³² [proposed s 103AC];

³⁰ Hon R P Meagher MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 10 November 2004.

³¹ It is intended that the deed will set out the parameters for the conduct of the home warranty insurance business of the insurers and for the exercise by the government of its powers under the Act.

³² The Minister noted that “[a]ccess to this kind of information is necessary for the commissioner to deal effectively with disputes and protect the public”: Hon R P Meagher MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 10 November 2004.

- it is a condition of the approval of an insurer that, if an application is made to the insurer for home warranty insurance or the insurer has provided home warranty insurance³³ to a person, the insurer must disclose certain information that is relevant to the provision of the insurance to another insurer to which the person applies for such insurance or which provides such insurance if requested to do so by the other insurer [proposed s 103AD]. This consists of information:
 - concerning the business, commercial, professional or financial affairs of the person that is relevant to the provision of home warranty insurance;
 - obtained in the course of an investigation of an application for such insurance; or
 - concerning the home warranty insurance (if any) provided to the person;³⁴ and
- it is an offence to knowingly or recklessly make a false or misleading statement, or to omit any matter or thing without which a statement is misleading, in an application to an insurer for home warranty insurance [proposed s 103EA].

Protected information

6. The Bill provides for the secrecy of certain information obtained from insurers under, or in connection with the administration or execution of, Part 6 of the Act [proposed s 121A].

A person who acquires protected information in the exercise of functions under this Act must not, directly or indirectly, make a record of the information or divulge the information to another person if the person is aware that it is protected information, except in the exercise of functions under this Act. The maximum penalty for such an offence is 50 penalty units (currently \$5,500).³⁵

7. *Protected information* is defined in proposed s 121A as information about the business or commercial operations of an insurer obtained from an insurer under (or in connection with the administration or execution of) Part 6, not being information that is publicly available.
8. Protected information *may* be divulged to:
- a particular person or persons, if the Minister certifies that it is necessary in the public interest that the information be divulged to the person or persons;
 - a person, or authority, prescribed by the regulations; or

³³ Home warranty insurance is defined in s 90 of the *Home Building Act 1989* as insurance under a contract of insurance required to be entered into by or under Part 6 of the Act.

³⁴ The proposed section extends to information obtained before the commencement of the amendment: see proposed cl 77 of Sch 4 to the *Home Building Act 1989*.

³⁵ As a consequence of this amendment the Bill also changes the definition of *relevant information* in s 121(2)(c) from "information concerning the business or financial affairs of the person from whom the information is obtained" to "information concerning the business or financial affairs of the person from whom the information is obtained, but does not include protected information within the meaning of section 121A".

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- a person who is expressly or impliedly authorised to obtain it by the insurer from which the information was acquired [proposed s 121A(2)].³⁶

Authorities³⁷

9. The Director-General must reject an application for a contractor licence, building consultancy licence, supervisor certificate or tradesperson certificate, or an application to renew or restore such an authority, if the applicant is:
 - not a fit and proper person to hold the authority;
 - a mentally incapacitated person; or
 - disqualified by the Act or Regulations from holding an authority [proposed amended s 20, s 25, s 32B and s 40].
10. In considering whether an applicant is fit and proper, the Director-General must take into account whether the applicant is of good repute, having regard to character, honesty and integrity [proposed s 20(1A), s 25(1A), s 32B(1A) and s 40(1A)].
11. The Director-General may reject an application for a licence, or application to renew or restore an authority, on the ground that the Director-General considers that a *close associate* of the applicant who would not be a fit and proper person to hold a licence or other authority exercises a significant influence over the applicant or the operation and management of the applicant's business [proposed s 20(6), s 32B(5) and s 40(2B)].³⁸

³⁶ A person cannot be required to:

- (a) produce in any court any document or other thing that contains protected information and that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act; or
- (b) divulge to any court any protected information that has come to the person's notice in the exercise of the person's functions under this Act [proposed s 121A(3)].

However, a person *may* be required to produce such a document or other thing in a court or to divulge protected information to a court if:

- (a) the Minister certifies that it is necessary in the public interest to do so; or
- (b) the insurer to whom the information relates (or to whom the information contained in the document or thing relates) has expressly authorised it to be divulged to or produced in the court [proposed s 121A(4)].

An authority or person to whom protected information is divulged under proposed s 121A(2), and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that authority, person or employee were a person exercising functions under the *Home Building Act 1989* and had acquired the information in the exercise of those functions [proposed s 121A(5)].

Proposed s 121A does not apply to the divulging of information to, or the production of any document or other thing to:

- (a) any law enforcement agency, or
- (b) any person or body prescribed for the purposes of s 121A(6) [proposed s 121A(6)].

³⁷ Under the Act, authority means the following:

- a contractor licence (whether or not an endorsed contractor licence);
- a supervisor or tradesperson certificate;
- an owner-builder permit; or
- a building consultancy licence: proposed amended s 3 of the *Home Building Act 1989*.

³⁸ The Bill inserts proposed s 3AA into the *Home Building Act 1989* to provide an extensive definition of close associate for the purposes of the relevant sections. It includes a partner, agent or employee of the applicant

12. The Director-General may reject an application for a licence on the grounds that:
- an employee or proposed employee of the applicant is disqualified from holding a licence;
 - an employee or proposed employee of the applicant has had an application for an authority rejected on a ground relating to his or her character, honesty or integrity, or has had an authority cancelled or suspended on any disciplinary ground; or
 - if there are reasonable grounds to believe that the application has been made with the intention of avoiding disclosure of any relevant past misconduct of the applicant or a close associate of the applicant [proposed s 20(6) and s 32B(5)].³⁹
13. The Bill expands the definition of officer in s 3 of the Act to include a person who is an *officer* of a corporation, within the meaning of the *Corporations Act 2001* (Cth), and not simply a director of a corporation or a person concerned in the management of a corporation as at present.⁴⁰
14. The Director-General may require an applicant for a contractor licence or a close associate of the applicant to authorise a third party to provide certain information or to produce certain records to specified persons, or to consent to the party giving the Director-General financial and other confidential information concerning the applicant or close associate [proposed s 35].⁴¹
15. The Bill expands the grounds on which the Director-General may reject an application for the renewal or restoration of a licence to include the grounds that an employee or proposed employee of the applicant is disqualified from holding such a licence, has had an application for such a licence rejected on a ground relating to his or her character, honesty or integrity or has had such a licence cancelled or suspended on a disciplinary ground [proposed amended s 40].
- Such decisions are reviewable by the Administrative Decisions Tribunal (ADT) [proposed amended s 83B].
16. The Bill enables any person authorised for that purpose by the Director-General⁴² to obtain information about the financial solvency of an applicant for, or holder of, a

or licence holder. It also includes a person who bears a prescribed relationship to the applicant such as a spouse, de facto partner, child, grandchild, sibling, parent or grandparent.

³⁹ This also applies to renewals or restorations as well [proposed s 40]. It is an offence for an applicant for an authority, or for the variation, renewal or restoration of an authority, to fail to notify the Director-General of changes in the particulars or information accompanying the application. Maximum penalty is 50 penalty units (currently \$5,500): proposed s 34 of the *Home Building Act 1989*.

⁴⁰ An example of the effect of this is that, under s 54 of the Act, a wider group of individuals who are officers of a corporation that is the holder of a contractor licence or building consultancy licence may be found guilty of improper conduct for the actions of the corporation. Contractor licences and building consultancy licences held by a corporation may be cancelled if the corporation is wound up voluntarily, not only if it is wound up by court order: amended s 22 and s 32D of the *Home Building Act 1989*, respectively.

⁴¹ If a requirement made under this section is not complied with, the Director-General may refuse to consider the application concerned while the non-compliance continues: proposed s 35(2) of the *Home Building Act 1989*.

⁴² For the purposes of s 127 this means

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contractor licence, building consultancy licence, supervisor or tradesperson certificate or a close associate of such an applicant or holder [proposed s 127(1)(e)].

17. The aim of these amendments of the regime is to identify licence applicants with poor financial compliance records that place themselves, consumers and others at risk.⁴³
18. Proposed s 127(8) makes it clear that an authorised person is *not*, in obtaining information under s 127, required to comply with specified provisions of the *Privacy and Personal Information Protection Act 1998*.

Disciplinary action

19. Currently, the Director-General may take disciplinary action under s 62 against the holder of a contractor licence or holder of a building consultancy licence if the holder is guilty of *improper conduct* [s 56 and s 56A].
20. The Bill makes it improper conduct for:
 - the holder of an authority to commit an offence under s 307A (False or misleading applications) or s 307B (False or misleading information) of the *Crimes Act 1900*, eg, making a false statement in an application to renew the authority;
 - the holder of a contractor licence or supervisor or tradesperson certificate to become disqualified by the Act or regulations from holding the licence or certificate
 - the holder of a contractor licence or building consultancy licence to employ a person (or, if the holder of a contractor licence, to engage a person under a contract for services) knowing the person is disqualified from holding a licence, has had an application for an authority rejected on a ground relating to the person's character, honesty or integrity or has an authority cancelled or suspended on a disciplinary ground [proposed amended s 51].
21. The Bill provides a defence to a complaint that the holder of a licence has been guilty of such improper conduct if, before employing or engaging the person concerned, the holder obtained the approval of the Director-General to the employment or engagement [proposed s 51(4)].
22. Under s 54 of the Act, an individual who is a member of a partnership or an officer of a corporation that is the holder of a contractor licence is guilty of improper conduct if the holder acts as set out in s 51 and s 52 of the Act.

The Bill expands the provision to include individuals who are members of a partnership, or officers of a corporation that is the holder of a building consultancy licence [proposed amended s 54].

-
- (a) a person authorised in writing by the Director-General for the purposes of this section and holding a certificate issued by the Director-General as to that authority, or
 - (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*: s 127(1) of the *Home Building Act 1989*.

⁴³ Hon R P Meagher MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 10 November 2004.

23. The Bill expands the grounds for taking disciplinary action against the holder of a contractor licence to include where:
- the holder does not meet the standards of financial solvency determined by the Director-General to be appropriate to the class of licence held;
 - in the opinion of the Director-General, there is a risk to the public that the holder will be unable (whether or not for a reason relating to the financial solvency of the holder) to carry out work that the holder has contracted to do (whether before or after the commencement of the proposed paragraph);
 - the licence was improperly obtained;
 - the Director-General has become aware of information about the licensee that, if known at the time the application for the licence was determined, would have been grounds for rejecting the application;
 - the holder has *knowingly* done any residential building work or specialist work before the relevant principal certifying authority has carried out any critical stage inspection required to be carried out under s 109E(3)(d) of the *Environmental Planning and Assessment Act 1979* in relation to the work, or has failed to give any notification required under that Act in relation to such an inspection [proposed amended s 56].
24. The Bill also expands the grounds for taking disciplinary action against the holder of a building consultancy licence to include where:
- the licence was improperly obtained;
 - the Director-General has become aware of information about the licensee that, if known at the time the application for the licence was determined, would have been grounds for rejecting the application; and
 - an employee of the holder is disqualified from holding such a licence, has had an application for such a licence rejected on a ground relating to his or her character, honesty or integrity or has had such a licence cancelled or suspended on a disciplinary ground [proposed amended s 56A].
25. The Bill also expands the grounds for taking disciplinary action against the holder of a supervisor or tradesperson certificate to include where:
- the certificate was improperly obtained; and
 - the Director-General has become aware of information about the holder that, if known at the time the application for the certificate was determined, would have been grounds for rejecting the application [proposed amended s 57].
26. The Bill provides that the Director-General may suspend an authority, when a show cause notice is served, pending a determination as to whether to take disciplinary action against the holder of the authority [proposed s 61A].⁴⁴

⁴⁴ The Director-General may only suspend an authority under s 61A if satisfied that the grounds for disciplinary action specified in the show cause notice would, if established, justify the suspension or cancellation of the authority: proposed s 61A(2) of the *Home Building Act 1989*. Section 61A replaces s 83 of the *Home*

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27. The Director-General is *not* required to afford a person an opportunity to be heard before taking action against the person under s 61A [proposed s 61A(4)].

However, decisions under proposed s 61A will be reviewable by the ADT [proposed amended s 83B].

28. In the second reading speech, the Minister noted that:

[n]ormally, a period of time is given for the licensee to make submissions and to provide evidence with respect to the matters to which the notice relates. During this time the licensee may continue to operate until such time as a determination is made by the commissioner. This can leave consumers and others exposed to loss in dealing with the licensee in the intervening period.⁴⁵

29. The Bill increases from \$22,000 to \$50,000 the maximum penalty that the Director-General may impose against the holder of an authority that is a corporation, when satisfied that disciplinary action should be taken [proposed amended s 62(c)].

Offences and penalties

30. The Bill provides for the following offences:

- the holder of a contractor licence or a developer must not contract with an unlicensed person to undertake building work for the holder or developer of a kind that would normally require the person to be licensed [proposed amended s 4];
- the holder of a contractor licence must not contract with a person to supply a kit home if the person does not hold a licence to supply a kit home of that kind [proposed amended s 16A];.
- the holder of a building consultancy licence must not contract with another person to do building consultancy work for the holder if the person does not hold a licence to do work of that kind [proposed amended s 18H]; and
- the holder of an authority must not lend such authority to another person or permit another person to use an authority [proposed s 46A].⁴⁶

31. The Minister noted that these offences are designed to bring to an end the situation where builders use unlicensed persons as subcontractors, and to support existing licensees and improve the quality of construction.⁴⁷

32. All of these offences carry a maximum penalty of 1,000 penalty units for a corporation and 200 penalty units in any other case [currently \$110,000 and \$22,000 respectively].

Building Act 1989, which enables the District Court to suspend a contractor licence at the request of the Director-General.

⁴⁵ Hon R P Meagher MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 10 November 2004.

⁴⁶ This amendment brings the *Home Building Act 1989* into line with the *Property, Stock and Business Agents Act 2002*.

⁴⁷ Hon R P Meagher MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 10 November 2004.

33. Also, the holder of an owner-builder permit must not contract with another person to do residential building work for the holder if the person does not hold a licence to do work of that kind [proposed s 32AA – maximum penalty 200 penalty units].

Authorised officers

34. An authorised officer may:
- request the person who has control over the carrying out of the doing of any residential building work, or specialist work, at a building site to state the name and residential address of each person who has contracted to do the work or any part of such work [proposed s 127A(1)].
 - request the holder of an owner-builder permit to state the name and residential address of each person who has contracted to do any residential building work for the holder [proposed s 127A(2)].
35. For the purposes of proposed s 127A(1), the holder of an endorsed contractor licence or a supervisor certificate is to be presumed, in the absence of evidence to the contrary, to have control over the doing of all work for which the holder is a nominated supervisor.
36. A person is guilty of an offence if the person:
- fails or refuses, without reasonable excuse, to comply with a request under this section at the time that the request is made; or
 - states a name or address the person knows to be false.

The maximum penalty under s 127A is 200 penalty units (currently \$22,000).⁴⁸

Proceedings

37. The Bill provides that proceedings for a breach of the Act may be dealt with summarily either before a Local Court or the Supreme Court [proposed amended s 139].
38. If proceedings are brought in a Local Court, the maximum penalty that the Court will be able to impose is 200 penalty units (currently \$22,000).

Home Warranty Insurance Scheme Board and Home Building Advisory Council

39. The Bill constitutes the *Home Warranty Insurance Scheme Board* (the Scheme Board) [proposed s 89E & 89F] and sets out its functions, including:
- advising the Minister with respect to the approval of kinds of insurance, and insurers, under Part 6;
 - monitoring the scheme with respect to home warranty insurance; and

⁴⁸ However, a person is *not* guilty of an offence under s 127A unless it is established that the authorised officer:

- (a) provided evidence to the person that he or she was an authorised officer; and
- (b) warned the person that a failure to comply with the request may be an offence: proposed s 127A(5) of the *Home Building Act 1989*.

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- providing advice and recommendations with respect to the scheme [proposed s 89G].
40. The Bill also constitutes the *Home Building Advisory Council* (the Advisory Council) [proposed s 115B & s 115D]⁴⁹ and sets out its functions, which are to:
- advise the Minister on such consumer-related and trader-related issues relating to the home building industry as it thinks fit or as are referred to it by the Minister or the Scheme Board; and
 - provide advice to the Minister with respect to any other matter referred to it by the Minister.

Voidable contracts of sale

41. It is currently an offence for an owner-builder, developer or other person carrying out or having residential building work done on the owner-builder's, developer's or person's behalf to enter into a contract for the sale of land on which residential building work has been done, or is to be done, *unless* a certificate of insurance evidencing that the person who did or does the work was insured as required under Part 6 is attached to the contract of sale [s 95, s 96 & s 96A].

If this requirement is contravened, the contract is *voidable* at the option of the purchaser before the completion of the contract.

42. The Bill provides that the contract of sale will not be voidable if the owner-builder, developer or other person obtained a contract of insurance before entering into the contract and, before completion of the contract, serves on the purchaser (or a legal practitioner acting on the purchaser's behalf) a certificate of insurance evidencing the contract of insurance required under Part 6 for the residential building work concerned [amended s 95, s 96 and s 96A].

Amendment of Home Building Regulation 2004

43. The Bill makes amendments to the *Home Building Regulation 2004* that are consequential on amendments contained in Sch 2 to the proposed Act relating to the issue, renewal and restoration of authorities [proposed cl 28A and 39A]. It also increases the penalties for certain offences against the regulation [proposed amended cl 84 and cl 85].⁵⁰

⁴⁹ The Advisory Council is to consist of at least 14 members. These are to include the Chairperson and Deputy Chairperson of the Scheme Board, the Director-General or his or her nominee, members appointed by the Minister to represent the insurance industry, the building industry, building industry employees and the interests of consumers and holders of contractor licences, a legal practitioner appointed by the Minister and such other persons with appropriate qualifications or experience as may be appointed by the Minister: proposed s 115D of the *Home Building Act 1989*.

⁵⁰ The Bill amends s 140(3) of the *Home Building Act 1989* to provide that Regulations under the Act may provide for a maximum of 200 penalty units for offences in the case of a corporation and 100 penalty units in any other case.

Amendment of other Acts and regulations

44. The Bill amends the *Fair Trading Act 1987* to omit provisions in that Act that are superseded by provisions inserted by Sch 5[3] to the Bill reconstituting the Home Building Advisory Council, and to make it clear that persons who are members of the Council as constituted under that Act cease to hold office on the commencement of the amendments.
45. The Bill also amends various Acts and regulations to update references to certificates of registration under the Act to *tradesperson certificates*.

Issues Considered by the Committee

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

Clause 2: Commencement

46. The Committee notes that providing for an Act or parts of an Act to commence on proclamation delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
47. The Committee has been advised by the Minister's office that the Bill is commencing on proclamation to allow time to put administrative procedures in place to manage the licensing processes. In addition, the insurance provisions in the Bill need to be implemented before the Bill can be commenced.

Proposed s 103EA: Reversal of the onus of proof

48. Proposed s 103EA(1) makes it an offence, in connection with an application to an insurer for home warranty insurance, to make a statement (whether orally, in a document or in any other way) knowing that, or being reckless as to whether, the statement:
- is false or misleading [proposed s 103EA(1)(a)]; or
 - omits any matter or thing without which the statement is misleading [proposed s 103EA(1)(b)].⁵¹
49. Proposed s 103EA(1) does not apply as a result of s 103EA(1)(a) or (b) unless the relevant statement is false or misleading, or the matter or thing omitted makes the statement misleading, *in a material particular* [proposed s 103EA(2) and (3)].
50. The burden of establishing a matter referred to in s 103EA(2) or (3) – ie, that the information complained of was not false or misleading in a material particular – lies on the accused person.
51. Generally, in a prosecution, the Crown must prove all elements of the offence alleged. This is fundamentally connected to the presumption of innocence at common law.

⁵¹ The maximum penalty for an offence against s 103EA(1) is 200 penalty units, currently \$22,000.

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52. A clause reversing the onus of proof for a particular element of an offence may not necessarily breach the principle of the presumption of innocence, but only if the provision is within reasonable limits, namely, balancing the need to protect the rights of an accused with the need to meet other important public interests.
53. The Committee considers that normally a reasonable limit for a reversal of onus of proof would be placing no more than an evidential burden⁵² on a defendant.⁵³
54. The Committee notes that, under proposed s 103EA, if the prosecution establishes beyond reasonable doubt that a person, in applying for home warranty insurance, knowingly or recklessly made a statement that was false or misleading (whether directly or by omission), that person has the burden of establishing that the statement made was not false or misleading in a material particular.
55. The Committee also notes the centrality of the home warranty insurance scheme to the effective operation of the Home Building Act 1989.
56. The Committee considers that the reversal of onus in proposed s 103EA is within reasonable limits and does not trespass unduly on the right of an individual to be presumed innocent.

Proposed s 127(8): Privacy

57. Currently, s 127 provides that the Director-General may, by notice in writing served personally or by post on a person, require a person to:
- give to an authorised person, in writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any relevant information of which the person has knowledge;
 - produce to an authorised person, in accordance with the notice, any document containing relevant information; or
 - appear before an authorised person at a time and place specified in the notice and then and there to give (either orally or in writing) relevant information or to answer any questions reasonably related to giving relevant information or producing documents containing such information.⁵⁴
58. It is an offence to:
- fail to comply with a notice to the extent that the person is capable of complying with it; or

⁵² Evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist: sect 13.3 Commonwealth *Criminal Code Act 1995*.

⁵³ See discussion of the Crimes Legislation Amendment (Terrorism) Act 2004 & Sydney Opera House Trust Amendment Act 2004 in *Legislation Review Digest No 10 of 2004*.

⁵⁴ An authorised person may inspect a document produced in response to such a notice and may make copies of, or take extracts or notes from, the document.

- in purported compliance with such a notice, knowingly give information or an answer to a question, or produce a document, that is false or misleading [s 127(4)].

The maximum penalty for such an offence is 40 penalty units, currently \$4,400.

59. Currently, *relevant information* means information about:

- a possible offence against the Act or regulations, or against another Act if the offence relates to specialist work;
- a complaint under the Act;
- an investigation by the Director-General into a matter that is or may be the subject of disciplinary proceedings under this Act;
- an application for a contractor licence, a building consultancy licence or a supervisor or tradesperson certificate [current s 127].

60. The Bill adds to this list information relating to the financial solvency of an applicant for, or holder of, a contractor licence, building consultancy licence or of a supervisor or tradesperson certificate or a close associate of such an applicant or holder [proposed amendment to s 127].

61. A person is not excused from giving information, answering questions or producing documents under s 127 on the ground that the information, answers or documents may tend to incriminate the person [s 127(5)].

62. Any information or document obtained from a person under s 127 is inadmissible against the person in criminal proceedings, other than proceedings for an offence under the section [s 127(6)]. There is no equivalent exception for any subsequent civil proceedings.

63. Proposed s 127(8) makes it clear that an authorised person is *not*, in obtaining information under s 127, required to comply with specified provisions of the *Privacy and Personal Information Protection Act 1998* (Privacy Act).

64. These provisions relate to such matters as restrictions on the collection of personal information, the giving of information when personal information is obtained, the use, storage and security of personal information, access to personal information, and alteration of personal information (the *Information Protection Principles*).

65. These are principles with which a public sector agency must generally comply when dealing with personal information,⁵⁵ eg, s 18, which requires that:

A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:

⁵⁵ Under s 4 of the *Privacy and Personal Information Protection Act 1998*, *personal information* means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

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- (a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure;
- (b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body; or
- (c) the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

66. On the issue of Privacy Act exemptions, the Minister noted that:

[t]hese exemptions are necessary to facilitate the obtaining of information and use of material relevant to the operation of the Home Warranty Insurance Scheme. They will also facilitate the use of information under the changes to the licensing and disciplinary regime. An Industry Deed will be entered into between the Government and the insurers. The deed will indicate the insurers' and the Government's commitment to the scheme. The Government will agree not to amend the legislative scheme without proper consultation, and the insurers will agree to make a long-term commitment to underwriting home warranty insurance in New South Wales.⁵⁶

67. More generally, proposed s 127(8) relates to the Bill's aim to "remove unscrupulous operators from the system and to prevent their re-emergence either as, or behind, another legal entity".⁵⁷

68. The Committee notes the importance of the information privacy principles to the protection of individual privacy rights in New South Wales.
69. The Committee also notes that under s 127 there is no privilege against self-incrimination, and that information obtained pursuant to an exemption to the Privacy Act may be used in civil proceedings against a person.
70. The Committee also notes the importance to consumer protection of the Department of Fair Trading being able to obtain information relating to the financial solvency of an applicant for or holder of a licence under the Home Building Act 1989.
71. The Committee considers that having regard to the nature of the relevant information and the objects of the Act, exemption from the Information Protection Principles does not constitute an undue trespass on the privacy rights of licence applicants and holders.

The Committee makes no further comment on this Bill.

⁵⁶ Hon R P Meagher MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 10 November 2004.

⁵⁷ Hon R P Meagher MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 10 November 2004.

7. NOXIOUS WEEDS AMENDMENT BILL 2004

Date Introduced:	10 November 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Ian Macdonald MLC
Portfolio:	Primary Industries

Purpose and Description

1. The objects of this Bill are to amend the *Noxious Weeds Act 1993* (the Principal Act) as follows:
 - (a) to broaden the objects of the Principal Act to take into account the impact of noxious weeds on the economy, community and environment of the State,
 - (b) to replace the existing weed control orders made by the Minister for Primary Industries (the Minister) and control categories for noxious weeds with orders made by the Minister that permit a broader range of control measures to be used, together with a new classification system for noxious weeds,
 - (c) to make amendments to the Principal Act to cover the classification of seeds and plants previously dealt with under the *Seeds Act 1982*,
 - (d) to require public consultation before weed control orders are made,
 - (e) to provide for emergency weed control orders and emergency weed control notices,
 - (f) to extend to owners of land who do not occupy land, as well as occupiers of land, obligations to comply with weed control notices issued by local control authorities when occupiers fail to comply with weed control orders,
 - (g) to enable occupiers of land to be exempted from obligations under the Principal Act to control aquatic weeds and to confer those obligations on local councils and other bodies that are local control authorities,
 - (h) to require prior notice to be given before a weed control notice is given to an owner or occupier by a local control authority,
 - (i) to replace the Minister's power to give a local control authority a weed control notice to enforce its general obligations under the Principal Act with a power to direct a local control authority to carry out its functions and to enable the Minister to appoint a weed control administrator for a local control authority,
 - (j) to reduce the time within which an appeal may be made to the Land and Environment Court against a weed control notice and to enable the Court to order that the notice continues to have effect while the appeal is proceeding,
 - (k) to prohibit the sale of fodder from land on which there are notifiable weeds,
 - (l) to enable the Minister to make grants of money, out of money appropriated by Parliament, to further the objects of the Principal Act,

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- (m) to require local control authorities to keep certain records and report to the Director-General of the Department of Primary Industries (the Director-General) on noxious weed control,
- (n) to amend the powers of inspectors and authorised officers,
- (o) to make it clear that local control authorities may enter into agreements or arrangements with other persons or bodies for the exercise of the authorities' functions under the Principal Act,
- (p) to enable regulations to be made with respect to fees or charges for services provided under the Principal Act, and
- (q) to make other minor and consequential amendments and provisions of a savings or transitional nature.

2. The Bill also repeals the *Seeds Act 1982* and the *Seeds Regulation 1994*.

Background

3. In the second reading speech, the Minister said that:

The genesis of this bill was a comprehensive review of the Noxious Weeds Act 1993 conducted in 1998. That review group was made up of representatives from the Local Government Association, Shires Association, NSW Farmers' Association, Nature Conservation Council, rural land protections boards, Total Catchment Management, National Trust and Department of Land and Water Conservation. The initial review of the Noxious Weeds Act 1993 involved a thorough and open consultation process that resulted in over 100 submissions being received. The review group took due account of these responses in making its final recommendations. A number of concerns were raised, in particular relating to the responsibilities of public authorities, the precedent of noxious weeds legislation over other Acts, the use of weed management strategies to replace orders, joint owner/occupier responsibility, monitoring and reporting requirements as well as some minor issues.

...The review met three broad requirements. The first was a statutory requirement that the Noxious Weeds Act 1993 be reviewed as soon as possible after five years from the date of its assent, which was 4 May 1993. The second was to continue the New South Wales Government's ongoing program of red tape reduction and regulatory reform. The third was to fulfil the New South Wales Government's commitment to review legislation that may impact on competition under the Competition Principles Agreement.

...

The existing methods for declaring noxious weeds and defining weed control requirements are quite inflexible. Put simply, they do not address contemporary land and weed management practices. The methods for controlling noxious weeds are limited, in most cases, to continuously suppressing and destroying weeds. However, contemporary land and weed management practices now mean that there are alternative ways in which noxious weeds can be effectively controlled. These techniques either address the cause of the weed problem or provide effective control using a range of techniques. For example, maintaining a dense pasture through

improvement and grazing management can provide competition for weeds, reduce the level of infestation and reduce the opportunity for weeds to invade further.⁵⁸

The Bill

4. Currently, plants are declared, by order of the Minister, to be noxious weeds. The order applies a control category to the weed and the Principal Act specifies the level of weed control that applies to each category.
5. The Bill replaces this system with one based on “control classes” where the Minister, by order, classifies weeds according to the threat they pose to primary production or the environment and the extent of their distribution.
6. The Bill enables the Minister, by order published in the Gazette, to make a weed control order for a specified plant. The order is to declare the plant to be a noxious weed, apply a weed control class or classes to it and specify where the order applies, the control measures that may be used, the control objectives and the term of the order (being not more than 5 years) [proposed s 7].
7. The new classes are:
 - Class 1, State Prohibited Weeds—plants that pose a potentially serious threat to primary production or the environment and are not present in the State or are present only to a limited extent.
 - Class 2, Regionally Prohibited Weeds—plants that pose a potentially serious threat to primary production or the environment of a region to which the order applies and are not present in the region or are present only to a limited extent.
 - Class 3, Regionally Controlled Weeds—plants that pose a serious threat to primary production or the environment of an area to which the order applies, are not widely distributed in the area and are likely to spread in the area or to another area.
 - Class 4, Locally Controlled Weeds—plants that pose a threat to primary production, the environment or human health, are widely distributed in an area to which the order applies and are likely to spread in the area or to another area.
 - Class 5, Restricted Plants—plants that are likely, by their sale or the sale of their seeds or movement within the State or an area of the State, to spread in the State or outside the State.
8. Class 1, 2 and 5 weeds are *notifiable weeds* under the Act [proposed s 8(3)].
9. The Bill requires the Minister to cause a public consultation procedure to be undertaken before a weed control order is made [proposed s 9]. However, the Minister may make an emergency weed control order without public consultation if of the opinion that the threat posed by a plant requires it [proposed s 10].

⁵⁸ The Hon Kerry Hickey MP, Minister for Mineral Resources, *Legislative Assembly Hansard*, 10 November 2004.

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10. The Bill re-enacts (with changes to reflect the changes to weed control orders) provisions regarding the obligations of occupiers of land subject to weed control orders, public authorities and local control authorities to control weeds [proposed s 12–14].
11. The Bill also re-enacts existing obligations of occupiers of land to control noxious weeds on roads, watercourses, rivers, and inland waters, except that:
 - regarding waterways, the Director-General or the Minister may exempt an occupier, a noxious weed or a watercourse, river or inland water from those provisions (in which case the local control authority becomes responsible for the control of noxious weeds) [proposed s 17A]; and
 - obligations regarding land in irrigation areas are to apply only to public roads and do not apply to channel land that is not occupied by a public authority [proposed s 17B].
12. A local control authority may issue a weed control notice, requiring an owner or occupier of land to control noxious weeds on the land, as required under a weed control order applying to the land. The time for compliance is to be not less than 14 days or, for an emergency weed control notice (under an emergency weed control order), not less than 24 hours [proposed s 18]. A local control authority must give not less than 7 days' notice of a proposed weed control notice (other than an emergency notice) [proposed s 18A].
13. The Bill makes it an offence for an *owner* of land to fail to comply with a weed control notice. It is already an offence for an *occupier* to fail to comply [s 19].
14. The Bill also re-enacts (with changes to reflect the introduction of weed control orders) provisions regarding the powers of local control authorities to enter land and control noxious weeds on land subject to a weed control notice [proposed s 20] and the recovery of associated costs [proposed s 26]. However, the requirement for 24 hours' notice does not apply if an emergency weed control order has been given, although notice is still required if practicable [proposed s 20(4)] and entry of land must be at a reasonable time [s 43(2)].
15. The Bill also enables the Minister to issue a weed control notices to public authorities and local control authorities and makes associated enforcement provisions. However, the Bill does not continue the existing power of the Minister to issue a weed control notice to occupiers who are not public authorities [proposed ss 22–26].

Issues Considered by the Committee

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

Commencement: Clause 2

16. The Bill is to commence by proclamation.
17. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence the Act on a day it

chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.

18. In his second reading speech, the Minister advised that commencement by proclamation was required:

First, to ensure that, before the Seeds Act is repealed, proper provision is made in the Noxious Weeds Act and the Plant Diseases Act to prohibit the sale and spread of species of weed seeds and, secondly, to ensure that the existing declared noxious weeds lists are re-evaluated so that the new weed control orders are a true reflection of current needs.⁵⁹

The Committee makes no further comment on this Bill.

⁵⁹ The Hon Kerry Hickey MP, Minister for Mineral Resources, *Legislative Assembly Hansard*, 10 November 2004.

8. PREVENTION OF CRUELTY TO ANIMALS AMENDMENT BILL 2004

Date Introduced:	9 November 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Ian Macdonald MLC
Portfolio:	Primary Industries

Purpose and Description

1. This Bill amends the *Prevention of Cruelty to Animals Act 1979* (the Act) in a number of ways, including:
 - (a) to prohibit the tethering of birds;
 - (b) to change the offences relating to the use of live animals as lures;
 - (c) to remove the general defence against offences of cruelty to animals of committing the act concerned while providing veterinary treatment;
 - (d) to expand, with certain controls, a number of powers of inspectors and police officers acting under the Act;
 - (e) to allow a court to ban persons convicted of certain offences against animals from owning any animal;
 - (f) to make various changes to the way in which charitable organisations may deal with stray animals in their care; and
 - (g) to enable penalty notices to be issued for prescribed offences against the Act or the regulations.
2. The Bill also makes consequential amendments to the *Fines Act 1996* and the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Background

3. The second reading speech advised that:

The major aim of the Bill is to allow early intervention, with greater powers being given to officers to prevent harm to animals in the early stages. Perhaps most importantly, the Bill gives officers the power to issue directions to people to care for their animals.

To a certain degree, the amendments are about education. By giving officers the power to intervene, they can provide essential welfare information about the specific needs of individual animals...

The other major aim of the Bill is better responses once offences have been committed. In particular, the powers of police officers and inspectors are being expanded...

The Bill therefore provides a dual approach to improving animal welfare. On the one hand, there will be greater early intervention and education and, on the other, there will be improved enforcement and compliance provisions.⁶⁰

4. The Parliamentary Secretary explained the consultation process behind the preparation of the Bill. She said in the second reading speech:

I am advised that talks were held with the RSPCA and the Animal Welfare League on a number of occasions, and that the New South Wales Farmers Association was consulted. I am further advised that there were positive responses to the Bill. Additionally, the professional association of this State's vets, the New Wales Division of the Australian Veterinary Association, was consulted. Once again, I am told that there was positive feedback.

The Bill is the result of a review and improvement process, which the Department of Primary Industries conducts on an ongoing basis in conjunction with stakeholders. In recent years various shortcomings in the Act have been identified, and new and better ways of preventing cruelty to animals have been considered. As I have indicated, officers of the Department routinely meet with staff of the RSPCA and the Animal Welfare League, as well as other groups. Many of the amendments in the Bill have come about from discussions at those meetings.⁶¹

5. According to the second reading speech, the amendments in this Bill should be viewed together with recent amendments to the Act in the *Prevention of Cruelty to Animals Amendment (Penalties) Act 2003* and *Prevention of Cruelty to Animals Amendment (Tail Docking) Act 2004* as "one package".⁶²

The Bill

Offence of tethering animals

6. Current section 10 of the Act makes it an offence to tether or authorise the tethering of, an animal, for an unreasonable length of time or by means of an unreasonably heavy, or unreasonably short, rope, chain or cord. The maximum penalty for this offence is 250 penalty units in the case of a corporation (\$27,500) and 50 penalty units (\$5,500) or imprisonment for 6 months, or both, in the case of an individual.
7. The Bill amends section 10 by replacing the reference to "rope, chain or cord" so that the offence will apply to any sort of tether.

Offence of releasing animals to be chased by a dog

8. Section 21 provides the offence of causing, procuring, permitting or encouraging an activity in which an animal is used for the purpose of its being chased, caught or confined by a dog. The maximum penalty for this offence is 1,000 penalty units (\$110,000) in the case of a corporation or 200 penalty units (\$22,000) or imprisonment for 2 years, or both, in the case of an individual.

⁶⁰ Ms Alison Megarrity MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 9 November 2004.

⁶¹ Ibid.

⁶² Ibid.

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9. The Bill amends section 21 to limit the offence to circumstances in which the animal used has been confined and then released. The word "used" is being replaced with "released from confinement". According to the second reading speech:

There has been concern expressed that the word "used" in relation to a chased animal... could broaden the scope of the section so that vertebrate pest control and other legitimate activities are caught by the section...

To make sure that there is certainty as to the scope of the offence, the section is to be amended... In this way the offence will be limited to sporting-type activities where animals are kept and released to be chased, caught or confined by dogs.⁶³

Offence of tethering birds

10. The Bill omits section 21D of the Act, which contains an offence of confining a bird by means of a ring around its leg attached to a chain. In its place, the Bill creates a new offence of confining a bird by means of any tether. The maximum penalty for this offence is 250 penalty units (\$27,500) in the case of a corporation and 50 penalty units (\$5,500) or imprisonment for 6 months, or both, in the case of an individual. An exception is made for the tethering of a raptor to its handler by means of a jess.

"In the course of providing veterinary treatment" defence

11. The Act currently provides that it a defence to an offence of cruelty where the act constituting the offence was done in the course of providing veterinary treatment. The defence applied to veterinary surgeons and persons acting under their instructions. The Bill removes this defence (schedule 1[11]).
12. According to the second reading speech, this amendment is consistent with national competition policy. Further:

A review of the Act found that veterinarians were unnecessarily protected from prosecution if they were involved in the treatment of an animal or if they were conducting surgery. This defence also provides a significant barrier to disciplinary procedures against vets by the Board of Veterinary Surgeons. The defence provision once served a purpose, particularly when painful operations were performed without pain relief. This was at a time when the techniques of analgesia were less advanced and public expectations were lower. For example, the firing of horses' legs was done without painkillers. In such cases it would have been inappropriate to charge the vet with an offence under the Act.

However, times have changed, and there have been major improvements to animal care. Veterinary science and public expectations regarding professional behaviour and the humane treatment of animals have greatly progressed. It is no longer acceptable to exempt vets from prosecution for cruel treatment of animals during a medical treatment or surgical procedure...

Discussions with members of the New South Wales Division of the Australian Veterinary Association have raised no significant concerns about the repeal of the defence. This change will bring New South Wales into line with Tasmania, Victoria, Queensland, South Australia, the Northern Territory and the Australian Capital Territory.

⁶³ The Bill proposes a specific exemption for sheep dog trials, mustering of stock, working of stock in yards and other animal husbandry activities (see schedule 1[9]). Second Reading Speech, Legislative Assembly Hansard, 9 November 2004.

Powers of officers & inspectors

13. Schedule 1[15] omits provisions of the Act that contain powers of officers under that Act.⁶⁴ "Officers" are defined in section 4 of the Act as:
- (a) a member of the police force or an inspector within the meaning of the *Animal Research Act 1985*;
 - (b) an officer of an approved charitable organisation who is a special constable within the meaning of the *Police Offences Act 1901*; or
 - (c) a public servant who is appointed by the Minister as an officer for the purposes of this Act.
14. "Inspector" is defined in the Bill to mean:
- an officer (other than a police officer) holding an authority issued by the Minister or by an officer of the Department of Primary Industries authorised by the Minister; and
 - a police officer.
- "Land" is defined to include a vehicle, vessel or aircraft (proposed s24D).
15. The Bill provides for revised powers of officers and inspectors in relation to the prevention and punishment of cruelty to animals. These revisions are set out in proposed Part 2A and include:
- authorising officers to require the name and address of a person found committing an offence against the Act or regulations or whom the officer suspects on reasonable grounds of committing such an offence. It is an offence not to comply (proposed s 24A);
 - authorising officers to require a person who is responsible for a motor vehicle or has custody of it to provide the name and address of a person who is alleged to have committed an offence against the Act or the regulations while driving the motor vehicle. It is an offence not to comply (proposed s 24B);
 - requiring officers to provide identification and other information, and to give certain warnings (eg, that failure to comply with an order is an offence) when exercising powers under the proposed Part (proposed s 24C);
 - authorising a *police officer* to stop and detain a vehicle or vessel and examine an animal on it if the police officer suspects that certain offences against the Act have been or are being committed in relation to the animal.⁶⁵ It is an offence not to comply (proposed s24H); and
 - authorising an inspector to seize any thing that will afford evidence of the commission of an offence against the Act or regulations (proposed s 24K).
16. In addition, an inspector is authorised to enter land, including residential land, for the purposes of exercising their functions. Currently, inspectors have the power to enter

⁶⁴ The repealed provisions are section 25, 26, 26A, 27 & 27A.

⁶⁵ According to the second reading speech, this provision allows police officers to assist animals stranded in cars or other vehicles/vessels, eg, in very hot weather, by forcibly entering those vehicles to rescue the animals. Ms Alison Megarrity MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 9 November 2004.

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residential premises in the exercise of their duties without any restriction. The Bill reduces this power by providing that an inspector may enter land that is used for residential purposes *only* with the consent of the occupier, under the authority of a search warrant or if the inspector reasonably believes that it is necessary to help a seriously injured or ill animal (proposed s 24E).

17. Proposed section 24I authorises inspectors to examine animals in certain circumstances, including on suspicion that:
 - an offence against the Act or regulations has or is about to be committed in respect of the animal;
 - the animal has not been provided with proper and sufficient food and drink during the previous 24 hours;
 - the animal is so severely injured, diseased or in such physical condition that it requires veterinary treatment and it is receiving none; or
 - the animal is so severely injured, diseased or in such physical condition that it is cruel to keep it alive and the animal is not about to be killed or is about to be killed in a manner that will inflict unnecessary pain on the animal.
18. If, after examining an animal under proposed s 24I, an inspector suspects, on reasonable grounds, that the animal is in distress the inspector may, under proposed s 24J, do any or all of the following:
 - (a) take possession of the animal;
 - (b) if appropriate, remove the animal to such place as the inspector thinks fit;
 - (c) retain possession of the animal;
 - (d) provide the animal with necessary food, drink or veterinary treatment; or
 - (e) kill the animal in a manner that causes it to die quickly and without unnecessary pain.
19. Reasonable expenses incurred in the exercise of these powers may be recovered from the owner of the animal as a debt in a court of competent jurisdiction (proposed s 24J(4)).
20. The Bill also enables an inspector to give directions by notice in writing to a person who has care of an animal setting out the action the person should take to avoid contravening the Act in relation to the care of that animal. Before issuing such a notice, the inspector must be satisfied on reasonable grounds that the person is contravening the Act or the regulations in relation to the care of the animal.
21. While, failure to follow a direction is not an offence, the notice, and evidence of any action specified in the notice that was taken or not taken, is admissible in evidence in proceedings for the offence concerned or a similar offence (proposed s 24N).
22. According to the second reading speech:

Often, the cruelty that animals suffer is due to ignorance. [This amendment] will help overcome that ignorance by providing officers the ability to give directions about the care and welfare of an animal.⁶⁶

Provisions relating to charitable organisations

23. The Bill amends section 31A of the Act to enable a charitable organisation (eg, RSPCA) to sell or dispose of an animal after 21 days if it has made reasonable inquiries to find the owner and the owner has not been found or has refused to take care of the animal. If the owner has surrendered the animal to the organisation, the 21-day period does not apply. Currently, the section requires a charitable organisation to advertise an animal for sale before disposing of it regardless of the likelihood of the animal being able to be sold.

Court proceedings and prosecutions

24. The Bill (Schedule 1[17]) expands the operation of section 31 of the Act to enable a court to make an order prohibiting a person from having possession of an animal in addition to its current power to order the disposal of the animal.
25. Schedule 1 [23] extends the time for the bringing of proceedings for offences against the Act or the regulations from 6 months to 12 months. This provision applies to offences against the Act whether committed before, on or after it commences (schedule 1[27]).

Penalty notices

26. Proposed section 33E enables penalty notices to be issued in relation to offences against the Act or the regulations. The regulations may prescribe the offences for which penalty notices may be given and the amount of penalty payable.
27. According to the second reading speech, penalties payable under a penalty notice will:
[R]ange from two penalty units or \$220 to five penalty units or \$550. This in line with the amounts set for offences under other statutes.⁶⁷

Guidelines relating to the welfare of animals

28. Schedule 1 [24] substitutes section 34A of the Act to enable the regulations to prescribe guidelines or adopt a document (eg, a code of practice) as guidelines relating to the welfare of species of farm or companion animals. At present, section 34A only enables the regulations to prescribe guidelines relating to such matters.

⁶⁶ Ms Alison Megarrity MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 9 November 2004.

⁶⁷ Ibid.

Issues Considered by the Committee

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

Issue: Commencement by proclamation, Clause 2(2)

29. Clause 2(2) of the Bill provides that Schedules 1 [7], [14]–[16], [19], [21] and [22], 2.1 and 2.2 commence on a day or days to be appointed by proclamation.
30. Schedule 1, clauses [7], [15], [16], [19] and [21] and Schedule 2.1 and 2.2 are consequential amendments. Schedule 1[14] inserts the proposed Part 2A which prescribes the new powers of officers and inspectors.
31. The Committee notes that providing for an Act or parts of an Act to commence on proclamation delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
32. The Minister's Office has advised the Committee that the Bill is commencing on proclamation to allow time to draft penalty notice regulations (under proposed s 33E) and to conduct appropriate industry consultation on the regulations through the regulatory impact statement process.

The Committee makes no further comment on this Bill.

9. REDFERN-WATERLOO AUTHORITY BILL 2004

Date Introduced:	11 November 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Frank Sartor MP
Portfolio:	Redfern-Waterloo

Purpose and Description

1. The object of this Bill is to constitute the Redfern–Waterloo Authority (the Authority) and to specify its functions in relation to the management and improvement of certain areas in Redfern and Waterloo.

Background

2. On 26 October 2004, the Premier announced that the Government would create a new authority, under the control of one Minister, to have sole responsibility for implementing development and urban renewal strategies within the Redfern-Waterloo area.⁶⁸ The Bill seeks to implement that commitment.
3. The second reading speech states that:

The communities of Redfern and Waterloo are beset by a series of social challenges... many [of which] are unique to the area and require specific service and policy responses... Infrastructure development in Redfern and Waterloo is one of the keys to creating a sustainable and strong community... By establishing a dedicated body the authority can deal in commercial property management and development at a distance from government. Unlike a private company, the Redfern-Waterloo Authority will remain accountable to the Minister and to the community.⁶⁹
4. The Government is the largest landholder in the Redfern-Waterloo area, with assets such as the Australian Technology Park, the railway station, the Rachel Foster Hospital, Redfern public school and public housing estates.⁷⁰
5. The second reading speech notes that the Darling Harbour Authority, the Sydney Cove Redevelopment Authority, the Sydney Olympic Park Authority and the Sydney Harbour Foreshore Authority are precedents for “purpose-designed development corporations and authorities”.⁷¹
6. The second reading speech states that the Government will continue to work closely with City of Sydney Council. It also states that the functions of the Authority will complement the work of the Redfern-Waterloo Partnerships Project.⁷² This Project is

⁶⁸ Mr Frank Sartor MP, second reading speech, Legislative Assembly Hansard, 11 November 2004 [hereinafter second reading speech].

⁶⁹ Second reading speech.

⁷⁰ Second reading speech.

⁷¹ Second reading speech.

⁷² Second reading speech.

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an initiative between the Government, the City of Sydney Council and community groups.

The Bill

Constitution and management of the Authority [Part 2]

7. The Bill establishes the Redfern-Waterloo Authority as a statutory corporation, subject to the control and direction of the Minister for Redfern-Waterloo in the exercise of its functions [proposed ss 5-7].
8. The Authority is to have a Board, comprised of a Chief Executive Officer (CEO) and not more than nine persons appointed by the Minister, at least one of whom must be an Aboriginal person [proposed s 8]. The Bill also provides for the Minister to appoint and dissolve advisory committees [proposed s 11].

General Functions of the Authority [Part 3, Division 1]

9. The Authority's principal functions are to promote and undertake the economic development and use of the "*operational area*", including the provision of infrastructure and improvement of public spaces [proposed s 14(1(a)]. The boundaries of the *operational area* are described in Schedule 1.
10. Proposed subsection 45(1) provides that the Regulations may amend Schedule 1:
 - (a) by omitting any matter; or
 - (b) by inserting any matter; or
 - (c) by altering any matter.
11. Subsection 45(2) provides that the regulations may omit Schedule 1 and insert instead a Schedule that specifies or describes an area of land as the operational area.
12. The Authority's other functions include providing and promoting employment opportunities and housing choices for residents, managing public places and improving their use, and encouraging cultural, educational, recreational and other activities in the operational area [proposed s 14(1)(b)-(e)].
13. In exercising its functions, proposed section 14(2) requires the Authority to have as its principal objective the achievement of the outcomes of the Redfern-Waterloo Plan, which the Minister for Redfern-Waterloo is to make under proposed section 26.⁷³ The Authority is also to have regard to principles of social, economic, ecological and sustainable development [proposed s 15(3)].
14. The Bill enables the Authority to exercise its functions in relation to land outside the operational area. The Bill does not prescribe criteria for the exercise of the Authority's functions outside of the operational area [proposed s 16].

⁷³ See paragraphs 15 and 16 below.

15. In addition, the Authority may exercise its functions on both public and private land [proposed s 16].

Powers of the Authority re land and other property [Part 3, Division 2]

16. The Bill grants the Authority certain powers to acquire land and other assets and regulates how such assets may be dealt with and disposed of. For instance, the Authority is granted the power to:
- acquire land by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* [proposed s 17];
 - acquire, or take the management of, land owned by a public authority that is not being used or required for the public authority's core activities [proposed s 18];
 - deal with its land, with certain dealings requiring the Minister's consent [proposed s 19];
 - dedicate land for a public purpose or as a public road [proposed s 20];
 - acquire property by gift, devise or bequest [proposed s 22] and deal with such property [proposed s 23]; and
 - form and acquire interests in private corporations or dispose of such interests, with the approval of the Minister required for significant acquisitions or dispositions [proposed s 24].

"The Redfern-Waterloo Plan" [Part 4]

17. The Bill requires that the Minister prepare and maintain a "Redfern-Waterloo Plan" for the operational area (the Plan) [proposed s 26(1)]. The Plan is to assist the Authority and may make provision for matters such as urban design and infrastructure, employment and land use zoning within the operational area [proposed s 26(2)].
18. The Minister is to make the Plan publicly available and keep it under review. The Bill does not require public consultation on the preparation of the initial Plan, but the Minister is to have regard to any public submissions made on the Plan from time to time. The Minister may also amend or replace the Plan.

Operation of Environmental Planning and Assessment Act 1979 and Heritage Act 1977

19. The Bill provides for the Minister administering the *Environmental Planning and Assessment Act 1979* to delegate to the Minister for Redfern-Waterloo his or her functions as the "consent authority"⁷⁴ for any "*State significant development*" in the operational area [proposed s 27(1)]. The Minister for Redfern-Waterloo may sub-delegate such consent authority functions to the Authority or to the City of Sydney Council [proposed s 27(3)].

⁷⁴ A "consent authority" is defined in s 4 of the *Environmental Planning and Assessment Act 1979* as the person or body that is to determine an application either for development or for a complying development certificate.

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20. "*State significant development*" is development the approval of which ordinarily rests with the Minister administering the *Environmental Planning and Assessment Act 1979*. The *Environmental Planning and Assessment Act 1979* does not specify the criteria for designating development as State significant, but outlines the process for its designation, including under State environmental planning policies (SEPPs).⁷⁵
21. The Bill provides that the *Heritage Act 1977* does not apply to a development in the operational area that is State significant development and which is identified in the Redfern–Waterloo Plan as development that may be carried out despite any prohibition or restriction under the *Heritage Act 1977* [proposed s 28(1)].⁷⁶
22. Further, the Minister for Redfern-Waterloo may only identify a development as development that may be carried out despite any prohibition or restriction under the *Heritage Act 1977*, if it is "essential for achieving the strategic vision for the improvement of the operational area" [proposed s 28(2)].
23. Section 57(1A) of the *Heritage Act 1977* already provides that an interim heritage order made by a local council (as distinct from the Heritage Council) does not apply to State significant development.
24. The Bill, however, removes the requirement of Heritage Council approval before "controlled activities" may be undertaken in relation to a place, building, work, relic, moveable object, precinct or land that is the subject of an interim heritage order made by the Minister under the *Heritage Act 1977* or that is listed on the State Heritage Register.
25. "*Controlled activities*" are activities that may impact on an item's heritage value. Examples include the demolition or alteration of a building and the carrying out of any development on land on which a building is located.⁷⁷

Development contributions

26. The Bill establishes a framework for the payment of development contributions in respect of State significant developments in the operational area and within the former Carlton United Brewery Site at Broadway. Development contributions may be required for development in these areas for the purposes of affordable housing [proposed s 29]. In addition, development contributions may also be required for developments within the operational area for the provision or improvement of public amenities and public services such as public spaces and the Redfern Railway Station [proposed s 30].

⁷⁵ For example, major employment generating industrial development (SEPP 34) and Sydney Harbour and its tributaries (SEPP 56) have been designed as State significant development. For a list of developments designated as State significant, see the Department of Planning, Infrastructure and Natural Resource, *Assessing Development Proposals -What development needs the Minister's consent*, <www.planning.nsw.gov.au/assessingdev/whatisssd>.

⁷⁶ The *Heritage Act 1977* provides for the making of interim heritage orders, listings on the State Heritage Register and heritage agreements to conserve places, buildings, works, relics, moveable objects or precincts that are of local or State-wide significance from a cultural, social, historical archaeological, architectural, natural or aesthetic perspective.

⁷⁷ *Heritage Act 1977*, s 57.

27. The Minister may prepare and approve a contributions plan in accordance with Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* [proposed s 31]. Among other matters, that Division enables the Land and Environment Court to amend or disallow a condition in a contribution plan because it is unreasonable (even if it was determined in accordance with a contributions plan).⁷⁸
28. Any money resulting from a development contribution is to be paid into the Redfern-Waterloo Fund established under section 32.

Financing of the Authority - The Redfern-Waterloo Fund [Part 5]

29. The work of the Authority is to be funded through the establishment of a Redfern-Waterloo Fund [proposed s 32]. The Authority may invest Fund monies [proposed s 34]. The Fund will be financed through commercial activity on Government land and property, any profit from the future sale of this land or property and development contributions made under proposed s 29 or s 30.⁷⁹
30. The Authority is also empowered to administer a fund established for the provision of services within the operational area which money is paid by persons who carry on business within that area. The fund is to be audited by the Auditor-General [proposed s 35].

Misuse of information offences

31. The Bill makes it an offence for a person to disclose information obtained in connection with the administration of the proposed Act except in specified circumstances, including if the information provider has consented to the disclosure or disclosure is lawfully excused [proposed s 37]. The maximum penalty for the offence is 100 penalty units (\$11,000).
32. It is also an offence for a person associated with the Authority⁸⁰ to use confidential information that may affect the market price of land that is the subject of proposals made, or to be made, by the Authority in order to obtain an advantage or to disclose such information in order to confer an advantage on another person [proposed s 38(1)]. It is also an offence for such a person to use his or her capacity to influence land acquisition, development or disposal proposals in order to gain an advantage or to confer an advantage on another person [proposed s 38(2)]. The maximum penalty for these offences is 100 penalty units (\$11,000).
33. Notwithstanding a person's prosecution or conviction for these offences, any person who has gained advantage from the misuse of information is liable under civil law to any person who has suffered loss as a consequence [proposed s 38(3)].

⁷⁸ *Environmental Planning and Assessment Act 1979*, s 94(12).

⁷⁹ Second reading speech.

⁸⁰ A person associated with the Authority is not limited to members of the Board, an advisory committee or the Authority's staff. It includes persons who are council employees, bankers, solicitors, auditors or professional advisers to the Authority and the Minister, among other persons [proposed s 38(6)].

Miscellaneous provisions [Part 6]

34. This Part contains provisions supporting the operation of the Authority, including provisions:
- enabling the Authority to appoint authorised officers to perform prescribed functions [proposed s 36];
 - protecting members of the Board, the CEO, an advisory committee member or a person acting under the Authority's direction from personal liability for any good faith act or omission [proposed s 39]; and
 - permitting the Authority to recover money due to it as a debt [proposed s 41].

Issues Considered by the Committee

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

Henry VIII Clause: Proposed section 45

35. Proposed section 45 provides that the regulations may amend, omit, alter or entirely replace Schedule 1 of the Act, which describes the boundaries of the operational area.
36. The operational area is the area comprising Redfern-Waterloo, the area the Minister said in his second reading speech is facing unique challenges requiring the establishment of this Authority.
37. Allowing for the regulations to completely alter the operational area, including omitting it altogether is, in the view of the Committee, to allow the Regulations to alter or delete a fundamental component of the legislative scheme.
38. The Committee refers to Parliament the question as to whether allowing the Regulations to amend, omit, alter or replace any matter in Schedule 1 of the Act, is an inappropriate delegation of legislative power.

Commencement by proclamation: Clause 2

39. The Bill is to commence by proclamation [cl 2].
40. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
41. The Minister's office has advised the Committee that the Bill is to commence on proclamation so that the Authority may be legally constituted on a specific date, subsequent to the Bill's assent. The Minister's office has further advised that they would like to see the Bill proclaimed as soon as possible, and anticipate that it will occur within a few months of assent.

The Committee makes no further comment on this Bill.

10. SHOPS AND INDUSTRIES AMENDMENT (SPECIAL SHOP CLOSURES) BILL 2004

Date Introduced:	10/11/04
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Della Bosca, MLC
Portfolio:	Commerce

Purpose and Description

1. The object of this Bill is to amend the *Shops and Industries Act 1962* (the Principal Act):
 - (a) to provide for shops (other than scheduled shops and small shops) to be kept closed⁸¹ on Saturday 25 December 2004;
 - (b) to provide for shops (other than scheduled shops and small shops) to be kept closed on Sunday 26 December 2004 unless the shops are located in a tourist area that is subject to a pre-existing exemption under section 89B of the Principal Act that would allow the shops to open on that day and are staffed by persons who have freely elected to work on that day; and
 - (c) to provide that the amendments have effect despite any exemption granted under section 78A (exemption by the Director-General) or 89B (exemption of holiday resorts) or any order made under section 85 (2) (exemption by Ministerial order) of the Principal Act.

Background

2. In his second reading speech, the Parliamentary Secretary stated that the Bill's main purpose is:

the preservation of the tradition of families spending the Christmas weekend together. The exemption enabling general shops to trade in tourist areas on 26 December provides a sensible compromise between the commercial interests of shopkeepers and the family commitments of staff. It also caters for the post Christmas Day trade in tourist areas where the demand by travellers for consumables is substantial.⁸²
3. The Principal Act currently requires general shops (but not scheduled shops or small shops) to be kept closed on public holidays, subject to the Minister for Commerce suspending the operation of this requirement in NSW or in a specified part thereof [s 85]. Christmas Day and Boxing Day are listed within the definition of a "public holiday" [s 78(1)].

⁸¹ "Close" means "close to the admission of the public, and words derived therefrom have a corresponding meaning": *Shops and Industries Act 1962*, s 74(1).

⁸² Mr Graham West MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 10 November 2004.

Shops and Industries Amendment (Special Shop Closures) Bill 2004

4. It is an offence under the primary Act for a shop to be open at a time when it is required by or under the Act to be closed, subject to a number of defences, including that the shop was open only for the purposes of admitting persons unconnected with trade [ss 86(2) and 90]. The maximum penalty for this offence is 10 penalty units (\$1,100) for a first or second offence and 100 penalty units (\$11,000) for a third or subsequent offence [s 86(5)].

The Bill

5. The Bill inserts s 89E and s 89F into Division 3 of Part 4 of the principal Act. Division 3 restricts trading hours or work hours in certain industries.
6. The amendments are to commence on the date of assent of the Bill [cl 2]. The amendments are automatically repealed on 27 December 2004 [ss 89E(3) and 89F(5)].

Shops to be kept closed on Christmas Day 2004 [proposed s 89E]

7. The Bill requires shops (except scheduled shops and small shops) to be kept closed on Christmas Day 2004 despite any:
- exemptions granted by the Director-General of the Department of Commerce (Director-General), including from the s 85 prohibition on trading on public holidays [s 78A];
 - exemptions granted by the Minister for Commerce (Minister) to shops in holiday resort areas [s 89B]; or
 - Ministerial orders made pursuant to s 85(2) of the Principal Act [proposed s 89E(1) and (2)].
8. Scheduled shops are shops of a class listed in Schedule 3 to the Principal Act.⁸³ Scheduled shops include chemists, cooked food shops, newsagencies, vehicle service shops and video shops.
9. Small shops are shops with two or less shopkeepers that require not more than four persons to conduct the business of the shop on any one day.⁸⁴
10. The Bill proposes broader requirements for shop closures on 25 December 2004 than exist currently. Shops (other than scheduled shops or small shops) will need to be kept closed even if they have been exempted under s 78A or s 89B or a s 85(2) order applies to them. Section 86 of the Principal Act, which provides penalties for contravention, applies to trading contrary to this requirement.⁸⁵

Shops to be kept closed on Boxing Day 2004 except in limited circumstances [proposed s 89F]

11. The Bill requires shops (other than scheduled shops and small shops) to be kept closed on Sunday 26 December 2004, unless three conditions are satisfied:

⁸³ *Shops and Industries Act 1962*, s 78(1).

⁸⁴ *Shops and Industries Act 1962*, s 78(1) and s 78B.

⁸⁵ Mr Graham West, Parliamentary Secretary, *Legislative Assembly Hansard*, 10 November 2004.

Shops and Industries Amendment (Special Shop Closures) Bill 2004

- (a) the shop is located in an area or part of a holiday resort area that has a s 89B exemption in force immediately before the Bill's commencement that permits it to open on 26 December 2004; and
 - (b) the shop opens only in accordance with this exemption; and
 - (c) the shop is staffed on that day only by persons who have freely elected to work on that day without any coercion, harassment, threat or intimidation by their employer [proposed s 89F(1) and (2)].⁸⁶
12. This requirement is to apply despite any exemption granted to a shop under s 78A or s 89B of the Principal Act or the existence of a s 85(2) Ministerial order that applies to the shop [proposed s 89F(1) and (4)].
13. The Bill proposes broader requirements for shop closures on 26 December 2004. Shops (other than scheduled shops or small shops) will need to be kept closed (irrespective of whether they are exempt under s 78A or s 89B or a s85(2) order applies to them) unless they are located in an exempted holiday resort area and meet the other two conditions proposed in s 89F(2). Section 86 of the Principal Act, which provides penalties for contravention, applies to trading contrary to this requirement.⁸⁷

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

⁸⁶ A person is not taken to have freely elected to work on Sunday 26 December 2004 merely because that person is rostered to work on that day [proposed s 89F(3)].

⁸⁷ Mr Graham West, Parliamentary Secretary, *Legislative Assembly Hansard*, 10 November 2004.

11. SUPERANNUATION LEGISLATION AMENDMENT BILL 2004

Date Introduced: 10 November 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon John Della Bosca MLC
Portfolio: Commerce

Purpose and Description

1. The object of this Bill is to amend various public sector superannuation Acts with respect to the benefits of police hurt on duty, death benefits, deferral and payment of benefits as a result of Government initiatives, adjustment of employer reserves, payment of Commonwealth co-contributions into public sector superannuation schemes and dispute procedures; and for other purposes.

Background

2. The second reading speech states that:

The Superannuation Legislation Amendment Bill introduces miscellaneous amendments to public sector superannuation Acts to address a variety of issues.

The Acts being amended are the *First State Superannuation Act 1992*, the *Police Association Employees (Superannuation) Act 1978*, the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987*, the *Superannuation Act 1916* and the *Superannuation Administration Act 1996*.

Overall, the amendments are cost neutral to the Government. Some of the amendments will directly benefit some members of the public sector superannuation schemes; other amendments are relatively minor, affecting the administration of public sector superannuation arrangements.⁸⁸

The Bill

3. The Bill amends the abovementioned seven Acts in seven Schedules.
4. Amendments of direct benefit to some members include those:
 - enabling Federal Government co-contributions to be accepted in the State Authorities Non-contributory Superannuation Scheme [SANCS] for employees and former employees who are members of the State Superannuation Scheme, the State Authorities Superannuation (SAS) Scheme and the Police Superannuation Scheme [schedule 4[5] & [8]];
 - allowing former public sector employees with First State Superannuation (FSS) accounts to continue to make personal contributions and roll-in other

⁸⁸ Mr Graham West MP, Parliamentary Secretary, second reading speech, *Legislative Assembly Hansard*, 10 November 2004.

superannuation benefits into those accounts under the *First State Superannuation Act 1992* [schedule 1];

- allowing the SAS Trustee Corporation to increase a lump sum death benefit payable under the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987* or the *Superannuation Act 1916* where that benefit had previously been reduced for the purpose of obtaining an income tax deduction [schedules 3[4], 4[22], 5[6] & 6[7]]; and
 - clarifying that it is only the employer contributions of senior executive officers to superannuation schemes established under the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987* or the *Superannuation Act 1916* (ie, not optional contributions) which may *not* be included as part of the remuneration paid to an officer for the purpose of calculating the maximum salary that may be nominated by the officer under the relevant superannuation scheme established by these Acts [schedules 3[1], 4[3], 5[2] & 6[1]].
5. Minor amendments affecting the administration of public sector superannuation arrangements include those:
- clarifying that, under the *Police Regulation (Superannuation) Act 1906*, the Police Commissioner is to make the hurt-on-duty determinations for the purpose of paying gratuities in the nature of a workers compensation payment to a police officer (or former officer) who is hurt on duty and who is a member of the Police Superannuation Scheme [schedule 3[2] & [3]]; and
 - streamlining the provisions of the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987* and the *Superannuation Act 1916* that govern the superannuation entitlements of employees transferred to the non-government sector by way of a government privatisation initiative or a government initiative [schedules 4[24]-[28], 5[8]-[14], 6[9]-[16]]; and
 - clarifying that, under the *Superannuation Administration Act 1996*, the SAS and FSS Trustee Corporations may delegate their members' dispute handling function to their internal disputes committees [schedule 7[6] & [17]].

Issues Considered by the Committee

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

Issue: Commencement by proclamation, Clause 2

6. The Bill commences on a day or days to be appointed by proclamation.
7. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.

Superannuation Legislation Amendment Bill 2004

8. The Public Employment Office has advised the Committee that the Bill is commencing on proclamation to allow lead-in time for trustees of Superannuation Corporations to put administrative procedures in place and draft regulations. They anticipate the Bill will be commenced by the end of the year.

The Committee makes no further comment on this Bill.

12. WILDERNESS AMENDMENT BILL 2004*

Date Introduced: 11 November 2004
House Introduced: Legislative Council
Member Responsible: The Hon Jon Jenkins MLC

Purpose and Description

1. The object of this Bill is to amend the *Wilderness Act 1987* so as to include as a management principle for wilderness areas the reduction or control of feral animals and noxious weeds, and the amelioration of the effect of such animals and weeds on wilderness areas.

Background

2. The objects of the *Wilderness Act 1987* are to provide for the permanent protection and proper management of wilderness areas and to promote public education in the appreciation, protection and management of such areas [s 3].
3. The *Wilderness Act 1987* requires a wilderness area to be managed in accordance with three principles enumerated in s 9 of the Act. The first principle is that a wilderness area should be managed so as to restore (if applicable) and to protect the unmodified state of the area and its plant and animal communities [s 9(a)].
4. A wilderness protection agreement [s 12(3)], a conservation agreement [s 16(3)] or a wilderness area management plan made under the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974* must be consistent with these s 9 principles.
5. In the second reading speech, information was presented on the problems caused by feral animals and the proliferation of pest weeds, including their damaging impact on native species of flora and fauna.⁸⁹ The Bill's intention is to deal with these problems:

The Bill makes it a legislative requirement for the National Parks and Wildlife Service to deal with the problem of feral animals.⁹⁰

The Bill

6. The amendments to the *Wilderness Act 1987* described in Schedule 1 of the Bill are to commence on assent [cl 2].

New management principle for wilderness areas

7. The Bill proposes the insertion into s 9 of the *Wilderness Act 1987* of an additional principle that wilderness areas are to be managed so as to protect native plant and animal communities by reducing or controlling the presence of noxious weeds and

⁸⁹ The Hon Jon Jenkins MLC, second reading speech, Legislative Council Hansard, 12 November 2004.

⁹⁰ The Hon Jon Jenkins MLC, second reading speech, Legislative Council Hansard, 12 November 2004.

Wilderness Amendment Bill 2004*

feral animals in the area and ameliorating the effects of such weeds and animals on the area [proposed s 9(d)].

8. A noxious weed is defined as a plant declared to be a noxious weed under the *Noxious Weeds Act 1993* [proposed s 2(1)].⁹¹ The Bill lists seven animals that are “feral animals” if they live in the wild.⁹²
9. The newly inserted principle is not to detract from the operation of the *Noxious Weeds Act 1993* [proposed s 25A].⁹³ The *Noxious Weeds Act 1993* applies generally to NSW land, both publicly or privately owned. It does not make specific provision for the control of noxious weeds in wilderness areas.

Preserved validity of existing agreements and management plans for wilderness areas

10. The new management principle does not invalidate wilderness protection agreements or conservation agreements entered into, or wilderness area management plans made, before the Bill’s assent [proposed s 31(2) and s 32(2)].

Requirement of review of existing agreements and management plans

11. The Bill requires the Minister administering the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974* to review existing wilderness protection and conservation agreements to determine whether they are consistent with the new management principle [proposed s 31(3) and s 32(3)]. If an agreement is inconsistent, the Minister is to endeavour to negotiate variations to the agreement to make it consistent [proposed s 31(6) and s 32(6)].
12. The Bill also requires the Director-General of the Department of Environment and Conservation to undertake a similar review of wilderness area management plans. If a plan is inconsistent, the Director-General is to recommend changes to the relevant Minister [proposed s 31(4) and s 32(4)]. The Minister may amend a management plan in accordance with the procedures set out in whichever Act applies [proposed s 32(7)].

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

⁹¹ A plant may be declared by Ministerial order to be a noxious weed for the purposes of the *Noxious Weeds Act 1993*; *Noxious Weeds Act 1993*, s 7 and the Dictionary.

⁹² A pig, dog (other than a dingo), cat, goat, rabbit, hare or fox living in the wild is defined as a “feral animal” in the Bill. The *Game and Feral Animal Control Act 2002* does not define a “feral animal”, but s 5(2) of that Act defines “game animal” to include the same seven animals defined as feral in the Bill.

⁹³ The *Noxious Weeds Act 1993* has four objects: to identify noxious weeds in respect of which particular control measures need to be taken; to specify those control measures; to specify the duties of public and private landholders as to the control of those noxious weeds; and to provide a framework for the State-wide control of those noxious weeds by the Minister for Primary Industries and local control authorities [s 3].

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

13. CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (PAROLE) BILL 2004

Date Introduced:	26 October 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Justice

Background

1. The Committee reported on the *Crimes (Administration of Sentences) Amendment (Parole) Bill 2004* in Legislation Review Digest No 15 of 2004.
2. The Committee noted that under proposed s 193A(2) of the Bill, victims of a serious offender are entitled to be given access to all documents held by or on behalf of the Parole Authority in relation to the offender, except certain documents listed in s 194.
3. The Committee was concerned that under the legislation the Parole Authority is not required to consider protection of the serious offender's right to privacy before deciding which information to disclose to victims.
4. The Committee therefore resolved to write to the Minister for Justice to seek his advice on what measures would be taken to balance protecting a serious offender's right to privacy while achieving the objects of the Bill.

Minister's Reply

5. The Minister for Justice responded to the Committee by letter dated 9 November 2004 (below):

New section 185A of the Bill provides for the Parole Authority, in consultation with the Minister, to establish guidelines in relation to the exercise of the Parole Authority's functions. I will ask the Chairperson of the Parole Authority to ensure that the issue of privacy is addressed in the guidelines. It is reasonable to anticipate that the guidelines will address such matters as: information relating to third parties; and information solely relating to a serious offender's personal and business affairs.

Committee's Response

6. The Committee thanks the Minister for his reply and for his recognition of the need to minimise any unnecessary impact on privacy when providing victims of serious crimes access to information about the incarceration of the serious offender.

Crimes (Administration of Sentences) Amendment (Parole) Bill 2004

7. The Committee notes that the Authority may only make guidelines that are consistent with the Act. The Committee also notes that sections 193A and 194 (as amended) require the Authority to allow victims to have access to all documents it holds in relation to a serious offender unless a judicial member of the Authority is of the opinion that disclosing certain documents would:
 - (a) adversely affect the security, discipline or good order of a correctional centre, or
 - (b) endanger the person or any other person, or
 - (c) jeopardise the conduct of any lawful investigation, or
 - (d) prejudice the public interest, or
 - (e) adversely affect the supervision of any offender who has been released on parole; or
 - (f) disclose the contents of any offender's medical, psychiatric or psychological report.
8. It appears to the Committee that sections 193A and 194 do not provide the Authority with a discretion not to give a victim access to its documents other than in respect of these six exceptions.
9. It is not apparent to the Committee that the types of information the Minister suggested in his letter fall within these six exceptions. For this reason, the Committee is concerned any guidelines the Authority may make under section 185A in relation to taking into account the privacy rights of serious offenders or third parties prior to giving a victim access to its documents may be inconsistent with the Act.
10. The Minister's Office has advised the Committee that one of the current exceptions provided by section 194, namely "prejudice the public interest", would include consideration by the Authority of the privacy rights of an offender, or third party, when deciding whether a victim can access a particular document.
11. Furthermore, according to the Minister's Office, the proposed additional exception relating to the disclosure of the contents of any offender's medical, psychiatric or psychological report provides substantial protection for the privacy rights of the offender concerned. The Minister's Office advised the Committee that the use of the term "report" in this exception is intended to cover the general medical, psychiatric or psychological records of the offender.
12. For these reasons, the Minister's Office is of the view that the guidelines as proposed by the Minister can be made and that they will be consistent with the Act.
13. The Committee is concerned to ensure that the guidelines proposed by the Minister would be consistent with the Act.
14. The Committee has written again to the Minister for confirmation that the exceptions provided in section 194 to the presumption of disclosure to victims provided for in section 193A allow consideration of the need to minimise any unnecessary impact on privacy.

The Committee makes no further comment on this Bill.

Crimes (Administration of Sentences) Amendment (Parole) Bill 2004



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

5 November 2004

Our Ref: LRC1023

The Hon J Hatzistergos MLC
Minister for Justice
Room 802
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Minister

Crimes (Administration of Sentences) Amendment (Parole) Bill 2004

On 5 November 2004, the Committee considered the above Bill pursuant to s 8A of the *Legislation Review Act 1987*. The Committee will report on the Bill in its *Legislation Review Digest No 15 of 2004*.

The Committee resolved to write to you about the issue of the protection of the privacy of offenders.

Under proposed s 193A(2), victims of a serious offender are entitled to be given access to all documents held by or on behalf of the Parole Authority in relation to the offender, except certain documents listed in s 194. The Parole Authority is not required under the legislation to consider protection of the serious offender's right to privacy before deciding which information to disclose to victims.

The Committee notes that the right to privacy is not absolute and may need to be balanced with other public interest considerations. The Committee also notes the ongoing interest of victims of serious offenders in the administration of the offender's sentence. The Committee is concerned to ensure that any trespass on a personal right should be limited in scope to that which is necessary to achieve that balance.

The Committee writes to seek your advice on what measures can be taken to better protect a serious offender's right to privacy while achieving the objects of the Bill.

Yours sincerely

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

Peter Primrose MLC
Chairman



New South Wales

Minister for Justice

The Hon P Primrose, MLC
Chairman
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

- 9 NOV 2004

Dear Chair

I refer to your letter dated 5 November 2004 concerning the *Crimes (Administration of Sentences) Amendment (Parole) Bill 2004*.

New section 185A of the Bill provides for the Parole Authority, in consultation with the Minister, to establish guidelines in relation to the exercise of the Parole Authority's functions. I will ask the Chairperson of the Parole Authority to ensure that the issue of privacy is addressed in the guidelines. It is reasonable to anticipate that the guidelines will address such matters as: information relating to third parties; and information solely relating to a serious offender's personal and business affairs.

Yours faithfully

A handwritten signature in black ink, appearing to read 'John Hatzistergos', written over a large, stylized signature graphic.

(John Hatzistergos)

GPO BOX 5341 SYDNEY NSW 2001

Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Architects Regulation 2004	25/06/04	4388	21/09/04	
Environmental Planning and Assessment Amendment (ARTC Rail Infrastructure) Regulation 2004	03/09/04	7343	26/10/04	
Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003	07/11/03	10369	05/03/04 30/04/04	01/04/04
Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004	25/06/04	4486	21/09/04	
Forestry Regulation 2004	27/08/04	6778	26/10/04	
Inclosed Lands Protection Regulation 2002	06/12/02	10370	29/05/03 12/09/03	29/08/03 11/03/04
Passenger Transport (Drug and Alcohol Testing) Regulation 2004	05/03/04	957	30/04/04	
Road Transport (General) Amendment (Impounding Fee) Regulation 2003	17/10/03	10045	13/02/04	15/06/04
Wild Dog Destruction Regulation 2004	27/08/04	7133	26/10/04	

Appendix 1: Index of Bills Reported on in 2004

	Digest Number
Aboriginal Land Rights (Gandangara Estate) Bill 2004	12
Administrative Decisions Tribunal Amendment Bill 2004	11
Agricultural Livestock (Disease Control Funding) Amendment Bill 2004	10
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	2
Anti-Discrimination Amendment (Miscellaneous Provisions) Bill 2004	12
Appropriation Bill 2004	10
Appropriation (Budget Variations) Bill 2004	5
Appropriation (Parliament) Bill 2004	10
Appropriation (Special Offices) Bill 2004	10
Bail Amendment (Terrorism) Bill 2004	9
Botany Bay National Park (Helicopter Base Relocation) Bill 2004	5
Child Protection (Offenders Prohibition Orders) Bill 2004	9
Child Protection (Offender Registration) Bill 2004	10,13
Children (Detention Centres) Amendment Bill 2004	4
Civil Liability Amendment (Offender Damages) Bill 2004	5,7
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004	12,13
Commercial Agents and Private Inquiry Agents Bill 2004	9,10
Community Protection (Closure of Illegal Brothels) Bill 2003*	1
Compulsory Drug Treatment Correctional Centre Bill 2004	8
Constitutional Amendment (Pledge of Loyalty) Bill 2004*	7
Courts Legislation Amendment Bill 2004	7
Crimes Amendment (Child Neglect) Bill 2004	7
Crimes Amendment (Child Pornography) Bill 2004	16
Crimes and Firearms Legislation Amendment (Apprehended Violence Orders) Bill 2004*	15
Crimes Legislation Amendment Bill 2004	3
Crimes Legislation Amendment (Terrorism) Bill 2004	10
Crimes (Administration of Sentences) Bill 2004	9
Crimes (Administration Of Sentences) Amendment (Norfolk Island Prisoners) Bill 2004	13
Crimes (Administration of Sentences) Amendment (Parole) Bill 2004	15,16
Crimes (Interstate Transfer of Community Based Sentences) Bill 2004	9
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003	1

	Digest Number
Criminal Procedure (Sexual Offence Evidence) Bill 2004	8
Cross-Border Commission Bill 2004	3
Crown Lands Legislation Amendment (Budget) Bill 2004	10
Crown Lands (Prevention of Sales) Bill 2004*	10
Duties Amendment (Land Rich) Bill 2004	16
Education Amendment (Non-Government Schools Registration) Bill 2004	2
Electricity (Consumer Safety) Bill 2003	1,2
Fair Trading Amendment Bill 2004	4
Filming Approval Bill 2004	7,8
Fines Amendment Bill 2004	9
Fisheries Management Amendment Bill 2004	6
Food Legislation Amendment Bill 2004	3
Forestry (Darling Mills State Forest Revocation) Bill 2004	16
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	2
Gaming Machines Amendment Bill 2004	16
Gene Technology (GM Crop Moratorium) Amendment Bill 2004	15
Government School Assets Register Bill 2004*	16
Greyhound and Harness Racing Administration Bill 2004	7,9
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	6
Health Legislation Amendment Bill 2004	6
Health Legislation Amendment (Complaints) Bill 2004	15
Health Legislation Further Amendment Bill 2004	13
Health Registration Legislation Amendment Bill 2004	15
Health Services Amendment Bill 2004	15
Historic Houses Amendment Bill 2004	14
Home Building Amendment Bill 2004	16
Institute of Teachers Bill 2004	8
Jury Amendment Bill 2004	15
Jury Amendment (Majority Verdicts) Bill 2004*	14
Legal Profession Amendment Bill 2004	9
Legal Profession Legislation Amendment (Advertising) Bill 2003	1
Liquor Amendment (Parliament House) Bill 2004	6
Liquor Amendment (Parliamentary Precincts) Bill 2004	8
Liquor Amendment (Racing Clubs) Bill 2004	9

	Digest Number
Local Government Amendment (Council and Employee Security) Bill 2004	5
Local Government Amendment (Discipline) Bill 2004	9
Local Government Amendment (Mayoral Elections) Bill 2004	9
Lord Howe Island Amendment Bill 2003	10
Mine Health and Safety Bill 2004	8,9
Mining Amendment (Cyanide Leaching) Bill 2004*	14
Mining Amendment (Miscellaneous Provisions) Bill 2004	6,8
National Competition Policy Amendment (Commonwealth Financial Penalties) Bill 2004	2
National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004	7
National Competition Policy Liquor Amendment (Commonwealth Financial Penalties) Bill 2004	7
National Parks and Wildlife Amendment (Jenolan Caves Reserve Trust) Bill 2004	9
Noxious Weeds Amendment Bill 2004	16
Nurses and Midwives Amendment (Performance Assessment) Bill 2004	15
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	1
Parliamentary Electorates and Elections Amendment (Prohibition on Voting by Criminals) Bill 2004*	5
Partnership Amendment (Venture Capital Funds) Bill 2004	3
Passenger Transport Amendment (Bus Reform) Bill 2004	8,9
Police Amendment (Crime Reduction and Reporting) Bill 2004	3
Police Amendment (Senior Executive Transfers) Bill 2004	9,10
Police Integrity Commission Amendment Bill 2004	12
Prevention of Cruelty to Animals Amendment Bill 2004	16
Prevention of Cruelty to Animals (Tail Docking) Bill 2004	4,6
Professional Standards Amendment Bill 2004	11
Protected Estates Amendment (Missing Persons) Bill 2004	14
Public Lands Protection Bill 2004*	13
Public Lotteries Legislation Amendment Bill 2004	2
Redfern-Waterloo Authority Bill 2004	16
Regional Development Bill 2004	7
Registered Clubs Legislation Amendment Bill 2004	11
Residential Tenancies (Public Housing) Bill 2004	9
Retail Leases Amendment Bill 2004	10
Retirement Villages Amendment Bill 2004	3

	Digest Number
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	1
Road Transport (General) Amendment (Licence Suspension) Bill 2004	9
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	1,7
Rural Communities Impacts Bill 2004*	11
Save Orange Grove Bill 2004*	11
Shops and Industries Amendment (Special Shop Closures) Bill 2004	16
Smoke-free Environment Amendment Bill 2004	15
Snowy Mountains Cloud Seeding Trial Bill 2004	5
Special Commission of Inquiry (James Hardie Records) Bill 2004	15
State Records Amendment Bill 2004	13,15
State Revenue Legislation Amendment Bill 2004	7
State Revenue Legislation Further Amendment Bill 2004	10
State Water Corporation Bill 2004	8
Statute Law (Miscellaneous Provisions) Bill 2004	9
Stock Diseases Amendment (Artificial Breeding) Bill 2004	6,8
Stock Diseases Amendment (False Information) Bill 2004	4,9
Stock Medicines Amendment Bill 2004	12,15
Strata Schemes Management Amendment Bill 2003	1,3
Superannuation Administration Amendment Bill 2003	1
Superannuation Legislation Amendment Bill 2004	16
Sustainable Energy Development Repeal Bill 2004	10
Sydney Opera House Trust Amendment Bill 2004	10
Teaching Services Amendment Bill 2004	15
The Synod of Eastern Australia Property Amendment Bill 2004	2
Thoroughbred Racing Legislation Amendment Bill 2004	4,6
Threatened Species Legislation Amendment Bill 2004	11,13
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	6
University Legislation Amendment Bill 2004	15
Water Management Amendment Bill 2004	8,14
Wilderness Amendment Bill 2004*	16
Wool, Hide and Skin Dealers Bill 2004	2
Workers Compensation Legislation Amendment Bill 2004	9

Appendix 2: Index of Ministerial Correspondence on Bills in 2004

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Child Protection (Offender Registration) Bill 2004	Minister for Police	27/08/04	20/09/04		10,13
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004	Attorney General	21/09/04	28/09/04		12,13
Civil Liability Amendment Bill 2003	Minister for Health	28/11/03	22/12/03	7	1
Civil Liability Amendment (Offender Damages) Bill 2004	Minister for Justice	26/03/04	13/04/04		5,7
Commercial Agents and Private Inquiry Agents Bill 2004	Minister for Police	18/06/04	29/07/04		9,10
Crimes (Administration of Sentences) Amendment (Parole) Bill 2004	Minister for Justice	05/11/04 16/11/04	09/11/04		15,16
Crimes Legislation Further Amendment Bill 2003	Attorney General	28/11/03	16/12/03	7	1
Electricity (Consumer Safety) Bill 2003	Minister for Fair Trading	13/02/04	18/02/04		1,2
Environmental Planning and Assessment (Development Consents) Bill 2003	Minister for Infrastructure and Planning	24/10/03	19/03/04	4	5
Environmental Planning and Assessment Amendment (Planning Agreements) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	28/11/03	19/03/04	7	5
Environmental Planning and Assessment (Quality of Construction) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	18/11/03	19/03/04	6	5
Filming Approval Bill 2004	Minister for the Environment	11/05/04	12/05/04		7,8
Greyhound and Harness Racing Administration Bill 2004	Minister for Gaming and Racing	11/05/04	31/05/04		7,9
Lord Howe Island Amendment Bill 2003	Attorney General/ Premier	13/02/04	Premier 13/07/04		1,10 ⁹⁴
Legal Profession Legislation Amendment (Advertising) Bill 2003	Attorney General	13/02/04	23/03/04		1,5
Mine Health and Safety Bill 2004	Minister for Mineral Resources	28/05/04	09/06/04		8,9
Mining Amendment (Miscellaneous Provisions) Bill 2004	Minister for Mineral Resources	30/04/04	17/05/04		6,8

⁹⁴ Published under the title "Commencement of Acts."

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Motor Accidents Legislation Amendment Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1
National Parks and Wildlife Amendment (Kosciuszko National Park Roads) Bill 2003	Minister for the Environment	07/11/03	08/12/03	5	1
Partnership Amendment (Venture Capital Funds) Bill 2004	Attorney General	05/03/04	23/03/04		3,5
Passenger Transport Amendment (Bus Reform) Bill 2004	Minister for Transport Services	28/05/04 18/06/04	17/06/04		8,9
Police Amendment (Senior Executive Transfers) Bill 2004	Minister for Police	18/06/04	21/07/04		9,10
Police Legislation Amendment (Civil Liability) Bill 2003	Minister for Police	18/11/03	24/12/03	6	1
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004	Minister for Agriculture and Fisheries	16/03/04	05/04/04		4,6
Privacy and Personal Information Protection Amendment Bill 2003	Attorney General	24/10/03	25/02/04	4	3
Registered Clubs Amendment Bill 2003	Minister for Gaming and Racing	28/11/03	25/02/04	7	3
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	Minister for Roads	13/02/04	23/03/04		1,5
Road Transport (General) Amendment (Licence Suspension) Bill 2004	Minister for Roads	18/06/04			9
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	Minister for Roads	13/02/04	05/05/04		1,7
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/04			15
State Records Amendment Bill 2004	Premier	19/10/04	28/10/04		13,15
State Revenue Legislation Further Amendment Bill 2003	Treasurer	28/11/03	15/12/03	7	1
Stock Diseases Amendment (Artificial Breeding) Bill 2004	Minister for Agriculture and Fisheries	30/04/04	21/05/04		6,8
Stock Diseases Amendment (False Information) Bill 2004	Minister for Agriculture and Fisheries	16/03/04	28/05/04		4,9
Stock Medicines Amendment Bill 2004	Minister for Primary Industries	21/09/04	27/10/04		12,15
Strata Schemes Management Amendment Bill 2003	Minister for Fair Trading	13/02/04	27/02/04		1,3
Superannuation Administration Amendment Bill 2003	Treasurer	13/02/04	18/03/04		1,5
Thoroughbred Racing Legislation Amendment Bill 2004	Minister for Gaming Racing	16/03/04	07/04/04		4,6

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Threatened Species Legislation Amendment Bill 2004	Minister for the Environment	27/08/04	24/09/04		11,13
Water Management Amendment Bill 2004	Minister for Natural Resources	28/05/04 26/10/04	24/09/04		8,14
Workers Compensation Amendment (Insurance Reforms) Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1

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

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Aboriginal Land Rights (Gandangara Estate) Bill 2004	N				
Administrative Decisions Tribunal Amendment Bill 2004				N	
Agricultural Livestock (Disease Control Funding) Amendment Bill 2004				N	
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	N				
Anti Discrimination Amendment (Miscellaneous Provisions) Bill 2004	N			N	
Bail Amendment (Terrorism) Act 2004	N				
Botany Bay National Park (Helicopter Base Relocation) Bill 2004				N	
Child Protection (Offenders Prohibition Orders) Bill 2004	N			C	
Child Protection (Offenders Registration) Bill 2004	N,C			C	
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004				C	
Civil Liability Amendment (Offender Damages) Bill 2004	R			C	
Commercial Agents and Private Inquiry Agents Bill 2004	R			C	
Community Protection (Closure of Illegal Brothels) Bill 2003	R				
Compulsory Drug Treatment Correctional Centre Bill 2004	N			N	
Courts Legislation Amendment Bill 2004				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Crimes Amendment (Child Neglect) Bill 2004				N	
Crimes Amendment (Child Pornography) Bill 2004				N	
Crimes Legislation Amendment (Terrorism) Bill 2004	N				
Crimes (Administration of Sentences) Bill 2004	N			N	
Crimes (Administration of Sentences) Amendment (Parole) Bill 2004	N,C,R			N	
Crimes (Interstate Transfer of Community Based Sentences) Bill 2004				N	
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003				N	
Criminal Procedure (Sexual Offence Evidence) Bill 2004	N				
Crown Lands (Prevention of Sales) Bill 2004*	N, R				
Duties Amendment (Land Rich) Bill 2004	N, R				
Education Amendment (Non-Government Schools Registration) Bill 2004				N	
Electricity (Consumer Safety) Bill 2003	N, R				C
Fair Trading Amendment Bill 2004				N	
Filming Approval Bill 2004				C	
Fines Amendment Bill 2004				N	
Fisheries Management Amendment Bill 2004				N	
Food Legislation Amendment Bill 2004				N	
Forestry (Darling Mills State Forest Revocation) Bill 2004				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	N			N	
Gaming Machines Amendment Bill 2004				N	
Greyhound and Harness Racing Administration Bill 2004			R, C	N	
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	N		R		
Health Legislation Amendment Bill 2004	N			N	
Health Legislation Amendment (Complaints) Bill 2004	N,R			N	
Health Legislation Further Amendment Bill 2004				N	
Health Services Amendment Bill 2004				N	
Historic Houses Amendment Bill 2004				N	
Health Registration Legislation Amendment Bill 2004	N,R			N	
Home Building Amendment Bill 2004	N			N	
Institute of Teachers Bill 2004				N	
Jury Amendment Bill 2004	N				
Jury Amendment (Majority Verdicts) Bill 2004*	N, R				
Legal Profession Legislation Amendment (Advertising) Bill 2003	C, R		C, R	N	
Liquor Amendment (Parliamentary Precincts) Bill 2004				N	
Local Government Amendment (Council and Employee Security) Bill 2004	N			N	
Local Government Amendment (Discipline) Bill 2004				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Mine Health and Safety Bill 2004	N, R	N	C	N, R	
Mining Amendment (Cyanide Leaching) Bill 2004*	N, R				
Mining Amendment (Miscellaneous Provisions) Bill 2004	C, R			N	
National Parks and Wildlife Amendment (Jenolan Caves Reserve Trust) Bill 2004	N				
Noxious Weeds Amendment Bill 2004				N	
Nurses and Midwives Amendment (Performance Assessment) Bill 2004	N, R			N	
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	N				
Parliamentary Electorates and Elections Amendment (Prohibition on Voting Rights by Criminals) Bill 2004*	R				
Partnership Amendment (Venture Capital Funds) Bill 2004	C			C	
Passenger Transport Amendment (Bus Reform) Bill 2004	N, R		N, C, R	N	
Police Amendment (Senior Executive Transfers) Bill 2004				C	
Police Integrity Commission Amendment Bill 2004				N	
Prevention of Cruelty to Animals Amendment Bill 2004				N	
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004				C	
Professional Standards Amendment Bill 2004				N	
Protected Estates Amendment (Missing Persons) Bill 2004				N	
Public Lotteries Legislation Amendment Bill 2004				N	
Redfern-Waterloo Authority Bill 2004				N,R	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Regional Development Bill 2004				N	
Registered Clubs Legislation Amendment Bill 2004	N				
Residential Tenancies (Public Housing) Bill 2004	N			N	
Retail Leases Amendment Bill 2004				N	
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	N, C				
Road Transport (General) Amendment (Licence Suspension) Bill 2004	N	C	R		
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003				C	
Save Orange Grove Bill 2004*	R				
Smoke-free Environment Amendment Bill 2004	N,R,C				
Snowy Mountains Cloud Seeding Trial Bill 2004				N	
Special Commission of Inquiry (James Hardie Records) Act 2004	N, R				
State Records Amendment Bill 2004	N,R,C			N	
State Revenue Legislation Further Amendment Bill 2004	N				
State Water Corporation Bill 2004				N	
Stock Diseases Amendment (Artificial Breeding) Bill 2004	C, R			N	N
Stock Diseases Amendment (False Information) Bill 2004	C			C	
Stock Medicines Amendment Bill 2004	N	R, C		N	
Strata Schemes Management Amendment Bill 2003				N,C	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Superannuation Administration Amendment Bill 2003	N			C	
Superannuation Legislation Amendment Bill 2004				N	
Sydney Opera House Trust Amendment Bill 2004	N				
Teaching Services Amendment Bill 2004				N	
Thoroughbred Racing Legislation Amendment Bill 2004				C	
Threatened Species Legislation Amendment Bill 2004	N,R		N	N	R,C
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	R			N	
Water Management Amendment Bill 2004	C, R		N	N	
Wool, Hide and Skin Dealers Bill 2004				N	
Workers Compensation Legislation Amendment Bill 2004	N			N	

Key

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

Appendix 4: Index of correspondence on regulations reported on in 2004

Regulation	Minister/Correspondent	Letter sent	Reply	Digest Number
Children and Young Persons (Savings and Transitional) Amendment (Out-of-Home Care) Regulation 2003 & Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003	Minister for Community Services	13/02/04	21/04/04	1,7
Children's Services Regulation 2004	Minister for Community Services	10/09/04 16/09/04	14/09/04 16/09/04	12
Consultation on Regulations	Premier/Acting Premier	05/03/04	15/06/04	9
Crimes (Forensic Procedures) Amendment (DNA Database Systems) Regulation 2003	Attorney General	07/11/03	03/12/03	1
Determination of Regulatory Fee Increases	Premier	24/10/03	18/03/04	5
Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003	Minister Assisting the Minister for Infrastructure and Planning (Planning Administration)	05/03/04 30/04/04	01/04/04 01/06/04	6,9
Landlord and Tenant (Rental Bonds) Regulation 2003	Minister for Fair Trading	24/10/03 18/11/03 23/12/03	05/11/03 10/02/04	1
Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003	Minister for Commerce	26/03/04 30/04/04	15/04/04 05/05/04	6,7
Pawnbrokers and Second-hand Dealers Regulation 2003	Minister for Fair Trading	24/10/03 18/11/03 23/12/03	05/11/03 10/02/04	1
Radiation Control Regulation 2003	Minister for the Environment	24/10/03	23/01/04	1
Review of Regulations	Premier	18/12/03 27/08/04 01/09/04	12/07/04 20/08/04	11
Road Transport (General) Amendment (Impounding Fee) Regulation 2003	Minister for Roads	13/02/04	15/06/04	9
Road Transport (General) (Penalty Notice Offences) Amendment (Interlock Devices) Regulation 2003 and Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Privacy Commissioner	24/10/03 19/10/04	27/11/03	1
Road Transport (General) (Penalty Notice Offences) Amendment (Interlock Devices) Regulation 2003 and Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Minister for Roads	13/02/04 01/06/04 19/10/04	20/05/04 17/09/04	1,8