

PARLIAMENT OF NEW SOUTH WALES



# **Legislation Review Committee**

## LEGISLATION REVIEW DIGEST

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No 7 of 2004

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\* Denotes Private Member's Bill

Please note that the *Mine Health and Safety Bill 2004* is not reported on in this Digest. Its introduction into Parliament last Friday, 7 May 2004, together with other bills, did not allow the Committee sufficient time to consider the Bill.

This bill will be reported in *Legislation Review Digest 8 of 2004*.

## MEMBERSHIP & STAFF

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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. CONSTITUTIONAL AMENDMENT (PLEDGE OF LOYALTY) BILL 2004\*

Date Introduced:	6 May 2004
House Introduced:	Legislative Assembly
Member Responsible:	Mr Paul Lynch MP
Portfolio:	Private Member's Bill

### Purpose and Description

1. This Bill amends the *Constitution Act 1902* to require Members of Parliament and Ministers to take a pledge of loyalty to Australia and to the people of New South Wales instead of swearing allegiance to the Queen. This Bill also revises the oaths taken by Executive Councillors.

### Background

2. Currently, s 12 of the *Constitution Act 1902* provides, in part, that:

No Member either of the Legislative Council or of the Legislative Assembly shall be permitted to sit or vote therein until he has taken and subscribed before the Governor, or before some person authorised by the Governor to administer the same, the oath of allegiance in the form prescribed by the *Oaths Act 1900*.
3. The *Oaths Act 1900* prescribes the oath of allegiance as follows:

I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her Heirs and Successors according to law.  
So help me God.
4. The *Oaths Act 1900* also provides for an oath for Executive Councillors before the Member enters upon the discharge of the duties of his or her office in the following form:

I, \_\_\_\_\_, being chosen and admitted of Her Majesty's Executive Council in New South Wales, do swear that I will to the best of my judgment at all times when thereto required freely give my counsel and advice to the Governor or officer Administering the Government of New South Wales for the time being for the good management of the public affairs of New South Wales, that I will not directly or indirectly reveal such matters as shall be debated in council and committed to my secrecy, but that I will in all things be a true and faithful councillor.  
So help me God.<sup>1</sup>

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<sup>1</sup> Section 10 and Schedule 5.

## The Bill

5. While retaining the stipulation that a Member of the Legislative Council or the Legislative Assembly is not permitted to sit or vote in the House to which the Member has been elected until the Member has taken a pledge of loyalty, the proposed s 12 provides that the pledge is to be taken in the following form:

Under God, I pledge my loyalty to Australia and to the people of New South Wales.<sup>2</sup>

The Bill allows a Member to omit the words “Under God” when taking the pledge<sup>3</sup> and makes it clear that a Member is not required, despite any Act or law, to swear allegiance to Her Majesty Queen Elizabeth II or her heirs or successors before sitting or voting in the Legislative Council or Legislative Assembly.

6. This Bill also provides a new Executive Councillor’s pledge of loyalty and oath of office in *Constitution Act 1902* to replace that in the *Oaths Act*. According to the amendment, before assuming office, a person appointed as a Member of the Executive Council is to take both a pledge of loyalty and the Executive Councillor’s oath of office in the following form:

I, \_\_\_\_\_ being appointed as a member of the Executive Council of New South Wales, do swear that I will perform the functions and duties of an Executive Councillor faithfully and to the best of my ability and, when required to do so, freely give my counsel and advice to the Governor or officer administering the Government of New South Wales for the time being for the good management of the public affairs of New South Wales, and that I will not directly or indirectly reveal matters debated in the Council and committed to my secrecy, but that I will in all things be a true and faithful councillor.

So help me God.

7. Provision is made for a Member of the Executive Council to make an affirmation to the same effect.
8. This Bill also makes consequential amendments to the *Oaths Act 1900* by omitting the provisions in relation to the Executive Oath
9. These changes only apply in relation to Members of Parliament, and to Members of the Executive Council, who are elected after the commencement of this Bill.
10. This Bill commences on the date of assent [cl 2].

## Issues Considered by the Committee

11. The Committee did not identify any issues arising under s 8A(1)(b) of the *Legislation Review Act 1989*.

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

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<sup>2</sup> Section 12(2).

<sup>3</sup> Section 12(3)



## 2. COURTS LEGISLATION AMENDMENT BILL 2004

Date Introduced:	7 May 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

### Purpose and Description

1. This Bill makes miscellaneous amendments to legislation affecting the operation of the courts of New South Wales. The Bill amends the following Acts:
  - (a) the *Children (Criminal Proceedings) Act 1987*;
  - (b) the *Commercial Arbitration Act 1984*;
  - (c) the *Crimes (Local Courts Appeal and Review) Act 2001*;
  - (d) the *Crimes (Sentencing Procedure) Act 1999*;
  - (e) the *Criminal Appeal Act 1912*;
  - (f) the *Criminal Procedure Act 1986*;
  - (g) the *District Court Act 1973*;
  - (h) the *Jury Act 1987*; and
  - (i) the *Protected Estates Act 1983*.

### The Bill

#### Commencement

2. All Schedules commence on assent, except Schedule 5, which commences on proclamation.

#### Schedule 1 - *Children (Criminal Proceedings) Act 1987*

3. This amendment removes the requirement for a child under bond to notify the Children's Court of a change of address.

#### Schedule 3 - *Crimes (Local Courts Appeal and Review) Act 2001*

4. Currently, section 4 allows a defendant who was not present before a Local Court when that court convicted, or imposed a sentence on, the defendant to apply to the same Local Court for annulment of the conviction or sentence.

According to the Minister in his second reading speech:

[I]f this application for rehearing is refused, the only recourse for the defendant is to appeal to the District Court. This current process uses the District Court's valuable time and resources... If this subsequent application to the District Court is granted, there must be a complete hearing of all evidence in the District Court.<sup>4</sup>

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<sup>4</sup> The Hon Bob Debus MP, Attorney General, Second Reading Speech, *Parliamentary Debates (Hansard)* Legislative Assembly, 7 May 2004.

To overcome this situation, proposed section 11A allows a defendant to appeal to the District Court against the refusal of a Local Court to rehear the matter. If the District Court grants the application it must remit the matter to the Local Court for a fresh hearing.

#### **Schedule 4 - *Crimes (Sentencing Procedure) Act 1999***

5. Section 86 of this Act is amended to provide that an offender sign an undertaking to comply with his or her obligations under a community service order *after* the Court has made the order.

Currently, the offender is required to sign the undertaking *before* the Court makes the order and hence before the offender can know the content of that undertaking.

#### **Schedule 6 - *Criminal Procedure Act 1986***

6. Currently, among other things, the Act:

- provides that a public officer prosecutor is not personally liable for costs awarded against them [s 218];
- allows a public officer prosecutor to issue subpoenas [s 222]; and
- dispenses with the requirement to provide money for the expenses of complying with the subpoena when the subpoena has been issued by a public officer prosecutor [s 224].

7. Section 3 of the Act defines “public officer”. The definition includes an employee in the Police Service.

However, in his second reading speech, the Minister stated that the Crown Solicitors Office “recently noted some conflicting legal argument that suggested that a Police Officer might not be able to issue a subpoena.”<sup>5</sup> Hence, sections 222 and 224 are amended to include police officers.

8. Additionally, section 218 is amended to expressly indemnify police officers from personal liability for costs awarded against them in their capacity as public officer prosecutors.

The Minister stated that these amendments are proposed to “remove any ambiguity that a Police Officer cannot issue a subpoena under the [Act]”.<sup>6</sup>

#### **Schedule 7 - *District Court Act 1973***

##### **Judicial Registrar**

9. This Act is amended to create the position of a Judicial Registrar with the following functions and powers:
- presiding as a Master of the District Court;
  - liaising with the Judiciary in providing and seeking specialist legal procedural advice and assistance;

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

- conducting call overs, status conferences, pre-trial conferences, show cause hearings and directions hearings (both in person and by telephone);
  - considering applications for adjournment from hearing and arbitration listings;
  - allocating cases to judges for case management;
  - assisting as required with the case management of the specialist lists;
  - hearing and determining notices of motion;
  - providing advice and assistance on case management; and
  - referring appropriate matters to arbitration and mediation.
10. The position is a statutory appointment for a term not exceeding five years.

Proposed section 18FA states that the Judicial Registrar must be admitted as a legal practitioner to any Court of a State or Territory or of the High Court.

The Judicial Registrar must also devote their whole time to the office, and is to be an officer of the District Court.

11. In addition, section 18G changes the current name of the registrar for Sydney to the Principal Registrar.

Under proposed 18J the Principal Registrar may exercise all of the functions of the Principal Registrar. This will bring the District Court in line with a similar provision in the Supreme Court.<sup>7</sup>

### **Residual Jurisdiction of the District Court**

12. With the repeal of the *Compensation Court Act 1984*, the jurisdiction exercised by the Compensation Court was transferred to the District Court.<sup>8</sup>
13. The Bill completes the transition of this residual (compensation) jurisdiction to the District Court. This Bill gives the Court the same powers as the Compensation Court through proposed section 142I.
14. The residual jurisdiction is that which was exercised by the Compensation Court under a range of NSW legislation, namely:
- (a) jurisdiction to examine, hear and determine all coal miner matters (within the meaning of the *Workplace Injury Management and Workers Compensation Act 1998*) except matters arising under Part 5 of the *Workers Compensation Act 1987*;
  - (b) jurisdiction to make determinations under section 216A of the *Police Act 1990*, section 21 of the *Police Regulation (Superannuation) Act 1906*, section 29 of the *Sporting Injuries Insurance Act 1978* and sections 16 and 30 of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*; and
  - (c) jurisdiction to determine appeals under section 8I of the *Workers' Compensation (Dust Diseases) Act 1942*<sup>9</sup>.

<sup>7</sup> The Hon Bob Debus MP, Attorney General, Second Reading Speech, *Parliamentary Debates (Hansard)* Legislative Assembly, 7 May 2004.

<sup>8</sup> See the *Compensation Court Repeal Act 2002*.

<sup>9</sup> See the Note to proposed section 142G [schedule 7, clause 7].

Courts Legislation Amendment Bill 2004

15. When exercising the residual jurisdiction the District Court does not need to follow strict legal precedent, but must decide cases on their merits [proposed section 142J].
16. A person aggrieved by a decision of the Court exercising its residual jurisdiction can be appeal to the Court of Appeal on point of law or on a question as to the admission or rejection of evidence [proposed section 142N].
17. The Court of Appeal may remit the matter to the District Court in its residual jurisdiction for determination by that Court.
18. Additionally, proposed section 124K provides that section 112 of the *Workplace Injury Management and Workers Compensation Act 1998* (Costs) applies to all proceedings of the residual jurisdiction in the District Court.
19. Under proposed section 142P the District Court can also refer a matter to WorkCover for an inquiry or report.<sup>10</sup>

**Schedule 9 - *Protected Estates Act 1983***

20. The Bill amends section 30 of this Act so as to extend the power of the Protective Commissioner to authorise persons appointed as managers of estates of protected persons to exercise certain functions and to direct the managers in the exercise of their functions.
21. The extension of these powers applies to persons appointed as managers of estates by the Supreme Court under s 22 of the Act and those appointed by the Guardianship Tribunal under s 25M of the *Guardianship Act 1987*.
22. The amendments specifically authorise the Protective Commissioner to make orders, and give authorities and directions, of the kind that the Supreme Court may make and give under sections 32 and 33 of the Act (such as an order that any property of the protected person be sold or otherwise dealt with in order to pay the protected person's debts).

The amendments also permit the Protective Commissioner to authorise a manager to exercise functions of the same kind as are specified in section 24(2).<sup>11</sup>

23. Such authorisations by the Protective Commissioner are subject to review by the Administrative Decisions Tribunal under section 30A of the Act.

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<sup>10</sup> The Hon Bob Debus MP, Attorney General, Second Reading Speech, *Parliamentary Debates (Hansard)* Legislative Assembly, 7 May 2004.

<sup>11</sup> These functions include:

- receiving money, rent, income and profit of real and personal property;
- granting and surrendering leases of property;
- selling, realising, charging and mortgaging real and personal property;
- completing or terminating a contract, the performance of which the protected person is liable;
- sequestrating the estate under the bankruptcy laws; and
- bringing and defending actions, suits and other proceedings, on behalf of the protected person.

## Issues Considered by the Committee

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

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

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

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

26. In his second reading speech, the Minister explained that schedule 5 “is expected to commence in mid-2004 when CourtLink is implemented in a number of District Court registries.”<sup>12</sup>

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

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<sup>12</sup> The Hon Bob Debus MP, Attorney General, Second Reading Speech, *Parliamentary Debates (Hansard)* Legislative Assembly, 7 May 2004.

### 3. CRIMES AMENDMENT (CHILD NEGLECT) BILL 2004

Date Introduced:	5 May 2004
House Introduced:	Legislative Council
Minister Responsible:	Hon Carmel Tebbutt MLC
Portfolio:	Community Services

#### Purpose and Description

1. The Bill amends the *Crimes Act 1900* [the Crimes Act] to revise child neglect offences under that Act. The Bill also makes a consequential amendment to the *Criminal Procedure Act 1986*.

#### Background

2. In 2003 a working party of officers of the Department of Community Services and the Attorney General's Department was established to review offences in the Crimes Act and the *Children and Young Persons (Care and Protection) Act 1998* in relation to child neglect.

According to the second reading speech, the working group has recommended that the Crimes Act be amended as proposed in the Bill.<sup>13</sup>

#### The Bill

3. At present, s 43 of the Crimes Act deals with the offences of unlawful abandonment and exposure of a child under 7 years of age:

Whosoever unlawfully abandons or exposes any child under the age of 7 years, whereby the life of such child was or is endangered, or its health was or is likely to be seriously injured, shall be liable to imprisonment for five years.<sup>14</sup>

4. The Bill inserts a new s 43 into the Crimes Act. The essential features and maximum penalty for the offence are retained in the proposed new s 43, but the terms of the offence are revised to replace the word “unlawful”, and make other changes in line with the terminology of the new child neglect offence in proposed s 43A. The proposed section provides that:

A person who, without reasonable excuse, intentionally abandons or exposes a child under 7 years of age is guilty of an offence if it causes a danger of death or of serious injury to the child.

5. The maximum penalty under s 43 is imprisonment for 5 years.

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<sup>13</sup> Hon C M Tebbutt MLC, Minister for Community Services, Ageing, Disability Services and Youth, Legislative Council, *Hansard*, 5 May 2004.

<sup>14</sup> Section 43 was recently amended by the *Crimes Legislation Further Amendment Act 2003*, which raised the relevant age of a child for the purposes of the offence from 2 to 7 years.

6. As to the expression, “reasonable excuse” in proposed s 43, the Minister for Community Services noted that:
- [i]t will be the role of judicial officers to determine whether an individual can establish this defence. Trivial or shallow reasons will not assist an individual being prosecuted under this section. I am advised, for example, that the proposed section could be used to mount a prosecution against anyone—it need not be a parent—who abandons a child in a car in the blazing summer sun, thereby causing a danger of serious injury to the child.<sup>15</sup>
7. Proposed s 43A of the Crimes Act makes it an offence for a person who has parental responsibility<sup>16</sup> for a child under 16 years of age to intentionally or recklessly fail to provide the child with the *necessities of life*, and thereby cause a danger of death or of serious injury to the child [maximum penalty: imprisonment for 5 years].
8. According to the second reading speech, the necessities of life include, *but are not limited to*, such things as providing a child with adequate food, clothing, medical treatment, accommodation, or care.<sup>17</sup>
9. Currently, s 44 of the Crimes Act provides for a similar offence to that created by proposed s 43A:
- Whosoever being legally liable to provide any wife, child, ward, apprentice, or servant or any insane person with necessary food, clothing, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or maliciously does, or causes to be done, any bodily harm to any wife, child, ward, apprentice or servant, or to any insane person so that, in any such case, his or her life is endangered, or his or her health becomes or is likely to be seriously injured, shall be liable to imprisonment for five years.
10. The Bill amends s 44 to remove references to a child or ward in that section, since children and wards will now be covered by the new child neglect offence in proposed s 43A.
11. The Bill enables the new child neglect offence to be dealt with summarily in the Local Court, unless the prosecutor or the accused elects otherwise [Sch 2].

This is in line with the present procedures for offences against s 43 and s 44 of the Crimes Act.

## Issues Considered by the Committee

### Commencement by proclamation: Clause 2

12. The ensuing Act is to commence on a day, or days, to be appointed by proclamation.

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<sup>15</sup> Hon C M Tebbutt MLC, Minister for Community Services, Ageing, Disability Services and Youth, Legislative Council, *Hansard*, 5 May 2004.

<sup>16</sup> Pursuant to proposed s 43A, *parental responsibility* means the duties, powers, responsibilities and authority in respect of a child that, by law, parents have in relation to their children.

<sup>17</sup> Hon C M Tebbutt MLC, Minister for Community Services, Ageing, Disability Services and Youth, Legislative Council, *Hansard*, 5 May 2004.

Crimes Amendment (Child Neglect) Bill 2004

13. The Minister's office has advised that the delay in commencement is due to the need to advise all the relevant welfare and law enforcement agencies of the new provisions and their potential impact, and to allow for the necessary inter-agency arrangements to be made to effectively implement the changes.

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



## 4. FILMING APPROVAL BILL 2004

Date Introduced:	5 May 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Environment

### Purpose and Description

1. The objects of this Bill are:
  - (a) to facilitate the granting of approvals to film in national parks, marine parks and other areas under the *National Parks and Wildlife Act 1974* and the *Marine Parks Act 1997*, but to limit the granting of such approvals in respect of wilderness areas to filming for educational, scientific, research or tourism purposes; and
  - (b) to make a consequential amendment to the *National Parks and Wildlife Regulation 2002*.

### Background

2. According to the Minister in his second reading speech, “[t]he New South Wales film and television industry provides around 50,000 jobs is worth some \$4 billion a year to the State’s economy”.<sup>18</sup>
3. The Department of Environment and Conservation recently granted consent for the filming of *Stealth* in a part of the Blue Mountains National Park which also happens to be in a declared wilderness area. The decision was challenged in the Land and Environment Court by the local conservation group, the Blue Mountains Conservation Society.<sup>19</sup>
4. In that case,<sup>20</sup> Lloyd J of the Land and Environment Court held that the consent to film a commercial movie in a wilderness area given under clause 20 of the *National Parks and Wildlife Regulation 2002* was invalid because it constituted a licence for the purposes of section 153A of the *National Parks and Wildlife Act 1974*.
5. Clause 20 of the *National Parks and Wildlife Regulation* prohibits certain commercial activities in national parks. These include the taking of any photograph, video, movie or television film for sale, hire or profit. The penalty is 30 penalty units (currently \$3300).

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<sup>18</sup> The Hon Bob Debus MP, Minister for the Environment, Second Reading Speech, *Parliamentary Debates (Hansard)* Legislative Assembly, 5 May 2004.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Blue Mountains Conservation Society Inc v Director-General of National Parks and Wildlife & (2) Ors* [2004] NSWLEC 196.

Filming Approval Bill 2004

However, it is a defence if the prohibited commercial activity was done with the consent of a park authority and in accordance with any conditions to which the consent is subject.

6. Section 153A of the *National Parks and Wildlife Act* provides that a licence cannot be granted in respect of land within a wilderness area.
7. His Honour also found that filming a commercial feature film was, in any event, contrary to the management principles for wilderness areas set out in section 9 of the *Wilderness Act 1987*.

Section 9 provides that:

A wilderness area shall be managed so as:

- (a) to restore (if applicable) and to protect the unmodified state of the area and its plant and animal communities,
  - (b) to preserve the capacity of the area to evolve in the absence of significant human interference, and
  - (c) to permit opportunities for solitude and appropriate self-reliant recreation.
8. His Honour further held that the production of a commercial feature film was not within the general objects of the *National Parks and Wildlife Act* as set out in section 30E(1).<sup>21</sup>

Section 30E(1) provides:

The purpose of reserving land as a national park is to identify, protect and conserve areas containing outstanding or representative ecosystems, natural or cultural features or landscapes or phenomena that provide opportunities for public appreciation and inspiration and sustainable visitor use and enjoyment so as to enable those areas to be managed in accordance with subsection.

9. His Honour held that the production of a commercial film in a designated wilderness area contravenes section 9 of the *Wilderness Act*. He concluded that the “proposed activity is unlawful; and the approval and consent are unlawful” and should be set aside.<sup>22</sup>
10. According to the Minister in his second reading speech:

In ruling on the Stealth case, the Land and Environment Court has specifically drawn attention to doubts concerning the power to approve the making of any commercial feature film in any national park or reserve, whether or not the land in question is in a declared wilderness area.

...

The court has also drawn attention to doubts concerning the power to approve the making of any film in a wilderness area, at least in the following circumstances: first, when the filming is being undertaken commercially, that is, for sale, hire or profit;

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<sup>21</sup> *Blue Mountains Conservation Society Inc v Director-General of National Parks and Wildlife & (2) Ors* [2004] NSWLEC 196, at para 37.

<sup>22</sup> *Ibid*, at para 52.

and, second, when the filming requires exclusive use of the area in question. The Government is committed to eliminating these doubts.<sup>23</sup>

## The Bill

11. The Bill commences on a day or days to be appointed by proclamation.
12. The Bill gives the Minister for the Environment and the Minister for Primary Industries the power to grant approval to carry out filming and related activities, whether for commercial purposes or not, in a national or marine park, respectively.
13. In relation to *wilderness areas*, the Minister for the Environment may *not* grant approval for filming *unless* the Minister is satisfied that it is for scientific, research or educational purposes to promote tourism [sub-clause 4(3)].
14. In all cases, the relevant Minister may attach conditions to the approval if necessary to ensure that adverse impacts on the environment are minimised. These conditions can include limiting the period of time within which filming is allowed, requiring the use of existing tracks and roads, and ensuring that the area used for the filming is the smallest feasible area [sub-clause 4(6)].
15. In addition, the Minister may not grant a film approval in respect of an area that forms part of Schedule 14 lands<sup>24</sup> or lands owned by Aboriginal persons pursuant to the *Land Rights Act 1983*, unless the Minister first obtains the concurrence of the board of management of such lands [sub-clause 4(4)].
16. Clause 5 provides that development for the purposes of a filming activity in a designated area does not require development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*.  
  
However, Part 5 of that Act continues to operate so that applicants for a filming approval will have to prepare an *Environmental Impact Statement* and the Minister can require a *Review of Environmental Factors*.
17. Clause 6 of the Bill expressly provides that a filming approval authorises the holder to carry out in the designated area to which the approval relates any filming activity, subject to any conditions imposed, even if filming is prohibited or not permitted in that area under:
  - (a) the *National Parks and Wildlife Act 1974*; or
  - (b) the *Wilderness Act 1987*; or
  - (c) the *Marine Parks Act 1997*; or
  - (d) a statutory rule or any other instrument made under one of these Acts.
18. Under the Bill, the Minister is to review the proposed Act as soon as possible after the period of 5 years following the date of its assent and to report the outcomes of such review to Parliament.

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<sup>23</sup> The Hon Bob Debus MP, Minister for the Environment, Second reading speech, *Parliamentary Debates (Hansard)* Legislative Assembly, 5 May 2004.

<sup>24</sup> "Schedule 14 lands" refers to lands of cultural significance to Aboriginals as set out in Schedule 14 to the National Parks and Wildlife Act.

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The purpose of the review is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives [clause 11].

19. Schedule 1 amends the *National Parks and Wildlife Regulation 2002* to provide that, for the purposes of that Regulation, a filming approval to carry out a filming activity on land reserved or dedicated under the *National Parks and Wildlife Act* is taken to constitute *consent* to the carrying out of that activity on the land by the park authority (within the meaning of that Regulation) for the land in accordance with the conditions of the approval.

## Issues Considered by the Committee

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

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

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

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

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| <p>21. <b>The Committee has written to the Minister seeking advice as to the reasons for commencing this Bill by proclamation rather than on assent.</b></p> |
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***The Committee makes no further comment on this Bill.***

## 5. GREYHOUND AND HARNESS RACING ADMINISTRATION BILL 2004

Date Introduced:	7 May 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Grant McBride MP
Portfolio:	Gaming and Racing

### Purpose and Description

1. The objects of this Bill are:
  - (a) to constitute the Greyhound and Harness Racing Regulatory Authority which is to take over the functions of the Greyhound Racing Authority and the Harness Racing Authority;
  - (b) to constitute the Greyhound and Harness Racing Appeals Tribunal which is to take over the functions of the Greyhound Racing Appeals Tribunal and the Harness Racing Appeals Tribunal;
  - (c) to give the Authority certain powers in relation to the control and regulation of greyhound racing and harness racing;
  - (d) to update the process and procedures in relation to an appeal to the Authority or the Tribunal; and
  - (e) to make consequential amendments to certain Acts.

### Background

2. According to the second reading speech:

The bill provides for the second part of the reform and restructure of the governance of the greyhound and harness racing industries in New South Wales.

The first part of the reforms separated the commercial and regulatory activities that resulted in a dual board structure for each of the greyhound and harness racing codes. The two commercial boards, Greyhound Racing NSW and Harness Racing NSW, exercise the strategic and commercial governance of the relevant code. They are independent of government and do not represent the Crown. That status is consistent with the wishes of industry participants that the industry itself should be able to manage its strategic direction and economic development free from government direction.

... the reform process has been undertaken in two stages, primarily to provide an appropriate environment for structured change management and also to ensure continuity of regulation during the period of change.

Stage one is completed with the two commercial boards fully empowered and operational. Stage two is the amalgamation of the two regulatory boards—the Greyhound Racing Authority and the Harness Racing Authority. Stage two has been preceded by a feasibility study, which was prepared by a working party chaired by a senior officer from the Minister's department and included the chairpersons of the Greyhound Racing Authority and the Harness Racing Authority... The main finding of the feasibility study was that it is feasible to amalgamate two authorities.

Greyhound and Harness Racing Administration Bill 2004

The study also found that the future operating costs of an amalgamated authority could be eventually expected to result in significant savings in the order of \$800,000 per year from reduced accommodation and staffing costs...

Another finding of the feasibility study was that amalgamation costs could be met from the sale of surplus building currently owned and occupied by the Harness Racing Authority, with any surplus funds being made available for the benefit of the greyhound and harness racing industries.

During the course of preparing the feasibility study the working party consulted with the staff of the Greyhound Racing Authority and the Harness Racing Authority. The Public Service Association was also a part of that consultation process.

One of the matters the working party identified was the need to continue to consult with staff and the staff association as the amalgamation proposal progresses from the initial feasibility stage to the implementation stage. Staff will be consulted as more information becomes available during the implementation stage, which will be an ongoing task for the Department of Gaming and Racing, the board and chief executive of the soon-to-be-appointed amalgamated body.

The working party also consulted with the two industry commercial boards, Greyhound Racing NSW and Harness Racing NSW.<sup>25</sup>

## The Bill

### Commencement

3. This Bill commences on a day or days to be appointed by proclamation, except for Parts 1 and 2 and Schedule 1, which commence on the date of assent.

### Greyhound and Harness Racing Regulatory Authority

4. Clause 4 constitutes the Greyhound and Harness Racing Regulatory Authority (the Authority) as a body corporate that represents the Crown.

5. According to the second reading speech:

The bill provides for the amalgamation of the two existing regulatory authorities. In most other respects the functions, powers and responsibilities of the two former regulatory bodies are to be carried forward to the nominated body, which is to be known as the Greyhound and Harness Racing Regulatory Authority.

... The Minister will continue to determine the budget of the amalgamated regulatory board with appropriate consultation with the two industry commercial boards.

6. The Authority is to consist of 5 members appointed by the Governor on the recommendation of the Minister.

The Minister is to ensure that a least one of the persons recommended for appointment has suitable legal qualifications and at least four of the persons recommended have one or more of the following qualifications:

- Experience in management or administration; or

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<sup>25</sup> Mr Neville Newell MP, Parliamentary Secretary, Second Reading Speech, *Legislative Assembly Parliamentary Debates (Hansard)* 7 May 2004.

- Experience in enforcement or policing or regulatory schemes; or
  - Veterinary qualifications; or
  - Knowledge of the racing or wagering industries [clause 5].
7. Certain persons are expressly excluded from membership of the Authority, including members and employees of a greyhound or harness racing club and anyone with a financial interest in an animal intended for racing under the Greyhound or Harness Racing Acts 2002, as the case may be [clause 5(3)].
8. Schedule 1 contains the provisions relating to the members and procedure of the Authority, including terms of office and vacation of office of members, disclosure of pecuniary interests and preparation by the Authority of a code of conduct for members, deputy members and staff of the Authority.

### **Control and regulation of greyhound and harness racing**

9. The Authority can register greyhounds, horses and persons associated with greyhound or harness racing in accordance with the rules made under proposed Division 2 [see clause 12].

The Authority must not refuse to register a greyhound, horse or person unless it is of the opinion that it is in the best interests of the greyhound or harness racing industry, as the case may be [clause 12(2)]

10. The Bill permits the Authority to register bookmakers in relation to greyhound racing or harness racing or both and sets out a number of conditions in relation to a company's registration as a bookmaker under the proposed section [cl 13].
11. Clause 14 enables the Authority to take disciplinary action or to take action in the interests of occupational health and safety, including the suspension or cancellation of any registration under the proposed Act or the imposition of fines not exceeding 200 penalty units (currently \$22,000).

The Authority can also prohibit any greyhound or horse from racing.

12. The Authority may make rules for or with respect to the control and regulation of greyhound racing [cl 15] and harness racing [cl16].

### **Appeals and disciplinary inquiries**

13. A person who is aggrieved by a decision of a harness racing club, a greyhound racing club or a steward of a greyhound racing club, or a steward of the Authority, may appeal against the decision to the Authority or the Greyhound and Racing Appeals Tribunal<sup>26</sup> as determined by the Regulations [cl 19(1)].
14. In addition, any person who, or a greyhound or harness racing club that, is aggrieved by a decision of the Authority may appeal against the decision to the Tribunal [cl 19(2)].

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<sup>26</sup> This Tribunal is constituted by Part 4 of the Bill.

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15. Clauses 20 and 21 set out the procedure for the conduct of disciplinary inquiries and appeals to the Authority or the Tribunal, including that appeals are to be held as in open court.

In addition, the Tribunal may compel persons to give evidence or to produce any document relating to an appeal to the Tribunal [cl 22].

16. Clause 23 sets out the powers of the Tribunal with respect to the determination of appeals.

The proposed section makes it clear that the Tribunal may vary the decision appealed against by substituting any decision that could have been made by the person or body that made the decision appealed against.

17. Clause 24 provides that the Authority may conduct a special inquiry into a matter decided by the Tribunal on appeal if the Authority receives new information and it is satisfied that the information may have resulted in a substantially different decision had it been given in evidence at the hearing of the appeal.

After holding the special inquiry the Authority may decide to take no further action or it may decide the matter differently from the Tribunal. If the latter, the Authority's decision replaces the Tribunal's decision and is not to be the subject of an appeal.

### **Greyhound and Harness Racing Appeals Tribunal**

18. According to the second reading speech:

With the amalgamation of the two authorities the opportunity will be taken to amalgamate the Greyhound Racing Appeals Tribunal and the Harness Racing Appeals Tribunal.<sup>27</sup>

19. The Greyhound and Harness Racing Appeals Tribunal is established under clause 26.

20. Only a “qualified person” can be appointed as the Tribunal. A “qualified person” is defined in clause 18 as a judge of any court in New South Wales (including a judicial member of the Industrial Relations Commission), a retired judge of any court or a person qualified to be appointed as a Judge of the District Court.

21. The Minister may appoint experts as greyhound or harness racing assessors to assist the Tribunal in a particular matter [clauses 29 and 30].

Schedule 2 contains the provisions relating to persons appointed as the Tribunal and as greyhound or harness racing assessors, including terms of office and vacation of office.

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<sup>27</sup> Mr Neville Newell MP, Parliamentary Secretary, Second Reading Speech, *Legislative Assembly Parliamentary Debates (Hansard)* 7 May 2004.



## Miscellaneous

22. The Authority is to consult with Greyhound Racing New South Wales (GRNSW) and Harness Racing New South Wales (HRNSW) at least twice a year to co-ordinate the carrying out of their respective functions [cl 33].
23. Clause 40 provides that the Authority must investigate, and provide a report on, any matter relevant to greyhound or harness racing when directed by the Minister and may investigate and report on any such matter on its own motion.
24. The Authority is empowered to require the production of records relating to the affairs of any greyhound racing club, greyhound trial track or harness racing club [cl 41].
25. Clause 42 makes it an offence to disclose information obtained in connection with the administration of the proposed Act, the *Greyhound Racing Act 2002* or the *Harness Racing Act 2002*, except in certain circumstances or to certain persons.<sup>28</sup> The penalty is 50 penalty units.
26. Members of the Authority and other specified persons are not personally liable for things done or omitted to be done in good faith for the purposes of executing the proposed Act or any other Act [cl 44].

## Issues Considered by the Committee

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

#### Issue: Clause 24(4) – Non-reviewable decision

27. Clause 24 gives the Authority power to conduct a special inquiry into a matter decided by the Tribunal on appeal if the Authority receives new information and it is satisfied that the information may have resulted in a substantially different decision had it been given in evidence at the hearing of the appeal.
28. After holding the special inquiry the Authority may decide to take no further action or it may decide the matter differently from the Tribunal.  
  
If the latter, the Authority's decision replaces the Tribunal's decision and *appeal from the Authority's decision to the Tribunal is excluded*.
29. The Department has advised the Committee that clause 24 has been carried forward from previous pieces of legislation, most recently from the *Harness Racing Act 2002*.<sup>29</sup>

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<sup>28</sup> For example, if the Minister certifies that it is necessary in the public interest that the information be divulged to a person or persons [cl 42(2)]. Subclause 42(5) provides for other exceptions on divulging information to the Independent Commission Against Corruption, the Australia or NSW Crime Commissions, the Ombudsman, the Policy Integrity Commission or any other person or body prescribed by the regulations for the purposes of the subsection. The provision does not affect the operation of the *Freedom of Information Act 1989*.

<sup>29</sup> This Act is to be repealed. The same provision was also in Harness Racing Act's predecessor, the *Harness Racing New South Wales Act 1977* (repealed), s 19A.

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30. The Department further that advised that the special inquiry provisions sit alongside the normal disciplinary mechanisms as a safeguard to enable the Authority to keep in touch with the detection of new drugs in racing.

For example, the testing laboratory may not have developed a screen for a new drug but after a period of time it becomes obvious that a racing animal's performance is unusual. While racing stewards may initiate an inquiry, without the detection of the new drug it is impossible to sustain a charge under the rules of racing. Frozen swabs in such cases provide the opportunity for the Authority to revisit the issue when drug-testing procedures catch up.

According to the Department, it is considered in the wider interest of racing to provide the Authority with the special inquiry mechanism.

31. The Department also advised the Committee that there have two special inquiries held by the former Authority. Both involved positive drug tests in race-horses. In both cases, the trainers investigated were exonerated.
32. The Committee notes the need of an effective mechanism available to the racing industry regulators to deal with developments both in the type of performance affecting drugs available and the tests used to screen for them. However, the Committee also notes the importance of review for protecting individuals' rights against oppressive administrative action.
33. The Committee will always be concerned when legislation seeks to exclude review of a decision unless there is a strong public interest in doing so.

Further, it is not apparent to the Committee why a person aggrieved by a decision of the Authority, made after conducting a special inquiry under clause 24, should not be able to appeal that decision to the Tribunal.

The mere fact that clause 24 has been carried forward from previous legislation does not, of itself, provide justification for making the Authority's decision non-reviewable by the Tribunal.

- 34. The Committee refers to Parliament the question of whether failing to provide for appeal to the Tribunal of a decision of the Authority under a special inquiry makes rights unduly dependent on a non-reviewable decision.**
- 35. The Committee has written to the Minister for advice as to the reasons for failing to provide for review of such a decision of the Authority.**

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

**Issue: Clause 2-Commencement by proclamation**

36. The Bill commences on a day or days to be appointed by proclamation, except for Parts 1 and 2 and Schedule 1, which commence on the date of assent.
37. According to the second reading speech:

Greyhound and Harness Racing Administration Bill 2004

... it is proposed to commence the new arrangements on 1 July 2004, subject to planned operational arrangements for the new authority being in place at that time.<sup>30</sup>

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

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<sup>30</sup> Mr Neville Newell MP, Parliamentary Secretary, Second Reading Speech, *Legislative Assembly Parliamentary Debates (Hansard)* 7 May 2004.

## 6. NATIONAL COMPETITION POLICY HEALTH AND OTHER AMENDMENTS (COMMONWEALTH FINANCIAL PENALTIES) BILL 2004 & NATIONAL COMPETITION POLICY LIQUOR AMENDMENT (COMMONWEALTH FINANCIAL PENALTIES) BILL 2004

Date Introduced: 4 May 2004  
House Introduced: Legislative Assembly  
Minister Responsible: Hon Bob Carr MP  
Portfolio: Premier

### Purpose and Description

1. The *National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004* [the Health Bill] is cognate with the *National Competition Policy Liquor Amendment (Commonwealth Financial Penalties) Bill 2004* [the Liquor Bill].
2. Both Bills result from the now-withdrawn *National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004* [the original Bill].

**3. The Legislation Review Committee reported on the original Bill in its Digest No.2 of 2004. The background to this legislation is set out below.**

4. The **Health Bill** effects the following amendments:
  - (a) the *Dentists Act 1989* and the *Dental Practice Act 2001* are amended to remove restrictions on the persons or bodies who may employ dentists or in association with whom dentists may practise, and to prohibit employers of dentists from directing or inciting them to engage in misconduct;
  - (b) the *Optometrists Act 2002* is amended to remove restrictions on the persons or bodies who may carry on the business of optometry, and to prohibit employers of optometrists from directing or inciting them to engage in misconduct;
  - (c) the *Pharmacy Act 1964* is amended:
    - (i) to remove restrictions on who may have a pecuniary interest in a pharmacy business, on the number of such businesses that pharmacists may carry on or in which they may have a pecuniary interest and on the ability of friendly societies to carry on such businesses; and
    - (ii) to allow an incorporated practice of pharmacists to carry on a pharmacy business (rather than just pharmacists or partnerships of pharmacists)

and to allow any person to participate in (but not control) the carrying on of a pharmacy business; and

- (iii) to prohibit persons who have a pecuniary interest or who participate in carrying on the business of a pharmacist from directing or inciting the pharmacist to engage in misconduct;
  - (d) the *Farm Debt Mediation Act 1994* is amended:
    - (i) to remove a provision that prohibits action under the Act being taken within the 12 months following the Rural Assistance Authority's refusal of an application for a certificate declaring that the Act does not apply to a particular farm mortgage; and
    - (ii) to remove a provision that makes certain decisions of the Rural Assistance Authority reviewable by the Administrative Decisions Tribunal.
5. The **Liquor Bill** amends the *Liquor Act 1982* to:
- (a) remove the "needs test" that currently applies in relation to hotelier's licences and off-licences (retail) and to replace it with a social impact assessment process in connection with applications for the grant or removal of such licences;
  - (b) provide that an off-licence (retail) that relates to a service station cannot be granted;
  - (c) provide that the existing restrictions on granting an off-licence (retail) that apply in relation to convenience stores will also apply to other general stores such as mixed business shops, corner shops and milk bars;
  - (d) provide that the fee for granting a hotelier's licence or an off-licence (retail) will be the fee prescribed by (or determined in accordance with) the regulations instead of being fixed by the Liquor Administration Board;
  - (e) provide that an annual fee will be payable in respect of a hotelier's licence or an off-licence (retail); and
  - (f) make other ancillary and consequential amendments.

## Background

6. As noted in the Committee's report on the original Bill, the National Competition Council [NCC] assessed New South Wales as having fulfilled almost all of its obligations under the National Competition Policy [NCP] agreements. The exceptions were in relation to the degree of reform undertaken in the regulation of poultry supply, liquor, farm debt mediation, and the dentistry, optometry and pharmacy professions.
7. As a result, the Commonwealth has, on the recommendation of the NCC, imposed a penalty of \$50.9 million in respect of New South Wales' 2003–04 competition payments under the NCP agreements.

National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004 & National Competition Policy Liquor Amendment (Commonwealth Financial Penalties) Bill 2004

8. In response, on 17 February 2004 the Premier, the Hon R J Carr MP, introduced the original Bill into the Legislative Assembly.
9. At that time, the Premier stated that:

[t]he simple purpose of [the Bill] is to enable New South Wales to avoid penalties being imposed by the Federal Government on the advice of the National Competition Council [NCC]. Every member of this House will be aware that the Commonwealth is compelling New South Wales to change the way we regulate these industries or forfeit \$51 million in competition payments because the National Competition Council has deemed us “non-compliant” under the National Competition Principles Agreement.<sup>31</sup>
10. On 4 May 2004, pursuant to a suspension of standing and sessional orders, the original Bill was withdrawn by the Government; the Health and Liquor Bills were substituted at the stage previously reached by the original Bill; and the debate on the new Bills proceeded concurrently.
11. According to the Minister’s speech in reply on the Health and Liquor Bills, negotiations between the NCC, the New South Wales Government and the New South Wales Farmers Association resulted in agreement that the NCC will allow New South Wales to conduct a further independent review of the poultry meat legislation.<sup>32</sup> Accordingly, the poultry industry amendments in the original Bill have been withdrawn.<sup>33</sup>
12. The Minister also stated in the second reading speech that the original Bill was split into the Health and Liquor Bills as the result of requests from crossbench members of the Legislative Council to be able to consider the liquor licensing amendments separately from the other amendments.<sup>34</sup>

## The Bills

### The Health Bill

13. The provisions of the original Bill in relation to optometrists, dentists and farm debt mediation have not been amended in the Health Bill. These provisions have been considered in the Committee’s Digest No.2 of 2004.
14. However, it was stated in the second reading speech that the NCC requires the removal of restrictions on pharmacists entering into commercial arrangements with

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<sup>31</sup> Hon R J Carr MP, Premier, Legislative Assembly, *Hansard*, 17 February 2004.

<sup>32</sup> Hon G A McBride MP, Minister for Gaming and Racing, Legislative Assembly, *Hansard*, 4 May 2004. The NCC has agreed that it will not recommend another permanent penalty for poultry in financial year 2004-2005. Instead, it will recommend a suspension of payments for poultry until New South Wales implements any changes recommended by the independent review.

<sup>33</sup> The amendments to the *Poultry Meat Industry Act 1986* constituted Schedule 2 to the *National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004*.

<sup>34</sup> Hon G A McBride MP, Minister for Gaming and Racing, Legislative Assembly, *Hansard*, 4 May 2004.

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National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004 & National Competition Policy Liquor Amendment (Commonwealth Financial Penalties) Bill 2004

non-pharmacists.<sup>35</sup> Accordingly, s 26 of the Pharmacy Act, which restricted the carrying on business of a pharmacist in pharmacies, is omitted [Sch 4 [4]].

15. However, the definition of s 19A(e) of the Pharmacy Act provides that it is professional misconduct for a pharmacist to carry on the business of a pharmacist for or on behalf of, or in association with, an individual, a body corporate or an unincorporated body that is *not* entitled to carry on that business, except as provided by amended s 25(2)(d) of that Act.<sup>36</sup>

### The Liquor Bill

16. The amendments to the Liquor Act were previously contained in Schedule 1 to the original Bill.  
**These were considered by the Committee in its Digest No.2 of 2004.**
17. Subsequent consultations have resulted in the following amendments to the provisions of the original Bill:
- the social impact statement and licence application required under the amended Liquor Act may be lodged separately [proposed s 62C(4)];
  - social impact assessments must be advertised in statewide newspapers, as well as locally [proposed s 62E(b)(i)]; and
  - provision for the Minister to issue written guidelines to the Liquor Administration Board as to matters such as the criteria for delineating the local community and broader community when determining whether the overall impact of an application will not be detrimental [proposed s 62F(3)].<sup>37</sup>

### Issues Considered by the Committee

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

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

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<sup>35</sup> Hon G A McBride MP, Minister for Gaming and Racing, Legislative Assembly, *Hansard*, 4 May 2004.

<sup>36</sup> Proposed s 25(2)(d) of the *Pharmacy Act 1964* provides that an individual, a body corporate or an unincorporated body may participate in the carrying on of the business of a pharmacist, so long as that individual, body corporate or unincorporated body authorised by or under this Act to carry on the business has control over the carrying on of the business: Schedule 2[2] to the *National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004*. Other safeguards include a prohibition against directing or inciting misconduct [proposed s 27B] and providing for directors to be held liable for offences committed by corporations [proposed s 34].

<sup>37</sup> It was suggested in the second reading speech that these guidelines will “require the board to look at the particular characteristics of the community living around the premises, including such matters as its socioeconomic status and the proximity of low-income housing”: Hon G A McBride MP, Minister for Gaming and Racing, Legislative Assembly, *Hansard*, 4 May 2004.

## 7. REGIONAL DEVELOPMENT BILL 2004

Date Introduced:	5 May 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell MP
Portfolio:	Regional Development

### Purpose and Description

1. The object of this Act is to provide a framework for strategic intervention in the economies of regional New South Wales for the following purposes:
  - (a) to help fill gaps left by the market system;
  - (b) to promote economic and employment growth in regions;
  - (c) to assist regional communities to capitalise on their regional strengths, to broaden and reposition the industry base of their regions and to develop new products and new markets; and
  - (d) to develop regional or local solutions for regional or local business development problems.

### Background

2. According to the Minister:

The Regional Development Bill is a framework for this Government's financial assistance to attract investment and jobs in regional New South Wales.<sup>38</sup>

3. The Minister set out four main aims of the Bill:

- to enshrine in legislation important principles relating to economic development and employment growth in regional New South Wales;
- to link financial assistance for regional industry to jobs and investment targets;
- to establish the Regional Development Trust, which will encourage private sector contributions to regional development across New South Wales; and
- to give statutory recognition to the work of the Regional Development Advisory Council.

4. The Minister also stated:

We will link financial assistance to the creation of new investment, new sales and jobs growth, and we will make our regional business development programs more outcomes driven. Old-fashioned ideas of propping up a loss-making business simply because it chooses to locate in a region, and not because it has made a viable commercial decision, are no longer sustainable.

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<sup>38</sup> *Legislative Assembly Hansard*, 5 May 2004



We want businesses and industries to be serious about providing viable investments and jobs for regional communities. This bill takes a flexible approach to the types of industries that can be assisted. We will not prescribe types of industries that can be assisted. We can only attract new investment if we are flexible. We need to be responsive to emerging industries and their specific needs. We have no intention of delivering programs which apply a one-formula-fits-all approach. This bill also has the scope to add new programs, services and regional development structures so we can meet future challenges.<sup>39</sup>

## **The Bill**

### **Grants of financial assistance**

5. The Bill enables the Minister to grant financial assistance to:
- a person conducting or proposing to establish an industry or other business in a region; or
  - a person or a group of persons for the purposes of carrying out an undertaking that is likely to assist the economic development of a region or the object of the Act [cl 5(1)].

In determining whether to grant financial assistance, the Minister may consider the likely economic impact on the region concerned of granting assistance [cl 5(3)].

Financial assistance may consist of a grant of money, a subsidy, or a pay-roll tax rebate [cl 6].

### **Conditions of grants**

6. A grant of assistance may be subject to conditions as the Minister thinks fit, including:
- meeting specified performance targets or outcomes;
  - obtaining specified levels of investment; and
  - repayment of assistance where specified targets are not met [cl 7].

### **Repayment of grants**

7. The Minister may require a person to repay financial assistance received if:
- it was a condition of that assistance that it be repaid;
  - a condition to which the assistance was subject has not been complied with; or
  - the Minister is of the opinion that the assistance was improperly obtained [cl 9].

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<sup>39</sup> *Legislative Assembly Hansard*, 5 May 2004

### **Regional Development Trust Fund**

8. The Bill provides for a Regional Development Trust Fund from which financial assistance and the costs of administering the Act may be paid. Money paid into the fund is to include:
- all money appropriated by Parliament for the Act;
  - any gift or bequest of money for the purposes of the fund;
  - any fees or charges paid under the regulations; and
  - any financial assistance repaid under the Act [cl 11].

### **Regional Development Advisory Council**

9. The Bill provides for a Regional development Advisory Council to advise the Minister on:
- any matter that is referred to it by the Minister; and
  - any other matter it considers relevant to the object of the Act.

The members of the Advisory Council are to be appointed by the Minister.

Rules regarding the establishment, membership and procedure of the Advisory Council may be prescribed by regulations [cl 12].

### **Review of Act**

10. The Bill requires that the Minister review the Act after 5 years [cl 20]

## **Issues Considered by the Committee**

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

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

11. The ensuing Act is to commence on a day, or days, to be appointed by proclamation.
12. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on whatever day it chooses, or not to commence the Act at all.
13. The Minister's office has informed the Committee that it is intended to commence the Act as soon as possible after assent

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

## 8. STATE REVENUE LEGISLATION AMENDMENT BILL 2004

Date Introduced:	7 May 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Michael Egan MLC
Portfolio:	Treasury

### Purpose and Description

1. The object of this Bill is to amend certain State revenue legislation for the following purposes:
  - (a) to increase the duty concessions available to first home buyers under the First Home Plus scheme and to align the eligibility criteria for that scheme more closely with the First Home Owner Grant scheme;
  - (b) to remove the tax free threshold for land tax and to introduce new rates of land tax in respect of all land that is subject to land tax;
  - (c) to repeal the premium property tax and replace it with a premium rate of duty on purchases of residential land where the dutiable value of the land exceeds \$3,000,000;
  - (d) to introduce a vendor duty on land-related transactions that are dutiable under the *Duties Act 1997*; and
  - (e) to make other miscellaneous changes to State revenue legislation.

### Background

2. The Bill implements the revenue measures announced by the Government on 6 April 2004.

### The Bill

#### Amendments to the *Duties Act 1997* relating to the First Home Plus Scheme [Schedule 1]

3. The Bill extends the First Home Plus scheme (the Scheme) in the *Duties Act* so that no duty is chargeable on the purchase of a first home with a dutiable value of up to \$500,000, with concessions applying for purchases exceeding \$500,000 but less than \$600,000.

In the case of a purchase of vacant land, duty is not chargeable on a purchase of up to \$300,000, with concessions for purchases between \$300,000 and \$450,000 [proposed s 74 & 80].

The changes will apply to agreements for sale or transfer entered into on or after 4 April 2004 [Schedule 1[9]].

4. The Bill also proposes to change the eligibility criteria for the scheme in regards to joint purchasers from 1 July 2004.

A purchaser will only be eligible if the purchaser or their spouse have not owned residential property in Australia and, if purchasing a property jointly, *all* those purchasing the property and their spouses have not owned residential property [proposed s 71].

Currently, joint purchasers are eligible if *any* of them have not previously owned property

The Bill provides an exception for a purchaser who acquires an interest in a property for the purpose of assisting an eligible person to finance an acquisition of a first home [proposed s 71(6)].

5. The Bill also makes the grant of the concession conditional on the purchaser occupying the home for a continuous period of at least 6 months, with that period starting within 12 months after the completion of the agreement or transfer concerned [proposed s 76].

**Amendments to *Land Tax Act 1956* and *Land Tax Management Act 1956* relating to land tax [Schedule 2]**

6. The Bill removes the tax free threshold that currently applies in respect of land that is subject to land tax [Schedule 2.1 [2]].
7. The Bill substitutes the following rates for the current rate of \$100 plus 1.7 cents for each \$1 above the tax threshold [Schedule 2.1 [3]]:

<b>Taxable value of land</b>	<b>Rate</b>
not more than \$400,000	0.4 cents for each \$1
more than \$400,000 but not more than \$500,000	\$1,600 plus 0.6 cents for each \$1 over \$400,000
more than \$500,000	\$2,200 plus 1.4 cents for each \$1 over \$500,000

8. Land that is owned by a non-concessional company<sup>40</sup> or is subject to a special trust<sup>41</sup> will be taxed at the top rate of 1.4 cents for each \$1 of taxable value [Schedule 2.1[2]].

**Amendments relating to premium property duty [Clause 4 & Schedule 3]**

9. The Bill repeals the *Premium Property Tax Act 1998*, which imposes land tax on land that has a substantial taxable value, even if that land is a principal place of residence [cl 4].
10. The bill creates a *premium property duty for residential land*<sup>42</sup> of \$150,490 plus \$7 for every \$100 over \$3,000,000. This represents an increase from the general rate<sup>43</sup>

<sup>40</sup> Under s 29 of the *Land Tax Management Act 1956*, the Chief Commissioner shall classify any related company not jointly assessed with companies related to it to be a non-concessional company.

<sup>41</sup> See s 3A of the *Land Tax Management Act 1956*.

of an additional \$1.50 for every \$100 above \$3,000,000 [proposed s 32A *Duties Act*].

11. If residential land is used for non-residential purposes, the premium duty rate will apply only to that component of the dutiable value of the land that is attributable to the residential use of the land and that exceeds \$3,000,000 [proposed s 32B *Duties Act*].

#### **Amendments to *Duties Act 1997* relating to vendor duty [Schedule 4]**

12. The Bill imposes a *vendor duty* on:
- a transfer of land-related property;<sup>44</sup>
  - an agreement for the sale or transfer of land-related property; and
  - a declaration of trust over land-related property [proposed s 146].

The vendor duty is in addition to duty payable under Chapter 2 of the *Duties Act*.

13. Vendor duty is to be charged at a rate of 2.25% of the dutiable value<sup>45</sup> of the land-related property [proposed s 160].
14. Exemptions from vendor duty apply to:
- (a) land used as a principal place of residence by the vendor [proposed 162B];
  - (b) farms (land used for primary production) [proposed s 162H];
  - (c) land-related property in respect of which the dutiable value has not increased more than 12% since it was acquired by the vendor [proposed ss 162I – 162O];<sup>46</sup>

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<sup>42</sup> ***Residential land*** means:

- (a) a parcel of land on which there is one single dwelling or one flat, or a parcel of land on which there is a building under construction that, when completed, will constitute one single dwelling or one flat, or
- (b) a strata lot, if it is lawfully occupied as a separate dwelling, or suitable for lawful occupation as a separate dwelling, or
- (c) a land use entitlement, if it confers an entitlement to occupy a building, or part of a building, as a separate dwelling, or
- (d) a parcel of vacant land that is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) for residential or principally for residential purposes [proposed s 32A(3)].

<sup>43</sup> Under s 32 of the *Duties Act 1997*, a dutiable transaction for more than \$100,000 is subject to a duty of \$40,490 plus \$5.50 for every \$100 over \$100,000.

<sup>44</sup> ***Land related property*** is any of the following:

- (a) land in New South Wales,
- (b) a land use entitlement,
- (c) an interest in any land-related property referred to in paragraph (a) or (b), except to the extent that:
  - (i) it arises as a consequence of the ownership of a unit in a unit trust scheme and is not a land use entitlement, or
  - (ii) it is, or is attributable to, an option over land-related property [proposed s 149].

<sup>45</sup> Section 21(1) provides:

- (1) The ***dutiable value*** of dutiable property that is subject to a dutiable transaction is the greater of:
  - (a) the consideration (if any) for the dutiable transaction (being the amount of a monetary consideration or the value of a non-monetary consideration), and
  - (b) the unencumbered value of the dutiable property.

State Revenue Legislation Amendment Bill 2004

- (d) land on which there is a new building [proposed s 162P];
  - (e) land on which there is a substantially new building [proposed s 162Q];
  - (f) vacant land that has been substantially improved by the vendor [proposed s 162S; and
  - (g) land sold in connection with a sale of business, if the dutiable value of the land is not a significant component of the consideration for the sale [s 162T].
15. For the exemption of land used as a principal place of residence to apply:
- (a) the land must have been continuously used by the person for residential purposes for at least two years up to the date of the transaction; or
  - (b) the land must have been continuously used by the person for residential purposes for at least three of the last five years up to the date of the transaction; or
  - (c) if the vendor has owned the land for less than two years, the vendor must have used the land as their principal place of residence since becoming an owner [proposed s 162B(3)].
16. General exemptions under Chapter 2 of the *Duties Act* will also apply in respect of vendor duty.
- Generally speaking a transaction that is not chargeable with *ad valorem* duty under Chapter 2 is not chargeable with vendor duty.
17. Under the Bill, vendor duty is to apply to relevant transactions occurring on or after 1 June 2004.

**Miscellaneous amendments [Schedule 5]**

18. Amendments to the *Duties Act* in Schedule 5 include:
- making an exemption from duty granted to certain public housing tenants who purchase a home conditional on the fulfilment of a residential requirement (similar to the First Home Plus scheme) and certain other requirements [proposed s 278];
  - ensuring that duty is payable on leases with a substantial premium component [proposed s 179(5)];
  - clarifying that duty is not payable on a premium payable for a residential lease;
  - making it easier to establish that entities are linked entities for the purpose of provisions relating to acquisitions in land rich entities; and
  - making provision for the re-assessment of land rich acquisition statements if an uncompleted agreement affecting a landholder's land rich status is completed or rescinded after the acquisition of an interest in a landholder is made [proposed s 122A].

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<sup>46</sup> Discounts apply where the increase in value is greater than 12% but less than 15%: 75% discount for increases not more than 13%; 50% if not more than 14%; and 25% if not more than 15%.

**Commencement [Clause 2]**

19. The Act is to commence on assent, except certain provisions that are to commence on particular dates as set out in cl 2(2).

**Issues Considered by the Committee**

20. The Committee did not identify any issues arising under s 8A(1)(b) of the *Legislation Review Act 1989*.

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

## SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

### 9. CIVIL LIABILITY AMENDMENT (OFFENDER DAMAGES) BILL 2004

Date Introduced: 18 March 2004  
House Introduced: Legislative Assembly  
Minister Responsible: Hon John Hatzistergos MLC  
Portfolio: Justice

#### Background

1. The Committee reported on the *Civil Liability Amendment (Offender Damages) Bill 2004* in Legislation Review Digest No 5 of 2004.
2. On 26 March 2004 the Committee resolved to write to the Minister for Justice, seeking his advice as to the reasons for delaying commencement after assent and a likely timeframe for the commencement of the ensuing Act.
3. The Minister has responded to the Committee by letter dated 13 April 2004.

#### Minister's Reply

4. The Minister has advised the Committee that he does not expect any "undue delay" in commencing the ensuing Act, other than a short period of consultation between the Department of Corrective Services, the Department of Juvenile Justice, WorkCover NSW, and the Workers Compensation Commission, concerning administrative arrangements for the Departments to use the dispute and appeal mechanisms of the *WorkCover Guides for the Evaluation of Permanent Impairment*.
5. The Minister further notes that "the retrospective nature of the legislation also affects the delay in commencement" and has advised that he is confident that the ensuing Act will be commenced "within a short period of assent".

#### Committee's Response

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

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





PARLIAMENT OF NEW SOUTH WALES  
LEGISLATION REVIEW COMMITTEE

26 March 2004

Our Ref: LRC663/CP4014

Your Ref:

Hon John Hatzistergos MLC  
Minister for Justice  
Level 25  
59-61 Goulburn St  
Sydney NSW 2000

Dear Minister

**Civil Liability Amendment (Offender Damages) Bill 2004**

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 5 of 2004*.

The Committee notes that the Bill commences on day or days to be appointed by proclamation.

The Committee also notes that the Act, once commenced, is to have retrospective application, ie, from 15 January 2004 in the case of adult offenders in custody, and 18 March 2004 for child detainees. In the case of an award of damages, or settlement or consent order in respect of damages, the relevant date is the date of assent.

The Committee seeks your advice as to the reasons for delaying commencement after assent and a likely timeframe for the commencement of the ensuing Act.

Yours sincerely

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

**BARRY COLLIER MP  
CHAIRPERSON**



New South Wales

Minister for Justice

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3 U APR 2004

LEGISLATION REVIEW  
COMMITTEE

Barry Collier MP  
Chairperson, Legislation Review Committee  
Parliament House  
Macquarie Street  
SYDNEY 2000

13 APR 2004

Dear Mr Collier

**Re: *Civil Liability Amendment (Offender Damages) Bill 2004***

I refer to your letter of 26 March 2004.

I do not expect any undue delay in commencing the resultant Act after assent, other than a short period of consultation between the Department of Corrective Services, the Department of Juvenile Justice, WorkCover NSW and the Workers Compensation Commission concerning administrative arrangements for the Departments to use the dispute and appeal mechanisms of the *Workcover Guides for the Evaluation of Permanent Impairment*.

As previously advised by my office, the retrospective nature of the legislation also affects the delay in commencement.

I do not expect a significant delay to result from these processes and I am confident that the resultant Act will be commenced within a short period after assent.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'John Hatzistergos'.

(John Hatzistergos)

GPO BOX 5341, SYDNEY. NSW 2001

## 10. ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) AMENDMENT (ALCOHOL) BILL 2003

Date Introduced: 3 December 2003  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Carl Scully MP  
Portfolio: Roads

### Background

1. The Committee reported on the *Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003* in Legislation Review Digest No 1 of 2004.
2. The Committee noted that this Bill was to commence on a day or days to be appointed by proclamation and therefore wrote to the Minister seeking his advice as to why the Act is to commence on proclamation, and an indication of the likely timeframe within which the Bill will commenced after assent.

### Minister's Reply

3. In a letter dated 5 May 2004, the Minister advised the Committee that the Roads and Traffic Authority (RTA) have developed a detailed public education campaign strategy to ensure that the 400,000 drivers in NSW directly affected by this legislation are aware of the new law. Additionally, the Minister advised that this new law also requires changes to the RTA licensing database to enable recording of the new offence and court imposed penalties.
4. This Bill passed through Parliament on 17 March 2004 and commenced on 3 May 2004.

### Committee's Response

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

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



PARLIAMENT OF NEW SOUTH WALES  
LEGISLATION REVIEW COMMITTEE

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13 February 2004

Our Ref:LRC536/3786  
Your Ref:

The Hon Carl Scully MP  
Minister for Roads  
Level 36  
Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Dear Minister

***Road Transport Legislation Amendment (Alcohol) Bill 2003***

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

The Committee notes that this Bill is to commence on a day or days to be appointed by proclamation. I would appreciate it if you would advise the Committee why it might be necessary to delay the commencement of the Bill and indicate a time frame within which the Act will commence after assent.

Yours sincerely

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

**BARRY COLLIER MP  
CHAIRPERSON**

Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003

M04/1283



NEW SOUTH WALES

*Minister for Roads  
Minister for Housing  
Leader of the House*



Mr Barry Collier MP  
Chairperson  
Legislation Review Committee  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

- 5 MAY 2004

Dear Mr Collier

I refer to your letter of 13 February 2004 regarding the commencement of the Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill.

As you are aware, the Bill was tabled in Parliament in December 2003 and has now proceeded through Parliament.

To ensure that the 400,000 drivers in NSW directly affected by this legislative amendment are aware of the new law, the Roads and Traffic Authority (RTA) has developed a detailed public education campaign strategy. In addition to a letter to be sent to all drivers directly affected by this change, brochures and an associated website are also in production. Additionally, many current materials, such as the Road Users' Handbook and programs delivered by the School and Youth Section of the Road Safety Strategy Branch are being revised and amended to reflect the new law.

The new law also requires changes to the RTA licensing database to enable recording of the new offence and court imposed penalties.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Scully'.

**CARL SCULLY MP**  
Minister for Roads

## Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003	07/11/03	10369	05/03/04 30/04/04	01/04/04
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	

**SECTION B: COPIES OF CORRESPONDENCE ON REGULATIONS**

Regulation & Correspondence	Gazette ref
Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003 and Children and Young Persons (Savings and Transitional) Amendment (Out-of-Home Care) Regulation 2003 <ul style="list-style-type: none"><li>• Letter to the Minister for Community Services dated 13 February 2004</li><li>• Letter from Minister for Community Services dated 21 April 2004</li></ul>	11/07/2003 p. 7021
Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003 <ul style="list-style-type: none"><li>• Letter to the Minister for Commerce dated 30 April 2004</li><li>• Letter from the Minister for Commerce dated 5 May 2004</li></ul>	19/12/2003 p. 11335

# 1. Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003 & Children and Young Persons Savings and Transitional) Amendment (Out-of-Home Care) Regulation



PARLIAMENT OF NEW SOUTH WALES  
LEGISLATION REVIEW COMMITTEE

---

13 February 2004

Our Ref: 308  
Your Ref:

The Hon Carmel Tebbutt MLC  
Minister for Community Services  
Level 25, 9 Castlereagh Street  
SYDNEY NSW 2000

Dear Minister

**Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003**  
**Children and Young Persons (Savings and Transitional) Amendment (Out-of-Home Care) Regulation 2003)**

I refer to the Committee's correspondence with you in relation to these Regulations and, in particular, the Committee's concern with the privacy implications of clause 27 of the *Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003*.

The Committee sought the advice as to the privacy implications, if any, of this clause from the Privacy Commissioner. That advice was received on 8 January 2004. I am now forwarding that advice to you for your information.

The Acting Privacy Commissioner advised the Committee that all designated agencies that are public sector agencies must comply with the *Privacy and Personal Information Protection act 1998* when requesting medical information under clause 27. Further, from July 2004, private sector agencies (and public sector agencies) will have similar obligations under the *Health Records and Information Privacy Act 2002*.

The Acting Commissioner also advised that in some circumstances a NSW public sector organisation (eg, a designated agency) might be bound to take responsibility for the collection, use or disclosure of personal information by private sector agencies.

The Acting Commissioner advised that it might be appropriate for your Department to consider developing guidelines to assist designated agencies to



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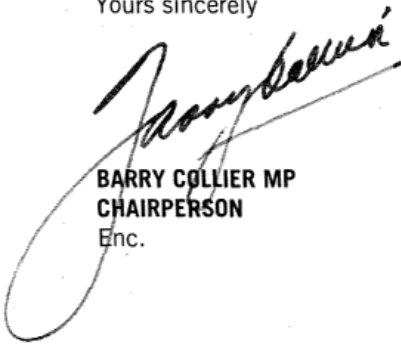
Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003  
& Children and Young Persons Savings and Transitional) Amendment (Out-of-Home Care) Regulation

identify when clause 27 may be used, for example if the existence of a communicable disease is indicated within the household.

He also pointed out that such guidelines could also ensure that designated agencies comply with their obligations under privacy legislation while discharging their statutory obligations under child protection legislation.

The Committee supports this advice and commends it to you.

Yours sincerely



**BARRY COLLIER MP**  
**CHAIRPERSON**  
Enc.

Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003  
& Children and Young Persons Savings and Transitional) Amendment (Out-of-Home Care) Regulation

**The Hon Carmel Tebbutt MLC**

Minister for Community Services  
Minister for Ageing  
Minister for Disability Services  
Minister for Youth



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22 APR 2004

LEGISLATION REVIEW  
COMMITTEE

R 04/00228

M 04/2257

21 APR 2004

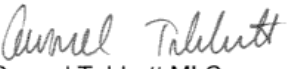
Mr B Collier, MP  
Chairperson  
Parliament of New South Wales  
Legislation Review Committee  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr <sup>Bunny</sup> Collier

I refer to your correspondence in which you included a copy of the advice provided by the Privacy Commissioner in relation to the privacy implications of clause 27 of the *Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003*.

The advice on the relationship between this regulation and the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* is noted. Guidelines will be prepared by the Department of Community Services in due course to inform staff of the need to ensure compliance with the above Acts.

Yours sincerely

  
Carmel Tebbutt MLC  
**Minister for Community Services**  
**Minister for Ageing**  
**Minister for Disability Services**  
**Minister for Youth**

## 2. Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003



PARLIAMENT OF NEW SOUTH WALES  
LEGISLATION REVIEW COMMITTEE

30 April 2004

Our Ref:577  
Your Ref:

The Hon JJ Della Bosca MLC  
Minister for Commerce  
Level 30 Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Dear Minister

### **Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003**

The Committee thanks you for your response to its letter expressing concern that clause 284(2A) is too broad and that the Regulation should set out the grounds on which WorkCover can refuse an application.

The Committee acknowledges the need for WorkCover to have the appropriate degree of discretion to refuse accreditation and for the legislation not to be overly prescriptive. However, by failing to provide any guidance whatsoever as to the kind of matters WorkCover may take into account in determining whether to refuse accreditation, the regulation leaves open the possibility that WorkCover will refuse accreditation on irrelevant or inappropriate grounds.

In the Committee's view, the Regulation, as currently drafted, also makes applicants for accreditation unduly dependent on an insufficiently defined administrative power.

Informing applicants of the grounds on which their application for accreditation has been refused is an essential part of procedural fairness. However, in the Committee's view, it is not an alternative to prescribing grounds for refusal.

The Committee remains of the view that the legislation should, at the very least, set out a non-exhaustive list of grounds on which WorkCover may refuse an application for accreditation. The Regulation should be amended accordingly.

The Committee will be drawing the special attention of Parliament to these issues in its next *Legislation Review Digest*.

Yours sincerely



**BARRY COLLIER MP**  
**CHAIRPERSON**

Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003



Special Minister of State  
Minister for Commerce  
Minister for Industrial Relations  
Assistant Treasurer and  
Minister for the Central Coast



Ref: WC00612/04

Mr Barry Collier MP  
Chairperson  
Legislation Review Committee  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

05 MAY 2004

Dear Mr Collier

Thank you for your letter of 30 April 2004 regarding the *Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003* (the Amendment Regulation).

I have carefully considered your concerns but I adhere to the position expressed in my letter of 16 April 2004. I do not believe further amendments are appropriate.

While the ICAC's report has not been released, it is highly likely that it will recommend the introduction of a number of corruption resistant measures. I believe that the Amending Regulation is appropriate in these circumstances.

I would also like to assure the Committee that the Amendment Regulation is not intended to circumvent the laws of procedural fairness or other administrative law principles. WorkCover has advised that it understands its power to extend only to the refusal of an applicant's accreditation for any *relevant* reason.

The Government is committed to workplace safety, and I consider that the Amendment Regulation, in the light of the evidence before Commission, provides a necessary level of protection to ensure the integrity of the accreditation system.

Thank you for your valuable comments on this issue.

Yours sincerely

John Della Bosca MLC

Level 30 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000, Australia  
Tel: (02) 9228-4777 Fax: (02) 9228-4392 E-Mail: office@smos.nsw.gov.au



# Appendix 1: Index of Bills Reported on in 2004

	Digest Number
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	2
Appropriation (Budget Variations) Bill 2004	5
Botany Bay National Park (Helicopter Base Relocation) Bill 2004	5
Children (Detention Centres) Amendment Bill 2004	4
Civil Liability Amendment (Offender Damages) Bill 2004	5,7
Community Protection (Closure of Illegal Brothels) Bill 2003*	1
Constitutional Amendment (Pledge of Loyalty) Bill 2004*	7
Courts Legislation Amendment Bill 2004	7
Crimes Amendment (Child Neglect) Bill 2004	7
Crimes Legislation Amendment Bill 2004	3
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003	1
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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
Fisheries Management Amendment Bill 2004	6
Food Legislation Amendment Bill 2004	3
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	2
Greyhound and Harness Racing Administration Bill 2004	7
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	6
Health Legislation Amendment Bill 2004	6
Legal Profession Legislation Amendment (Advertising) Bill 2003	1
Liquor Amendment (Parliament House) Bill 2004	6
Local Government Amendment (Council and Employee Security) Bill 2004	5
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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
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	1
Parliamentary Electorates and Elections Amendment (Prohibition on Voting by Criminals) Bill 2004*	5

	Digest Number
Partnership Amendment (Venture Capital Funds) Bill 2004	3
Police Amendment (Crime Reduction and Reporting) Bill 2004	3
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Stock Diseases Amendment (Artificial Breeding) Bill 2004	6
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Superannuation Administration Amendment Bill 2003	1
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Thoroughbred Racing Legislation Amendment Bill 2004	4,6
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	6
Wool, Hide and Skin Dealers Bill 2004	2



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

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Bail Amendment (Firearms and Property Offences) Bill 2003	Attorney General	28/11/03	12/01/04	7	1
Catchment Management Authorities Bill 2003; Natural Resources Bill 2003 and Native Vegetation Bill 2003	Minister for Infrastructure, Planning and Natural Resources	18/11/03	19/03/04	6	5
Child Protection Legislation Amendment Bill 2003	Minister for Community Services	12/09/03	07/11/03	2,5	
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
Coroners Amendment Bill 2003	Attorney General	07/11/03	27/11/03	5,7	
Courts Legislation Amendment Bill 2003	Attorney General	07/11/03	25/11/03	5,7	
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			7
Gaming Machines Amendment (Miscellaneous) Bill 2003	Minister for Gaming and Racing	10/10/03	26/11/03	3,7	
Greyhound and Harness Racing Administration Bill 2004	Minister for Gaming and Racing	11/05/04			7
Independent Commission Against Corruption Amendment (Ethics Committee) Bill 2003	Premier	07/11/03	27/11/03	5,7	
Legal Profession Legislation Amendment (Advertising) Bill 2003	Attorney General	13/02/04	23/03/04		1,5
Local Government Amendment Bill 2003	Minister for Local Government	28/11/03		7	
Lord Howe Island Amendment Bill 2003	Minister for the Environment	07/11/03	28/11/03	5	1

<b>Bill</b>	<b>Minister/Member</b>	<b>Letter sent</b>	<b>Reply</b>	<b>Digests 2003</b>	<b>Digest 2004</b>
Mining Amendment (Miscellaneous Provisions) Bill 2004	Minister for Mineral Resources	30/04/04			6
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
Police Legislation Amendment (Civil Liability) Bill 2003	Minister for Police	18/11/03	24/12/03	6	1
Powers of Attorney Bill 2003	Attorney General	12/09/03	07/10/03	2,4	
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 (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	Minister for Roads	13/02/04	05/05/04		1,7
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			6
Stock Diseases Amendment (False Information) Bill 2004	Minister for Agriculture and Fisheries	16/03/04			4
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
Sydney Water Amendment (Water Restrictions) Bill 2003	Minister for Energy and Utilities	24/10/03	27/10/03	4,5	
Thoroughbred Racing Legislation Amendment Bill 2004	Minister for Gaming Racing	16/03/04	07/04/04		4,6
Transport Administration Amendment (Rail Agencies) Bill 2003	Minister for Transport Services	18/11/03		6	
Transport Legislation Amendment (Safety and Reliability) Bill 2003	Minister for Transport Services	07/11/03	21/11/03	5,7	
Veterinary Practice Bill 2003	Minister for Agriculture and Fisheries	07/11/03	03/11/03	5	1

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<b>Bill</b>	<b>Minister/Member</b>	<b>Letter sent</b>	<b>Reply</b>	<b>Digests 2003</b>	<b>Digest 2004</b>
Workers Compensation Amendment (Insurance Reforms) Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1

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

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	N				
Botany Bay National Park (Helicopter Base Relocation) Bill 2004				N	
Civil Liability Amendment (Offender Damages) Bill 2004	R			C	
Community Protection (Closure of Illegal Brothels) Bill 2003	R				
Courts Legislation Amendment Bill 2004				N	
Crimes Amendment (Child Neglect) Bill 2004				N	
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003				N	
Education Amendment (Non-Government Schools Registration) Bill 2004				N	
Electricity (Consumer Safety) Bill 2003	N,R				C
Fair Trading Amendment Bill 2004				N	
Filming Approval Bill 2004				C	
Fisheries Management Amendment Bill 2004				N	
Food Legislation Amendment Bill 2004				N	
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	N			N	
Greyhound and Harness Racing Administration Bill 2004			R,C	N	
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	N		R		

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Health Legislation Amendment Bill 2004	N			N	
Legal Profession Legislation Amendment (Advertising) Bill 2003	C, R		C, R	N	
Local Government Amendment (Council and Employee Security) Bill 2004	N			N	
Mining Amendment (Miscellaneous Provisions) Bill 2004	C, 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	
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004				C	
Public Lotteries Legislation Amendment Bill 2004				N	
Regional Development Bill 2004				N	
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	N,C				
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003				C	
Snowy Mountains Cloud Seeding Trial Bill 2004				N	
Stock Diseases Amendment (Artificial Breeding) Bill 2004	C,R			N	N
Stock Diseases Amendment (False Information) Bill 2004	C			C	
Strata Schemes Management Amendment Bill 2003				N,C	
Superannuation Administration Amendment Bill 2003	N			C	
Thoroughbred Racing Legislation Amendment Bill 2004				C	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	R			N	
Wool, Hide and Skin Dealers Bill 2004				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

<b>Regulation</b>	<b>Minister/Correspondent</b>	<b>Letter sent</b>	<b>Reply</b>	<b>Digest Number</b>
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
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	6
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
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	27/11/03	1