PARLIAMENT OF NEW SOUTH WALES

# Legislation Review Committee

## LEGISLATION REVIEW DIGEST

No 16 of 2010

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# FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

(1) The functions of the Committee with respect to Bills are:
   (a) to consider any Bill introduced into Parliament, and
   (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
      (i) trespasses unduly on personal rights and liberties, or
      (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
      (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
      (iv) inappropriately delegates legislative powers, or
      (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny

(2) A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations:

(1) The functions of the Committee with respect to regulations are:
   (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
   (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
      (i) that the regulation trespasses unduly on personal rights and liberties,
      (ii) that the regulation may have an adverse impact on the business community,
      (iii) that the regulation may not have been within the general objects of the legislation under which it was made,
      (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,
      (v) that the objective of the regulation could have been achieved by alternative and more effective means,
      (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
      (vii) that the form or intention of the regulation calls for elucidation, or
      (viii) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
   (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

(2) Further functions of the Committee are:
   (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
   (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

(3) The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

# GUIDE TO THE *LEGISLATION REVIEW DIGEST*

## Part One – Bills

### Section A: Comment on Bills

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

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

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

## Part Two – Regulations

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

### Regulations for the special attention of Parliament

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

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

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

### Copies of Correspondence on Regulations

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

## Appendix 1: Index of Bills Reported on in 2010

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

## Appendix 2: Index of Ministerial Correspondence on Bills

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

## Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2010

This table specifies the action the Committee has taken with respect to Bills that received comment in 2010 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

## Appendix 4: Index of correspondence on Regulations reported on

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

# SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

## 1. Children (Education and Care Services National Law Application) Bill 2010

**Issue: Commencement by proclamation – Clause 2 (1) and (2) – Provide the executive with unfettered control over the commencement of an Act:**

**22. Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power.**

**23. The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the Legislation Review Act 1987.**

## 2. Dust Diseases Tribunal Amendment (Damages-Deceased's Dependants) Bill 2010*

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

## 3. Food Amendment Bill 2010

**Issue: Strict Liability – Schedule 1 [3] - proposed section 106N (4) – Requirement for certain standard food outlets to display nutritional information – Amendment of *Food Act 2003*:**

**27. Proposed section 106N (4) provides for a strict liability offence. The imposition of strict liability may give rise to concern as the prosecuting authority is not required to prove that the individual intended to commit the offence, and may be seen as contrary to the right to the presumption of innocence. However, in some circumstances, the imposition of strict liability may be warranted after considering the community impact of the offence, the availability of defences and safeguards, and the type of penalty that may be imposed.**

**28. The Committee notes that terms of imprisonment are generally considered inappropriate in relation to strict liability offences.**

**29. However, the imposition of strict liability may be acceptable in circumstances where it is designed to ensure compliance to protect the public interest and after consideration of the type of penalties that may be imposed. The Committee further notes that proposed subsection (3) still requires the prosecuting authority to prove a person has intentionally contravened subsection (2). Therefore, under proposed subsection (5), if the court is not satisfied that the person has committed the offence intentionally but is satisfied that the person has committed an offence against subsection (4), that the court may find the person guilty of an offence against subsection (4) which carries the lesser penalty units.**

**30. The Committee concludes that, given the lesser penalty units that may be imposed which are limited to monetary ones with no terms of imprisonment, as well as recognising the public benefit of ensuring compliance to achieve the objective of the Bill, personal rights and liberties are not unduly trespassed by the inclusion of strict liability under the proposed section 106N (4).**

## 4. Industrial Relations Amendment (Non-operative Awards) Bill 2010

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

## 5. Library Amendment (Arrangement For Mutual Provision Of Library Services) Bill 2010

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

## 6. Local Government Amendment (Environmental Upgrade Agreements) Bill 2010

**Issue: Commencement by Proclamation**

**9. The Committee appreciates that various administrative arrangements may need to take place before this Bill can commence operation, including the drafting of appropriate guidelines. Given that the Committee has not identified any other issue in this Bill that may unduly trespass on personal rights and liberties, the Committee does not regard the Minister's discretion to commence the Act by proclamation to be an inappropriate delegation of power in this instance.**

## 7. National Park Estate (South-Western Cypress Reservations) Bill 2010

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

## 8. Planning Appeals Legislation Amendment Bill 2010

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

**24. Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power.**

**25. The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the Legislation Review Act 1987.**

## 9. Public Holidays Bill 2010; Shop Trading Amendment Bill 2010

**Issue: Denial of Compensation**

**21. The Committee acknowledges the right of Government to be exempt from paying compensation to affected retailers for declaring public holidays and notes the public policy grounds to restrict retail trading on certain public holidays. However, the Committee does not support denial of compensation in circumstances where the Government, or any statutory agency acting on legislative authority, has engaged in conduct that is 'unconscionable, misleading or deceptive' or which makes statements that are 'negligent, false or misleading'.**

## 10. Roads Amendment (Private Railways) Bill 2010

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

## 11. State Emergency and Rescue Management Amendment Bill 2010

**Issue: Commencement by Proclamation**

**9. Considering that the amendments foreshadowed by this Bill are largely minor in nature, and given that the Committee has not identified any other issue in this Bill that may unduly trespass on personal rights and liberties, the Committee does not regard the Minister's discretion to commence the Act by proclamation to be an inappropriate delegation of power in this instance.**

## 12. Superannuation Administration Authority Corporatisation Amendment Bill 2010

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

## 13. Water Management Amendment Bill 2010

**Issue: Strict Liability – Amendments to *Water Management Act 2000* - Schedule 2 [14] – proposed section 60B (2) and (3); Schedule 2 [15] – proposed section 60C (2) and (3); Schedule 2 [51] – proposed section 91A (4) and (5); Schedule 2 [52] – proposed section 91B (5); and Schedule 2 [54] – proposed section 91G:**

**29. The Committee, therefore, notes the above numerous clauses in the Bill which provide for strict liability offences. The imposition of strict liability may give rise to concern as the prosecuting authority is not required to prove that the defendant intended to commit the offence, and may be seen as contrary to the right to the presumption of innocence. However, in some circumstances, the imposition of strict liability may be warranted after considering the community impact of the offence, the availability of defences and safeguards, and the type of penalty that may be imposed. Terms of imprisonment are generally considered inappropriate in relation to strict liability offences.**

**30. The Committee is of the view that where the above proposed strict liability offences have available defences and their penalties do not attract terms of imprisonment, along with the consideration of the community impact of the offences and compliance with the Bill's objective, the above proposed provisions may not be unduly trespassing on individual rights and liberties.**

**31. Strict liability also arises in proposed section 60C (2): A person who takes water from a water source to which this Part applies otherwise than in accordance with the water allocation for the access licence by which the taking of water from that water source is authorised is guilty of an offence. Tier 2 penalty.**

**32. Strict liability is again contained in proposed section 60C (3): If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (2), and the water supply work is nominated in relation to an access licence held by some other person, both persons are taken to have contravened that subsection.**

**33. However, there does not appear to be the availability of any corresponding defences for the strict liability offences contained in the above proposed section 60C (2) and (3). Accordingly, the Committee refers to Parliament to consider whether the proposed section 60C (2) and (3) of Schedule 2 [15] of the Bill may unduly trespass on the rights and liberties of those charged with such strict liability offences.**

**Issue: Removal of basic landholder right as a defence – Amendment to *Water Management Act 2000* – Schedule 2 [57] – proposed section 91M (2) – Section 91M General defence:**

**36. However, proposed section 91M (2) will remove the currently available general defence of "the water was taken pursuant to a basic landholder right" in relation to the doing of anything without an approval, to a prosecution under the Division 1A offences (other than for defences available for offences under the new sections 91A (4) and 91B (5)).**

**37. Therefore, the Committee refers this to Parliament for consideration as to whether the proposed section 91M (2) of Schedule 2 [57] may constitute an undue trespass on the accused person's rights and liberties.**

**Issue: Excludes appeal – Amendments to *Water Management Act 2000* - Schedule 1 [6] – proposed section 368 (2)(c) and Schedule 2 [94] – proposed section 368 (2)(a1) - Section 368 Appeals to Land and Environment Court:**

**41. The Committee notes the importance of judicial review for protecting individual rights and in upholding the rule of law.**

**42. The Committee is also of the view that the above proposed sections appear broad and may have the potential to deny natural justice by removing the opportunity for review of a decision. Accordingly, the Committee asks Parliament to consider whether individual rights or liberties may be unduly dependent on non-reviewable decisions by removing appeals to the Land and Environment Court against decisions proposed by the new section 368 (2)(c) of Schedule 1 [6] and new section 368 (2)(a1) of Schedule 2 [94] of the Bill.**

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

**44. Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power.**

**45. The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the Legislation Review Act 1987.**

# Part One – Bills

## SECTION A: COMMENT ON BILLS

# 1. CHILDREN (EDUCATION AND CARE SERVICES NATIONAL LAW APPLICATION) BILL 2010

| | |
|---|---|
| Date Introduced: | 12 November 2010 |
| House Introduced: | Legislative Assembly |
| Minister Responsible: | Hon Linda Burney MP |
| Portfolio: | Community Services |

## Purpose and Description

1. This Bill applies as a law of this State a national law relating to the regulation of education and care services for children.

2. It provides for the application in New South Wales of the *Education and Care Services National Law*. It provides the legislative foundation for nationally consistent standards to ensure quality education and care is provided by long day care, family day care, preschool and outside school hours care services. The national standards were agreed by the Council of Australian Governments in December 2009.

3. The objectives of the national law include: ensuring the safety, health and wellbeing of children and providing optimal conditions during their educational and developmental journey; promoting continuous improvement in the quality of education and care services for children and improving access to information about the quality of those services; and establishing a national regulatory framework.

4. The national law provides for the approval of providers and services, and the certification of the supervisors of services. Provider approvals and supervisor certificates will be issued by a regulatory authority in a particular State or Territory, but the approvals and certificates will be portable. This will mean that a person will not need to obtain a provider approval or supervisor certificate in more than one jurisdiction.

5. To reduce unnecessary regulatory burden on service providers, the national law includes provisions to integrate regulation where a provider operates a service that is subject to regulation under State legislation from the same premises as a service that is regulated under the national law.

6. The national law will also provide for the quality of services to be assessed and for services to be given quality ratings that are published. Quality assessment will generally be carried out by the regulatory authority of the State or Territory in which the service is located.

7. The national law contains a range of mechanisms for the review of decisions with regard to matters such as the approval of providers and services, the certification of supervisors, the quality rating of services and the issue of directions and notices. These mechanisms include show-cause processes, internal and external review.

8. The national law also sets out the financial management duties of the Australian Children's Education and Care Quality Authority and requires the authority to publish an annual report, including audited financial statements. The Australian Children's Education and Care Quality Authority's performance will be subject to monitoring and review by the ministerial council and also by an Education and Care Services Ombudsman.

9. The national law will provide for the exchange of information between regulatory authorities and between those authorities and the Australian Children's Education and Care Quality Authority. It will provide for regulatory authorities and the Australian Children's Education and Care Quality Authority to publish information such as registers of approved providers, approved services and certified supervisors, and information about compliance action.

10. A clear and consistent legal framework will be required in relation to the disclosure of information applicable to all the regulatory authorities and the Australian Children's Education and Care Quality Authority. Therefore, the national law provides that the Commonwealth privacy and freedom of information legislation applies to all regulatory authorities and to the Australian Children's Education and Care Quality Authority in administering that law.

## Background

11. The main element of the Council of Australian Governments' agreement was the establishment of a jointly governed, unified national quality framework for early childhood education and care and school-age care in order to replace existing separate licensing and quality assurance processes administered by States and Territories and the Commonwealth.

12. Australian Governments have agreed that the national quality framework will become operational from 1 January 2012 and will include a national system of provider and service approvals and supervisor certificates; the staged introduction of improved staff-to-child ratios and staff qualifications; the introduction of a quality assessment and rating system based on a national quality standard; and the establishment of a new national body to oversee the implementation of the framework.

13. The national law will not apply to a small number of existing licensed children's services, such as home-based care, occasional care and mobile services, which will continue to be regulated under State legislation. These service types may be included under the national law at a later time. A review of the national law planned for 2014 will consider this and other questions about how the law is working to achieve the goals of the Council of Australian Governments' agreement.

14. The national law also includes a number of offences and provides for a range of compliance and enforcement tools, such as compliance notices, enforceable undertakings and prosecution.

15. The national law will establish a national body, the Australian Children's Education and Care Quality Authority [ACECQA], which will be located in New South Wales. The functions of the Australian Children's Education and Care Quality Authority will include: guiding the implementation and administration of the regulatory framework, promoting national consistency in its application and reporting to the Ministerial Council for Education, Early Childhood Development and Youth Affairs. The Australian Children's Education and Care Quality Authority will be governed by a board that will be appointed by the ministerial council following nominations from Commonwealth, State and Territory Ministers. The Australian Children's Education and Care Quality Authority will be governed by a board that will be appointed by the ministerial council following nominations from Commonwealth, State and Territory Ministers.

16. The national law will also set out the role of the regulatory authorities. This includes: approving providers and services, certifying supervisors, assessing and rating the quality of services, and monitoring and enforcing compliance with the law.

17. This Bill provides that the regulatory authority in New South Wales will be the Department of Human Services, which is the currently responsible for regulating children's services in New South Wales.

18. The Agreement in Principle speech stated that:

> The national law allows the ministerial council to make regulations for the purposes of the law. Regulations to support the national law are currently being developed in consultation with the sector. These regulations will provide further detail on the national quality standard, the assessment and rating system, staff-to-child ratios and fees associated with the national quality framework. It is expected that a further bill will be considered by Parliament next year that will address any necessary amendments to the *Children and Young Persons (Care and Protection) Act 1998* prior to the commencement of the national quality framework from January 2012.

## The Bill

19. The object of this Bill is to adopt the Education and Care Services National Law (the ***National Law***) hosted by the Victorian Parliament and set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria. The National Law gives effect to the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care endorsed by the Council of Australian Governments in December 2009. This included a commitment to establish a jointly governed, uniform National Quality Framework and facilitates the introduction, through the national regulations made under the National Law, of a new National Quality Standard.

> The National Law:
>
> (a) provides a national approach to regulation, assessment and quality improvement for early childhood education and care and outside school hours care, and
>
> (b) replaces existing separate licensing and quality assurance processes for pre-school, family day care and outside school hours care, and

(c) establishes a public rating system for education and care services.

Before the National Law commences it will be necessary for New South Wales, and each of the other States and Territories participating in the national licensing scheme, to enact legislation providing for consequential amendments of other Acts consequent on the adoption of the National Law.

20. **Outline of provisions**

**Part 1 Preliminary:**

**Clause 1** sets out the name (also called the short title) of the proposed Act. **Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation. **Clause 3** defines certain words and expressions used in the proposed Act. Specifically, clause 3 (1) provides that the National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria, as applied in New South Wales, is to be known as the *Children (Education and Care Services) National Law (NSW).* Clause 3 (2) provides that if a term is used in the proposed Act and in the National Law, the term has the same meaning in the proposed Act as it has in the National Law.

**Part 2 Adoption of National Law:**

**Clause 4** provides that the National Law, as in force from time to time, applies as a law of New South Wales (clause 4 (a)). Each jurisdiction that adopts the National Law will have an equivalent provision in its adopting Act so that the National Law will be the law of each jurisdiction and is not only the law of Victoria.

Clause 4 (b) provides that the National Law, as applying in New South Wales, may be referred to by the name *Children (Education and Care Services) National Law (NSW).*

Clause 4 (c) provides that the National Law, as applying in New South Wales, is part of the proposed Act. This is to ensure that the text of the National Law has effect for all purposes in New South Wales as an ordinary Act of Parliament. The effect of the proposed provision is that a reference in legislation to “an Act” or “any other Act” will include the National Law as applying in New South Wales.

**Clause 5** provides that a number of Acts that generally apply to New South Wales legislation do not apply to the *Children (Education and Care Services) National Law (NSW)* or to instruments, including regulations, made under that Law. In particular, Acts dealing with the interpretation of legislation, freedom of information and privacy do not apply. Instead, provisions have been included in the National Law to deal with each of these matters, ensuring that the same law applies in relation to each jurisdiction that adopts the National Law. Acts dealing with financial matters, the role of the Ombudsman and the employment of persons in the public sector will also not apply to the *Children (Education and Care Services) National Law (NSW)* or instruments made under that Law except to the extent that the Law and those instruments apply to the Regulatory Authority and the employees, decisions, actions and records of the Regulatory Authority.

**Clause 6** clarifies that the *State Records Act 1998* applies to the Regulatory Authority for this jurisdiction and its records.

**Clause 7** provides for definitions of generic terms used in the *Children (Education and Care Services) National Law (NSW)*, including the terms ***child protection law, superior court, de facto relationship*** and ***registered teacher***.

**Clause 8** provides for the declaration of the District Court as a relevant tribunal or court for the purposes of section 181 of the *Children (Education and Care Services) National Law (NSW)* and the declaration of the Administrative Decisions Tribunal as a relevant tribunal or court for the purposes of Part 8 of the Law.

**Clause 9** provides that the Director-General of the Department of Human Services is the Regulatory Authority for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW).*

**Clause 10** provides:

> (a) that certain legislation of this jurisdiction (in particular, Chapters 12 and 12A of the *Children and Young Persons (Care and Protection) Act 1998*) is a children's services law for the purposes of the *Children (Education and Care Services) National Law (NSW),* and
>
> (b) that the Director-General of the Department of Human Services is the children's services regulator for the purposes of the *Children (Education and Care Services) National Law (NSW).*

**Clause 11** provides that the *Education Act 1990,* the *Institute of Teachers Act 2004* and the *Teaching Service Act 1980* are all education laws for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

**Clause 12** provides that certain legislation of this jurisdiction (in particular, Chapters 12 and 12A of the *Children and Young Persons (Care and Protection) Act 1998*) is a former education and care services law for the purposes of the *Children (Education and Care Services) National Law (NSW).*

**Clause 13** provides that the *Fines Act 1996* and the regulations made under that Act are an infringements law for the purposes of the *Children (Education and Care Services) National Law (NSW).*

**Clause 14** provides that the *Public Sector Employment and Management Act 2002* and the regulations made under that Act are a public sector law for the purposes of the *Children (Education and Care Services) National Law (NSW).*

**Clause 15** provides that the *Commission for Children and Young People Act 1998* and the regulations made under that Act are a working with children law for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

**Clause 16** provides that a penalty specified at the end of a provision of the National Law indicates that a contravention of the provision is punishable by a penalty of not more than the specified penalty.

**Clause 17** provides for the definition of certain terms used in section 305 of the National Law as they apply in New South Wales. The terms are used in transitional provisions included in the National Law.

**Part 3 Miscellaneous:**

**Clause 18** provides that an employee of the Australian Children's Education and Care Quality Authority is not a State public sector employee for the purposes of the *Industrial Relations (Commonwealth Powers) Act 2009*.

**Clause 19** is the general regulation-making power.

**Clause 20** provides that the regulations may contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

**Clause 21** provides for the proposed Act to be reviewed as soon as possible after the period of 5 years from the date of assent to the Act.

**Note on Education and Care Services National Law:**

A copy of the National Law is set out in the Note to the proposed Act. The explanatory memorandum for the National Law, as set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria, is available at www.legislation.vic.gov.au.

# Issues Considered by the Committee

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

**Issue: Commencement by proclamation – Clause 2 (1) and (2) – Provide the executive with unfettered control over the commencement of an Act:**

21. The Committee notes that under clause 2 (1), the proposed Act is to commence on a day or days to be appointed by proclamation. Clause (2) provides that different days may be appointed under subsection (1) for the commencement of different provisions of the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria. This may delegate to the government the power to commence the proposed Act on whatever day it chooses or not at all. However, the Committee understands from the Agreement in Principle speech that:

> "Australian Governments have agreed that the national quality framework will become operational from 1 January 2012 and will include a national system of provider and service approvals and supervisor certificates; the staged introduction of improved staff-to-child ratios and staff qualifications; the introduction of a quality assessment and rating system based on a national quality standard; and the establishment of a new national body to oversee the implementation of the framework".

22. **Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power.**

23. **The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the Legislation Review Act 1987.**

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

# 2. DUST DISEASES TRIBUNAL AMENDMENT (DAMAGES-DECEASED'S DEPENDANTS) BILL 2010*

| | |
|---|---|
| Date Introduced: | 11 November 2010 |
| House Introduced: | Legislative Council |
| Minister Responsible: | Mr David Shoebridge MLC |
| Portfolio: | The Greens |

## Purpose and Description

1. This Bill amends the *Dust Diseases Tribunal Act 1989* to provide that damages for a compensation to relatives claim in respect of the death of a person from a dust-related condition cannot be reduced to take into account the claimant's entitlement to participate in the distribution of the deceased person's estate.

2. In *BI (Contracting) Pty Ltd v Strikwerda* [2005] NSWCA 288, the New South Wales Court of Appeal held that the damages to be awarded to a widow in a compensation to relatives claim brought by her in the Dust Diseases Tribunal in respect of the death of her husband from a dust-related condition, was to be reduced to take into account the fact that the estate of her husband had already been enlarged by a successful claim for damages in relation to the same condition.

3. The purpose of this Bill is to prevent the situation that arose in *Bi (Contracting) Pty Ltd v Eileen Sylvia Strikwerda and Anor*.

4. The Bill will insert new section 12E into the *Dust Diseases Tribunal Act*. The main provision in new section 12E is subsection (2):

> The amount of damages to be awarded for pecuniary loss in proceedings to which this section applies is not to be reduced so as to take into account the amount of general damages that has been paid or is payable in relation to the deceased person's claim.

5. Schedule 1 [2] inserts part 7 of new section 16, which provides transitional arrangements where it will apply the new section 12E prospectively. It will apply to all matters that have not been finally determined, including pending proceedings but it will not apply to any prior determinations.

### Background

6. The Bill has the support of Asbestos Diseases Foundation of Australia and the Australian Manufacturing Workers Union [AMWU], as well as the support of many victims of dust diseases and their families. It also mirrors similar legislation that was introduced recently in Western Australia, South Australia and Victoria.

7. The Attorney General has referred the issue raised in the *Strickwerda* case to the Law Reform Commission with that referral applying more broadly than just to dust diseases claims.

## The Bill

8. The object of this Bill is to amend the *Dust Diseases Tribunal Act 1989* to provide that the damages payable in relation to a compensation to relatives claim for the death of a person from a dust-related condition cannot be reduced to take into account that the claimant has an entitlement to participate in the distribution of the deceased person's estate in circumstances where the estate has been enlarged by a successful claim for the same dust-related condition.

9. **Outline of provisions**

**Clause 1** sets out the name (also called the short title) of the proposed Act. **Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Schedule 1 Amendment of *Dust Diseases Tribunal Act 1989* No 63**

**Schedule 1 [1]** makes the amendment to the *Dust Diseases Tribunal Act 1989* described in the Overview above.

**Schedule 1 [2]** inserts a savings and transitional provision in the Act.

# Issues Considered by the Committee

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

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

# 3. FOOD AMENDMENT BILL 2010

| | |
|---|---|
| Date Introduced: | 10 November 2010 |
| House Introduced: | Legislative Assembly |
| Minister Responsible: | Hon Steve Whan MP |
| Portfolio: | Primary Industries |

## Purpose and Description

1. This Bill amends the *Food Act 2003* with respect to the display of nutritional information by certain food businesses; and for other purposes.

2. The Bill introduces the concepts of a standard food item and a standard food outlet. It defines a standard food item as an item of ready-to-eat food that is sold in servings that are standardised for portion and content and, which is either listed or shown on a menu or displayed for sale with a price or identifying tag or label. It also makes it clear that a standard food item may include a combination of such items. For example, a "meal deal" of a burger, chips and a drink displayed on a poster could be a single standard food item.

3. It clarifies that standard food items of the same type shown or displayed for sale in different sizes or portions are separate standard food items. For example, a small container of fried chips listed for sale at an outlet is a separate standard food item from a large container of fried chips also listed for sale at that outlet.

4. The Bill makes it clear that a standard food item is not an item of food that arrives at the retail premises in the packaging in which it is sold. For example, a can of soft drink or a packet of potato crisps are not standard food items.

5. A standard food outlet is defined as a food business premises at which standard food items are sold by retail and where two criteria are met. First, the business must sell standard food items by retail at more than one premises or while operating in a chain of food businesses that sell standard food items. Second, at least one of the standard food items that are sold at the premises must be standardised for portion and content so that it is substantially the same as standard food items of that type that are sold at the other premises or sold by the other food businesses in the chain.

6. Two sets of requirements are provided. The first set of requirements relates to standard food outlets of a class prescribed in the regulations and the second set of requirements relates to standard food outlets that are not prescribed. Proprietors of standard food outlets of a class prescribed in the regulations are required to ensure that the nutritional information prescribed in the regulations is displayed for each standard food item. This information must be displayed in the manner and at the locations prescribed by the regulations. Failing intentionally to meet these requirements will be an offence which carries a maximum penalty of 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation. Failing to meet these requirements without a proven intention will also be an offence

which carries a lower penalty of 100 penalty units in the case of an individual and 500 penalty units in the case of a corporation.

7. The Bill amends the Food Regulation 2010 to prescribe the classes of standard food outlets that are required to meet these requirements. These requirements will apply to a standard food outlet that is either an outlet of a food business that sells standard food items at 20 or more locations in New South Wales or at 50 or more locations in Australia, or an outlet of a food business that is operating in a chain of food businesses that sell standard food items if together those businesses sell standard food items at 20 or more locations in New South Wales or 50 or more locations in Australia.

8. It amends the regulation to prescribe the nutrition information to be displayed as the average energy content of each standard food item for sale, and a statement, by way of reference, as to the average adult daily energy intake. Both these figures are to be expressed in kilojoules.

9. The regulation amendments prescribe the locations for the display of the nutritional information and the manner in which the information is to be displayed. Proprietors of standard food outlets that are not of a class prescribed in the regulations are not required to display prescribed nutritional information.

10. The regulation amendments prescribe the information as the energy content of the food. The Bill establishes an offence of failing to meet these requirements which carries a maximum penalty of 100 penalty units in the case of an individual and 500 penalty units in the case of a corporation.

11. The Bill also enables regulations to be made which provide exemptions for convenience stores, service stations, businesses that principally provide catering services, sit-down restaurants with no takeaway services and retail food sold in health care facilities, from having to comply with the requirement to display prescribed nutritional information.

12. The Bill includes miscellaneous amendments to the *Food Act 2003*. Firstly, it inserts a new section to make it clear that the powers of authorised officers and the duties of a food safety auditor may be exercised concurrently. At the Food Authority, a food safety auditor may also be an authorised officer under the Food Act.

13. Secondly, it makes an offence of threatening, intimidating or assaulting a food safety auditor, which carries a maximum penalty of 500 penalty units. Section 43 of the Act already provides that a person must not threaten, intimidate or assault an authorised officer but currently there is no equivalent offence in relation to food safety auditors.

14. Thirdly, section 119 will be amended to extend the time limit in which proceedings may be instituted under the Food Act or regulations to within two years after the date on which the offence is alleged to have been committed. Currently, proceedings for a food sample offence may be instituted only within six months of obtaining the food sample and, for other offences, within 12 months of the date when the offence is alleged to have been committed.

15. Finally, the Bill amends section 128 to remove a clause that prevents the prosecution relying on analysis as evidence unless the analysis has been carried out by an approved laboratory or under the supervision of an approved analyst.

16. The Agreement in Principle speech explained that this current restriction applies only to the prosecution and not the defence. The investigation of an outbreak or illness will usually involve the analysis of a range of specimens and there may have been several tests carried out by non-approved laboratories in isolating a cause. Some laboratories also specialise in a specific type of testing method and may be one of only a few laboratories, or even the only laboratory, that can do this testing. Accordingly, the Agreement in Principle speech explained that: "It is not feasible or reasonable to approve all such laboratories just in case one of their tests is required as evidence. The analyses carried out by a non-approved laboratory might otherwise be admissible as prosecution evidence subject to the established rules of evidence, except that the effect of section 128 (3) is to prohibit their admission outright. Removing this clause will not deter the Food Authority from using approved laboratories wherever possible. There is a strong incentive to do so as a certificate of analysis obtained from an approved laboratory or analyst may be tendered into evidence without the need to call witnesses".

## Background

17. Obesity and related chronic illness have been estimated to cost around $19 billion per annum in New South Wales. There are many contributing factors but one of the factors is the increase in the consumption of energy-dense, nutrient-poor foods. The food regulatory system can help to address these chronic health problems by giving consumers the information they need to make healthy food choices.

18. Earlier in 2010, the Government's submission to the Blewett Review of Food Labelling Law and Policy articulated its intention to pursue initiatives aimed at reducing adverse health outcomes related to the over-consumption of fast foods, fats and salt. It identified the need to prevent confusion and to promote consistency by prescribing the labelling format and requirements that businesses must use if they provide nutrition information.

19. The Agreement in Principle speech outlined that:

> This Bill includes labelling provisions that build on the initiative shown by industry to disclose nutrition information. They have been developed in close consultation with key consumer advocates and sections of the industry... The consultation process to consider and develop this initiative commenced with the Premier's Fast Food Forum in August and continued through the Quick Service Restaurant Labelling Reference Group that was formed following the forum.…There will be opportunity for further consultation with industry and community stakeholders during the implementation of this nutrition disclosure initiative. The operation and efficacy of the scheme will also be reviewed 12 months after implementation and this will include consideration of whether it is appropriate to extend disclosure requirements to ingredients such as salt and fat. This will include a formal evaluation based on data collected during implementation. The Government will support implementation of the initiative with consumer education materials to help consumers understand the energy values they see on menu boards.

20. The Bill provides a lead-in period until 1 February 2012 for the new offences, and penalty notices cannot be issued for any of these offences before that date. The NSW

information disclosure requirement aligns with a similar initiative announced by Victoria. Queensland and South Australia will be considering initiatives of this kind. New South Wales will advocate on the issue of national harmonisation at the upcoming ministerial council meeting scheduled for 3 December.

## The Bill

21. The object of this Bill is to amend the *Food Act 2003* (the Principal Act):

(a) to require certain prescribed food businesses that operate at more than one premises or in a chain (standard food outlets) to display certain nutritional information in relation to standard food items that they sell, and

(b) to require other standard food outlets that voluntarily display certain nutritional information to meet certain requirements in relation to the display of that information, and

(c) to make other changes to improve the administration of that Act.

The Bill also amends the *Food Regulation 2010* (the Principal Regulation):

(a) to prescribe the standard food outlets referred to in paragraph (a) above, and

(b) to prescribe the kind of nutritional information referred to above and the manner of determining and displaying it, and

(c) to make other related amendments.

22. **Outline of provisions**

**Clause 1** sets out the name (also called the short title) of the proposed Act. **Clause 2** provides for the commencement of the proposed Act.

**Schedule 1 Amendment of *Food Act 2003* No 43**

**Amendments relating to nutritional information**

**Schedule 1 [3]** inserts proposed Division 4 of Part 8 into the Principal Act which consists of the following provisions:

**Proposed section 106K** contains definitions used in the proposed Division.

**Proposed section 106L** defines ***standard food item*** as meaning an item of ready-to-eat food that is sold in servings that are standardised for portion and content and that is shown on a menu (whether on a board, leaflet or the like or in electronic form) or displayed with a price or identifying tag or label. It does not include food prescribed by the regulations as prepackaged food but includes any item of ready-to-eat food prescribed by the regulations.

**Proposed section 106M** defines ***standard food outlet*** as meaning premises at which standard food items are sold by retail by a food business that sells standard food items at other premises, or as one of a chain of food businesses that sell standard food items, if at least one of the standard food items sold is substantially the same as other standard food items of that type sold at the other premises or by the other food businesses in the chain.

**Proposed section 106N** requires standard food outlets prescribed by the regulations to display nutritional information of a kind prescribed by the regulations and determined in accordance with the regulations and to display that information in a manner and in locations prescribed by the regulations.

**Proposed section 106O** prevents standard food outlets that are not required under proposed section 106N to display nutritional information from voluntarily displaying nutritional information of a kind prescribed by the regulations unless the information is determined in accordance with the regulations and is displayed in a manner and in locations prescribed by the regulations.

**Proposed section 106P** enables regulations to be made regulating or prohibiting the display or distribution of material about nutritional information by standard food outlets.

**Proposed section 106Q** enables the regulations to prescribe exemptions in relation to the operation of the proposed Division.

**Schedule 1 [7]** amends Schedule 2 to the Principal Act to provide that a person does not commit an offence against proposed section 106N or 106O until 1 February 2012.

**Other amendments**

**Schedule 1 [1]** inserts proposed section 43A into the Principal Act to make it clear that a person who is an authorised officer and also a food safety auditor can exercise the functions of both of those offices when on premises or in relation to a food transport vehicle so long as the person produces his or her certificate of authority as an authorised officer. **Schedule 1 [2]** amends section 99 of the Principal Act to make it an offence for a person to threaten, intimidate or assault a food safety auditor in the exercise of his or her functions. **Schedule 1 [4]** amends section 119 of the Principal Act to extend the time for instituting proceedings for offences against the Act or the regulations to not later than 2 years after the date on which the offence was alleged to have been committed. **Schedule 1 [5]** amends section 128 of the Principal Act to remove a provision that currently prevents the prosecution in proceedings for an offence against the Act or the regulations from relying on an analysis as evidence unless it was carried out by an approved laboratory or approved analyst under the Act or under the supervision of an approved analyst. **Schedule 1 [6]** amends Schedule 2 to the Principal Act to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 2 Amendment of *Food Regulation 2010***

**Schedule 2 [1]** inserts proposed Part 2B into the Principal Regulation which contains the following provisions:

**Proposed clause 16P** provides that terms used in the proposed Part have the same meanings as in proposed Division 4 of Part 8 of the Principal Act.

**Proposed clause 16Q** defines ***prepackaged food*** to generally mean food that arrives at the premises at which it is sold in packaging and is not removed from that packaging before its sale.

**Proposed clause 16R** prescribes the standard food outlets for which nutritional information is required to be displayed for the purposes of proposed section 106N of the Principal Act.

They are standard food outlets of food businesses that sell standard food items by retail at 20 or more locations in New South Wales or at 50 or more locations in Australia or in a chain of food businesses that together sell standard food items at 20 or more locations in New South Wales or at 50 or more locations in Australia.

**Proposed clause 16S** prescribes the kind of nutritional information that must be displayed for the purposes of proposed section 106N of the Principal Act. That information is the average energy content expressed in kilojoules of each standard food item sold and the statement that "The average adult daily energy intake is 8,700 kJ.". The proposed clause also prescribes the method for determining the average energy content of a food item.

**Proposed clause 16T** prescribes, for the purposes of proposed section 106O of the Principal Act, the kind of nutritional information which, if displayed, must be determined in accordance with the prescribed requirements and displayed in the prescribed manner and locations. That information is the energy content of any standard food item sold.

**Proposed clause 16U** prescribes the locations in which the nutritional information must be displayed.

**Proposed clause 16V** prescribes the manner in which the nutritional information must be displayed.

**Proposed clause 16W** prescribes food businesses that are, and food that is, exempt from the operation of proposed section 106N of the Principal Act.

**Schedule 2 [2]** amends Schedule 2 to the Principal Regulation to prescribe offences against proposed section 106N or 106O of the Principal Act as penalty notice offences and to prescribe the amount of the fines that will apply.

# Issues Considered by the Committee

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

**Issue: Strict Liability – Schedule 1 [3] - proposed section 106N (4) – Requirement for certain standard food outlets to display nutritional information – Amendment of *Food Act 2003*:**

23. Proposed section 106N (2) reads: The proprietor of a standard food outlet to which this section applies must ensure that:

> (a) nutritional information of a kind prescribed by the regulations is displayed in relation to standard food items that are sold at the outlet, and
>
> (b) the nutritional information is determined in accordance with any requirements of the regulations for nutritional information of that kind, and
>
> (c) the nutritional information is displayed in the manner and locations prescribed by the regulations for nutritional information of that kind.

24. Proposed subsection (3) provides that: A person must not intentionally contravene subsection (2). Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

25. However, proposed subsection (4) also provides that: A person must not contravene subsection (2). Maximum penalty: 100 penalty units in the case of an individual and 500 penalty units in the case of a corporation.

26. Proposed subsection (5) states that: If, on the trial of a person charged with an offence against subsection (3) the court is not satisfied that the person committed the offence but is satisfied that the person committed an offence against subsection (4), the court may find the person not guilty of the offence charged but guilty of an offence against subsection (4), and the person is liable to punishment accordingly.

27. **Proposed section 106N (4) provides for a strict liability offence. The imposition of strict liability may give rise to concern as the prosecuting authority is not required to prove that the individual intended to commit the offence, and may be seen as contrary to the right to the presumption of innocence. However, in some circumstances, the imposition of strict liability may be warranted after considering the community impact of the offence, the availability of defences and safeguards, and the type of penalty that may be imposed.**

28. **The Committee notes that terms of imprisonment are generally considered inappropriate in relation to strict liability offences.**

29. **However, the imposition of strict liability may be acceptable in circumstances where it is designed to ensure compliance to protect the public interest and after consideration of the type of penalties that may be imposed. The Committee further notes that proposed subsection (3) still requires the prosecuting authority to prove a person has intentionally contravened subsection (2). Therefore, under proposed subsection (5), if the court is not satisfied that the person has committed the offence intentionally but is satisfied that the person has committed an offence against subsection (4), that the court may find the person guilty of an offence against subsection (4) which carries the lesser penalty units.**

30. **The Committee concludes that, given the lesser penalty units that may be imposed which are limited to monetary ones with no terms of imprisonment, as well as recognising the public benefit of ensuring compliance to achieve the objective of the Bill, personal rights and liberties are not unduly trespassed by the inclusion of strict liability under the proposed section 106N (4).**

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

# 4. INDUSTRIAL RELATIONS AMENDMENT (NON-OPERATIVE AWARDS) BILL 2010

| | |
|---|---|
| Date Introduced: | 11 November 2010 |
| House Introduced: | Legislative Assembly |
| Minister Responsible: | The Hon Paul Lynch MP |
| Portfolio: | Industrial Relations |

## Purpose and Description

1. The object of this Bill is to amend the *Industrial Relations Act 1996* to protect certain awards that have no current application to any employers or employees. The Bill provides that such awards cannot be rescinded and may only be amended to give effect to National or State decisions.

### Background

2. Through legislation enacted by both the Commonwealth and New South Wales parliaments in December 2009, the State jointed the national industrial relations system on 1 January 2010. The principal effect of referral is the removal of most private sector employers and employees from the New South Wales jurisdiction. However, the New South Wales *Industrial Relations Act 1996* continues to provide the framework for the conduct of industrial relations in the State public sector, the local government sector and those who are deemed employees under schedule 1 to the *Industrial Relations Act 1996.*

3. Section 19 of the *Industrial Relations Act* requires the commission to review each award at least once every three years. The purpose of each such review is to modernise and consolidate awards and at the same time rescind obsolete awards. The New South Wales Government has concerns that significant private sector common rule awards may be rescinded, as they have no current application, if there are not specific amendments to the current provisions of the *Industrial Relations Act 1996.*

4. As such, this Bill creates a new category of awards called 'non-operative awards' which will relate to awards that do not have any current application to any employer or employee. In practical terms, these are intended to be New South Wales common rule industry and occupational awards, which, as a result of the referral of powers, no longer apply to any employer or any employee.

### The Bill

5. **Outline of provisions**

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

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

**Schedule 1 Amendment of *Industrial Relations Act 1996* No 17**

**Schedule 1 [13]** inserts a definition of ***non-operative award*** into the Dictionary to the principal Act. ***Non-operative award*** is defined as an award that is declared, under section 19, 20 or 20A of the principal Act, to be an award that does not have any current application to any employer or employee.

**Schedule 1 [8]** inserts proposed section 20A. The proposed section provides that the Commission may, if satisfied that an award does not currently apply to any employer or employee, make a declaration to that effect. The proposed section also provides that the Industrial Registrar is to keep a register of non-operative awards.

**Schedule 1 [6] and [7]** make similar amendments that allow for a declaration that an award does not currently apply to any employee or employer as a result of a review of awards under section 19 of the principal Act or as a result of the consolidation of awards under section 20 of that Act.

**Schedule 1 [1]** amends section 17 of the principal Act to provide that a non-operative award may not be varied or rescinded under that section. However,

**Schedule 1 [10]** amends section 52 of the principal Act to provide that the Commission is to vary non-operative awards to give effect to certain National or State decisions that generally affect, or are likely to generally affect, the conditions of employment of employees in New South Wales.

**Schedule 1 [11]** amends Schedule 4 to the principal Act to enable the making of regulations containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [12]** provides that an award that was in force on the date that this Bill was introduced into the Legislative Assembly may be declared to be a non-operative award, and that any purported rescission or variation of such an award between that date and the date of assent to the proposed Act, is of no effect.

**Schedule 1 [2]–[5] and [9]** make consequential amendments.

# Issues Considered by the Committee

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

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

# 5. LIBRARY AMENDMENT (ARRANGEMENT FOR MUTUAL PROVISION OF LIBRARY SERVICES) BILL 2010*

| | |
|---|---|
| Date Introduced: | 11 November 2010 |
| House Introduced: | Legislative Council |
| Member Responsible: | The Hon Catherine Cusack MLC |
| Portfolio: | Private Member's Bill |

## Purpose and Description

1. Section 12 of the *Library Act 1939* currently enables two or more local authorities to enter into an agreement under which one of the local authorities undertakes the function of providing, controlling and managing libraries and library services in the area or areas of the other local authority or authorities concerned.

2. The object of this Bill is to amend the *Library Act 1939* to enable two or more local authorities to enter into alternative arrangements for the provision, control and management of libraries and library services in any of their respective local government areas.

3. Instead of agreeing that one of the local authorities undertakes the function of proving, controlling and managing a particular library, local authorities will, subject to the approval of the Library Council, be able to enter into any arrangement for the provision, control and management of a library and library services in the areas of any local authority that is a party to an approved arrangement.

### Background

4. According to the Second Reading Speech by the Member who introduced this Bill,

> 'The need for this legislation has been debated for many years but has become urgent because one of our largest regional libraries, the Richmond-Tweed Regional Library… is in jeopardy because its host council, Lismore City Council, is undertaking a hostile takeover using legislative defects as its excuse. By correcting legal anomalies in the legal arrangements that underpin the State's system of regional libraries, we will safeguard the future of the Richmond-Tweed Regional Library and protect all regional libraries.
>
> The legal loopholes cited by Lismore City Council appear to rest on a conflict between the *Local Government Act* and the *Library Act.* In simple terms, the *Local Government Act* governs how local councils allocate their funds. The *Library Act,* which governs State funding for libraries, is silent on the issue of regional libraries operating independently of host councils.'

5. The Bill therefore proposes to amend the *Library Act 1939* to ensure that, rather than having only one local authority undertake library services for the benefit of another local authority, alternative arrangements could be made to enable joint or cooperative control of library services. It is intended that this amendment will rectify the situation

that has occurred at Richmond-Tweed Regional Library where it appears that one local authority has assumed exclusive control of the provision of library services.

## The Bill

### 6. Outline of Provisions

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

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

**Schedule 1 Amendment of *Library Act 1939* No 40**

**Schedule 1** amends the *Library Act 1939* for the purposes described in the above Overview.

# Issues Considered by the Committee

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

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

# 6. LOCAL GOVERNMENT AMENDMENT (ENVIRONMENTAL UPGRADE AGREEMENTS) BILL 2010

| | |
|---|---|
| Date Introduced: | 11 November 2010 |
| House Introduced: | Legislative Assembly |
| Minister Responsible: | The Hon Frank Sartor MP |
| Portfolio: | Environment |

## Purpose and Description

1. The object of this Bill is to amend the *Local Government Act 1993* to authorise councils to enter into environmental upgrade agreements with building owners and finance providers.

2. An environmental upgrade agreement will be an agreement in which a building owner agrees to carry out upgrade works in respect of a building to improve the energy, water or environmental efficiency or sustainability of the building.

3. Under the scheme, a finance provider will be able to agree to advance funds to the building owner to finance those environmental upgrade works. That advance will be repaid by means of a charge on the relevant land that is levied by the council.

### Background

4. According to the Minister, a recent report by the policy research body ClimateWorks found that investing in energy efficiency projects in commercial buildings would deliver a total potential benefit to the New South Wales economy of more than $560 million each year, and that rather than costing money to reduce carbon, each tonne of carbon reduced would be equivalent to a $100 benefit.

5. In his Agreement in Principle, the Minister advised that:

> 'There are two major barriers to action and this Bill provides a path through each. The first barrier is access to capital… This Bill enables the establishment of an innovative finance mechanism – environmental upgrade agreements – to assist building owners to gain access to commercial finance…
>
> [The second barrier to energy efficiency]… is known in the industry as the split incentive between landlords and tenant. In leased properties, the building owner makes the decisions about implementing energy efficiency upgrades, but the tenant would often receive the most benefits through lower power bills. Because the tenant pays the power bill, there is little incentive for building owners to invest.
>
> Environmental upgrade agreements can overcome this because most leases provide for proportional pass-through of local council rates and charges. In most agreements under this Bill instead of paying a large power bill, the tenant will pay for a small power bill and a contribution to repaying the costs of the upgrade works. Once the upgrade cost is repaid, the tenant will experience an ongoing benefit in the form of lower outgoings.

## The Bill

### 6. **Outline of Provisions**

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

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

**Schedule 1 Amendment of *Local Government Act 1993* No 30**

**Schedule 1 [1]** makes the amendment described in the Overview.
In addition to authorising a council to enter into an environmental upgrade agreement, the amendment makes provision for the following:

(a) the buildings that can be the subject of an environmental upgrade agreement (commercial buildings and strata buildings),

(b) the types of works that can be authorised by an environmental upgrade agreement,

(c) requirements as to the content of environmental upgrade agreements.

The amendment authorises a council to levy a charge (an ***environmental upgrade charge***) in respect of the land on which a building to which the environmental upgrade agreement relates is erected or, in the case of a strata building, the land that is the subject of the relevant strata scheme.

Money paid to the council in respect of an environmental upgrade charge is to be paid by the council to the finance provider under the environmental upgrade agreement, after deduction of any council fees that the council is authorised to retain. The amendment applies various provisions of the principal Act that relate to the levying and payment of charges on rateable land to an environmental upgrade charge. This means that the charge will be recoverable against any occupier of the land on which it is charged. In relation to strata buildings, the amendment requires the owners corporation for the building to pay the environmental upgrade charge.
An environmental upgrade charge must be paid within 28 days after notice of the charge is served on the person liable to pay it. A council must hold the charge, pending its payment to the finance provider, in a separate account in its trust fund. A council is to use its best endeavours to recover a charge, but a failure by a person to pay the charge does not make the council liable to pay the charge to a finance provider.

The amendment also allows a provision of a lease to require a lessee to pay to the lessor a contribution towards an environmental upgrade charge payable under an environmental upgrade agreement that relates to the premises that are the subject of the lease. The amount recoverable by the lessor as a contribution must not exceed a reasonable estimate of the cost savings to be made by the lessee, as a consequence of the environmental upgrade works provided for by the environmental upgrade agreement, during the period to which the contribution relates. An environmental upgrade agreement may make provision for the methodology for determining those cost savings. However, the parties to a lease may agree on a different method of calculation of the lessee's contribution.

Entry into an environmental upgrade agreement is voluntary, and a council cannot require a person to enter into an agreement, whether by condition of a development consent, order or otherwise.

The amendment also requires a council to include information relating to environmental upgrade agreements in its annual report and authorises a council to provide information to the Director-General of the Department of Environment, Climate Change and Water.

The Minister for Climate Change and the Environment may, with the concurrence of the Minister administering the principal Act, make guidelines relating to environmental upgrade agreements and the functions of councils under the new provisions. In particular, the guidelines may make provision for the terms that may be included in environmental upgrade agreements with respect to the recovery of contributions towards environmental upgrade charges by lessees and the progress or implementation reports to be made by a building owner under an agreement. The regulations may make any of these requirements mandatory requirements. The amendment also makes it clear that the functions of a council under an environmental upgrade agreement may be exercised by any council to which the assets, rights and liabilities of the council entering the agreement are transferred (for instance, in the event of a change to the council's area).

**Schedule 1 [2]** provides that the public tendering requirements do not apply in respect of an environmental upgrade agreement.

**Schedule 1 [3]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [4]** provides for transitional matters. In particular, the amendment makes it a term of any existing lease that already requires the lessee to pay council charges that the lessee pay a contribution towards environmental upgrade charges in accordance with the arrangements for contributions referred to above. However, the parties to a lease may agree that a contribution is not required.

# Issues Considered by the Committee

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

### Issue: Commencement by Proclamation

7. The Committee notes that the Act is to commence on a day or days to be appointed by proclamation. This may delegate to the Government the power to commence the Act on whatever day it chooses or not at all.

8. However, the Committee notes that the new scheme provided for in the Bill requires new financing arrangements to be established between councils and finance providers. Various other administrative arrangements, such as the drafting of appropriate guidelines by the Department of Climate Change and the Environment, also need to be considered before this Bill can commence operation. As the Committee has not identified any other concerns with this Bill that may trespass on the rights and liberties of individuals, the Committee does not regard the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

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|---|---|
| 9. | **The Committee appreciates that various administrative arrangements may need to take place before this Bill can commence operation, including the drafting of appropriate guidelines. Given that the Committee has not identified any other issue in this Bill that may unduly trespass on personal rights and liberties, the Committee does not regard the Minister's discretion to commence the Act by proclamation to be an inappropriate delegation of power in this instance.** |

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

# 7. NATIONAL PARK ESTATE (SOUTH-WESTERN CYPRESS RESERVATIONS) BILL 2010

| | |
|---|---|
| Date Introduced: | 12 November 2010 |
| House Introduced: | Legislative Assembly |
| Minister Responsible: | The Hon Frank Sartor MP |
| Portfolio: | Environment |

## Purpose and Description

1. The objects of this Bill are to transfer to the national park estate certain State forest lands and Crown lands in the South-Western area of the State. Simultaneously, the Bill will enable forestry operations to continue on land in the South-Western area of the State remaining as a State forest.

2. The Bill will also make other miscellaneous provisions and adjustments in relation to reserved land.

### Background

3. In 2009, the Government tasked the Natural Resources Commission with carrying out a regional forest assessment and making recommendations on the use and management of the public forest land in the south-western cypress State forests. There are 197 previously unassessed State forests within this region, covering nearly 196,000 hectares.

4. In May 2009, the Natural Resources Commission submitted its assessment and recommendations to the Government. According to the Agreement in Principle Speech:

> 'The Commission found that the forests support a range of environmental, social, cultural and economic values, and that they can continue to be managed to support these values. The Commission made ten recommendations regarding the ongoing management of the south-western cypress forests. The recommendations address matters including the need for active management of the forests across all tenures, the development of an integrated forestry operations approval, reviews of forest management zoning, investment in silvicultural thinning, reservation of some forests and improvements in connectivity.'

5. The Government has endorsed the bulk of the recommendations. As such, the Government has decided to reserve 47 of the 197 forests, being eucalypt woodland forests with little or no cypress resource, under *National Parks and Wildlife Act 1974* and for them to be managed for their conservation values. Parts of a further four forests will also be reserved. Approximately 47,000 hectares of forest will be covered by the reservation. Arrangements will be made for Forests NSW to conduct an exit harvest to ensure that there is a minimal impact on available timber resource.

6. A further 149 forests, three of which are also part reserved, will remain as State forest. This covers up to 150,000 hectares of forest. It is intended that logging operations in these forests will be continued and streamlined subject to an interim forestry approval until the end of June 2011. Subsequent to that, it is intended that an integrated forestry operations approval will be negotiated and take effect.

## The Bill

### 7. Outline of Provisions

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

**Clause 2** provides for the commencement of the proposed Act on 1 January 2011.

**Clause 3** defines certain words and expressions used in the proposed Act. The clause contains a map that sets out the South-Western area for the purposes of the proposed Act.

**Part 2 Land transfers**

**Clause 4** revokes the dedication as State forest of lands that are to be reserved as national park, nature reserve or state conservation area, or are to be vested in the Minister for Climate Change and the Environment for the purposes of Part 11 of the *National Parks and Wildlife Act 1974*. The dedication of the lands specified in Schedules 1, 3 and 6 is revoked on 1 January 2011 and the dedication of the lands specified in Schedule 2 is revoked on 1 January 2012.

**Clause 5** reserves, on 1 January 2011, certain lands in revoked State forests as national park, nature reserve or state conservation area. The lands concerned are set out in Schedule 1.

**Clause 6** reserves, on 1 January 2012, certain lands in revoked State forests as national park or nature reserve. The lands concerned are set out in Schedule 2.

**Clause 7** vests, on 1 January 2011, certain lands in revoked State forests in the Crown as Crown land, which will be subject to the *Crown Lands Act 1989* (with an assessed preferred use for the purposes of nature conservation). The lands concerned are set out in Schedule 3.

**Clause 8** reserves, on 1 January 2011, certain Crown lands as national park, nature reserve or state conservation area. The lands concerned are set out in Part 1 of Schedule 4 (being general reservations) and in Part 2 of Schedule 4 (being land reserved as compensation for the revocation by clause 11 of the existing reservation relating to Merry Beach Caravan Park). Crown lands in the Brigalow and Nandewar area are also reserved as conservation zones under the *Brigalow and Nandewar Community Conservation Area Act 2005* by amendments to that Act contained in Schedule 7 to this Bill.

**Clause 9** reserves, on 1 January 2011, lands comprising Joulni Station, Willandra Lakes, as an addition to Mungo National Park and as Mungo State Conservation Area. The lands concerned are set out in Schedule 5.

**Clause 10** vests, on 1 January 2011, certain lands in revoked State forests in the Minister for Climate Change and the Environment for the purposes of Part 11 of the *National Parks and Wildlife Act 1974*. The lands concerned are set out in Schedule 6.

**Clause 11** revokes the reservation of certain land in Murramarang National Park that is used in connection with Merry Beach Caravan Park. On revocation, the land will become Crown land.

**Clause 12** makes provision for land with high conservation value in the Manna State Forest to be declared a special management zone under the *Forestry Act 1916*.

**Clause 13** requires a review to be carried out by 1 January 2012 of the status of land reserved as a state conservation area to determine which land should be retained as such reserved land because of the mineral values of the land and which should become national park. The decision is to be made by the joint determination of the Directors-General of the Department of Environment, Climate Change and Water and the Department of Industry and Investment.

**Clause 14** enables pending Aboriginal land claims over Crown land under the *Aboriginal Land Rights Act 1983* in relation to land reserved by Schedule 4 or 5 or by the amendments under Schedule 7 in the Brigalow and Nandewar area to continue to be dealt with as if the land had not been reserved. The reservation will be revoked if the land claims are granted.

**Clause 15** enables the Director-General of the Department of Environment, Climate Change and Water to adjust the descriptions of land in Schedules 1–6 in order to alter the boundaries of the land for the purposes of effective management of national park estate land and State forest land, to adjust boundaries to public roads, to adjust descriptions of easements or to provide a more detailed description of the boundaries of the land.

**Part 3 Forestry operations on land remaining as State forest**

**Clause 16** defines certain words and expressions used in proposed Part 3. In particular, ***South-Western forestry operations*** is defined to mean ***forestry operations*** within the meaning of the *Forestry and National Park Estate Act 1998* to which Part 4 of that Act applies that are carried out in South-Western State forests.

**Clause 17** provides that an integrated forestry operations approval may be granted under Part 4 of the *Forestry and National Park Estate Act 1998* for South-Western forestry operations. The clause makes transitional arrangements to enable forestry operations to continue pending the granting of an approval.

**Part 4 Miscellaneous**

**Clause 18** provides that the proposed Act binds the Crown.

**Clause 19** enables the making of regulations for the purposes of the proposed Act.

**Schedule 1** sets out the lands within State forests (whose dedication as State forest is revoked) that are, on 1 January 2011, reserved (to a depth of 100 metres) as national park, nature reserve or state conservation area.

**Schedule 2** sets out the lands within State forests (whose dedication as State forest is revoked) that are, on 1 January 2012, reserved (to a depth of 100 metres) as national park or nature reserve.

**Schedule 3** sets out the lands (whose dedication as State forest is revoked) that are, on 1 January 2011, vested in the Crown as Crown land and subject to the *Crown Lands Act 1989*.

**Schedule 4** sets out the Crown lands that are, on 1 January 2011, reserved as national park, nature reserve or state conservation area. Part 2 of the Schedule sets out the land that is reserved in compensation for the revocation relating to Merry Beach Caravan Park.

**Schedule 5** sets out the Crown land comprising Joulni Station reserved as part of Mungo National Park and as Mungo State Conservation Area (subject to the western lands lease of land in the area to the Soil Conservation Commission).

**Schedule 6** sets out the lands (whose dedication as State forest is revoked) that are, on 1 January 2011, vested in the Minister for Climate Change and the Environment for the purposes of Part 11 of the *National Parks and Wildlife Act 1974*.

**Schedule 7** amends the *Brigalow and Nandewar Community Conservation Area Act 2005* to reserve Crown lands in the area under that Act (to a depth of 100 metres) as Zone 1 (Conservation and recreation), Zone 2 (Conservation and Aboriginal culture) and Zone 3 (Conservation, recreation and mineral extraction). The reservations take effect on 1 January 2011, but are subject to the determination of pending Aboriginal land claims.

**Schedule 8** makes ancillary and special provisions with respect to land transferred under the proposed Act.

**Schedule 9** sets out amendments to other Acts.

# Issues Considered by the Committee

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

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

# 8. PLANNING APPEALS LEGISLATION AMENDMENT BILL 2010

| | |
|---|---|
| Date Introduced: | 11 November 2010 |
| House Introduced: | Legislative Council |
| Minister Responsible: | Hon Tony Kelly MLC |
| Portfolio: | Planning |

## Purpose and Description

1. This Bill amends the *Environmental Planning and Assessment Act 1979*, the *Land and Environment Court Act 1979* and other legislation with respect to appeals and reviews relating to development applications; and for other purposes.

2. The primary purpose of the Bill is to provide quick, just and cost-effective appeals and reviews for users of the planning system. It aims to make it easier and cheaper for home owners to have local council decisions on development applications and modification applications reviewed by the Land and Environment Court by introducing a new conciliation-arbitration scheme designed for disputes involving small-scale development.

3. With the introduction of the new conciliation-arbitration scheme, the planning arbitrator provisions will be repealed.

4. Schedule 2 provides for the conciliation-arbitration scheme by inserting new provisions in the *Land and Environment Court Act 1979*. The main features of the new conciliation-arbitration scheme are that reviews of council decisions on development applications and modification applications for single dwellings and dual occupancies, including subdivisions, will be automatically fast tracked to mandatory arbitration-conciliation at the first call over. The court will also be able to transfer other individual matters into the scheme at the request of the parties or on its own motion where the case is suitable for this type of dispute resolution.

5. A commissioner will be allocated to assist the parties in trying to reach agreement by way of conciliation. Conciliation conferences will usually be held on-site providing an opportunity for neighbours, objectors and other members of the community to express their views on the proposed development. The parties' experts will also be provided with an opportunity to participate in the process, and applicants and councils will be entitled to be legally represented. In the event the parties are unable to reach agreement, the commissioner will without further adjournment, determine the matter by way of arbitration immediately.

6. The commissioner's decision will be binding on the parties as there will be no right to further merit appeal. Further appeal will be available with regard to questions of law to afford parties with the same rights as if their appeal was decided after a full hearing. Both parties will need to ensure that they are authorised to enter into a binding agreement when they attend the conciliation conference.

7. Schedule 1 amends the *Environmental Planning and Assessment Act 1979* for appeals and reviews. The Bill makes an amendment to section 97B of the *Environmental Planning and Assessment Act 1979*, which deals with the requirement for the court to make mandatory cost orders where an applicant amends plans during the course of the proceedings.

8. The amendment to section 97B brings it closer to the original purpose of the provision; that it is only the costs of the consent authority as a result of having to consider the proposed amendments that should be taken into account in determining the quantum of costs and not the assessment of the development application as a whole.

9. The Bill also amends the statutory limitation period for merit appeals from twelve to six months. This is instead of the three-month limitation period introduced in 2008 but which we have not commenced.

10. This Bill provides for expanded rights to internal review for applicants. These internal reviews, which are based on the established practices under section 82A of the *Environmental Planning and Assessment Act*, will now extend to determinations of modification applications as well as development applications. In addition, there will be a new right to internal review where a council determines to reject a development application for reasons of inadequacy or failure to comply with statutory requirements.

11. There are amendments to the *Environmental Planning and Assessment Act* to require councils to notify a joint regional planning panel, or the Planning Assessment Commission, where there is an appeal to the court concerning a decision of the panel or the commission. The council as the consent authority is the relevant party to the appeal. However, this amendment ensures that the panel or the commission (not being a party), is still nevertheless, able to be heard during the proceedings.

12. These amendments are in the same terms as existing provisions in the Planning Act that enable concurrence authorities to be heard in appeal proceedings. It corrects an anomaly in the existing Act.

13. Schedule 3 repeals the existing planning arbitrator provisions in the *Environmental Planning and Assessment Amendment Act 2008* and makes necessary consequential amendments for the remaining parts of that Act.

## Background

14. In 2008, the Government legislated to establish a scheme of private independent planning arbitrators to review council decisions on small-scale developments for efficiency and cost effectiveness.

15. The new scheme of conciliation-arbitration in the Land and Environment Court has been developed following stakeholder consultations. According to the Second Reading speech, the chief judge of the court has been consulted and supports the proposed scheme.

16. The conciliation-arbitration scheme aims to provide a quick and cost-effective way of reviewing council decisions on development applications and modification applications for single dwellings and dual occupancies. The Government is of the

view that this scheme is best run by the court given its specialist jurisdiction and the extensive planning experience of its judges and commissioners. The new conciliation-arbitration scheme will supplement the existing alternative dispute resolution mechanisms currently run by the court.

17. The parties in conciliation or the commissioners in arbitration will be able to amend proposals through agreement or by the imposition of conditions. However, there will be limited opportunity for applicants to amend their plans significantly once the review has started. The court's analysis of the causes for delays in current appeals shows that amending plans during the proceedings doubles the cost and time taken to conclude appeals.

18. The proposed new scheme provides safeguards to protect the interests of the parties. The Second Reading speech explained the following:

> Commissioners will be specifically trained to ensure that they can fulfil the dual role of conciliator and arbitrator fairly and equitably without prejudice to either of the parties. In addition, the practices of the court will facilitate the proper administration of the scheme. For example, all proceedings will be required to be held in plenary session with no opportunity for ex parte negotiations. Ultimately the court may on application of the parties or on its own motion terminate the proceedings at any time and refer the matter back to the court for reallocation where the circumstances warrant. This may include cases involving questions of law or complex issues where multiple experts may be required to give evidence, where substantial amendments are required to the applicant's plans, where a party might have genuine concerns about the same commissioner determining the matter by arbitration or where reallocation is required in the interests of justice.
>
> …Any perceived concerns about the dual role of a commissioner presiding over a conciliation conference before needing to make a binding decision by way of arbitration is not supported by the current experience of the court. For example, in relation to existing conciliation practices, 85 per cent of matters that go to a section 34 conciliation conference are disposed of by the commissioner who undertook the initial conciliation either because the parties reached agreement or otherwise agreed to the same commissioner disposing of the matter. Over 48 per cent of matters not settled by agreement during conciliation were later disposed of by the same commissioner that conducted the conciliation.
>
> …A court practice note will be developed to address practical implementation issues and to ensure proper management of the scheme. The practice note will address such matters as requirements for on-site conferences; procedures for amending plans and submitting draft conditions of consent; the procedures for allowing neighbours, objectors and other members of the community to have their say; the role of the parties' experts and the means by which they can participate at different stages in the process; and requirements for parties to be suitably empowered to enter into binding agreements. This practice note will be developed in consultation with the court users group and court practitioners to ensure it addresses all the relevant implementation issues.

19. The proposed six-month limit also aims to strike a better balance, bringing New South Wales closer to the time period for appeals in other States while still allowing for reconsideration of the proposal. It aims to balance the need to speed up the time to resolve reviews to reduce cost and uncertainty for applicants and neighbours while also providing applicants with time to negotiate with council or explore the option of internal review under section 82A of the *Environmental Planning and Assessment Act 1979* before deciding if they will commence an appeal in the court.

20. There will also be a new right to internal review where a council determines to reject a development application for reasons of inadequacy or failure to comply with statutory requirements. This fits in with the reforms currently undertaken with respect to "stop the clock" procedures applying to the assessment of development applications. This aims to ensure that councils are made accountable for decisions to reject a development application.

## The Bill

21. The objects of this Bill are as follows:

> (a) to re-enact, with modifications, uncommenced provisions of the *Environmental Planning and Assessment Amendment Act 2008* establishing rights to reviews of decisions by councils to reject development applications without determining them,
>
> (b) to re-enact, with modifications, uncommenced provisions of that Act establishing rights to reviews of decisions by councils relating to applications to modify development consents and to provide for appeals to the Land and Environment Court (the Court) with respect to decisions about such reviews,
>
> (c) to require the Court to order an applicant who amends a development application on an appeal to pay the costs of the consent authority that are thrown away as a result of the amendment,
>
> (d) to provide for mandatory conciliation proceedings to be conducted by the Court in relation to proceedings relating to appeals about development applications for specified development and for determination by a Commissioner of the Court if no agreement is reached in conciliation proceedings,
>
> (e) to repeal uncommenced provisions of the *Environmental Planning and Assessment Amendment Act 2008* relating to planning arbitrators,
>
> (f) to make consequential amendments and repeals and provisions of a savings and transitional nature.

22. **Outline of provisions**

**Clause 1** sets out the name (also called the short title) of the proposed Act. **Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Schedule 1 Amendment of *Environmental Planning and Assessment Act 1979* No 203:**

**Reviews of decisions**

**Schedule 1 [9]** inserts proposed sections 82B–82D into the *Environmental Planning and Assessment Act 1979*. New section 82B enables an applicant for a development application to obtain a review by a council of the council's decision to reject the development application without determining it. The review may result in the decision being confirmed or the council proceeding to determine the application.

New sections 82C and 82D contain general provisions about reviews, including reviews of council determinations of development applications under current section 82A and reviews under new sections 82B and 96AB. **Schedule 1 [7]** makes a consequential amendment.

**Schedule 1 [17]** inserts proposed section 96AB. New section 96AB enables an applicant for the modification of a development consent to obtain a review by a council of the council's decision as to the application. There is no right to a review for specified applications, including applications to modify a complying development certificate and determinations relating to designated development, integrated development and Crown developments where the Minister has directed the council to make a determination. **Schedule 1 [14]** makes a consequential amendment.

**Schedule 1 [8]** omits from existing section 82A (which relates to reviews of council decisions about development applications) provisions that are now covered by the new general review provisions. It also makes it clear that the council must conduct a review if a request is made under that section. **Schedule 1 [10]** makes a consequential amendment.

**Schedule 1 [12]** makes it clear that a development consent is taken never to have been granted if development consent is refused on a review application under existing section 82A.

**Appeals**

**Schedule 1 [15] and [16]** omit provisions that provide for appeals to the Court relating to decisions about applications to modify development consents, as a consequence of the insertion of appeal provisions by **Schedule 1 [21]**. The amendments also enable regulations to be made with respect to the time within which an application for modification that has not been determined is taken to have been refused and related matters.

**Schedule 1 [18]** reduces from 12 months to 6 months the period within which an appeal may be made to the Court against a determination by a consent authority with respect to a development application, the carrying out of ancillary development or a matter that must be satisfied before a deferred consent can operate.

**Schedule 1 [19]** makes a statute law revision amendment.

**Schedule 1 [21]** inserts proposed sections 97AA and 97A. New section 97AA enables an applicant for the modification of a development consent to appeal to the Court against a determination by the consent authority (including on a review by the consent authority) within 6 months of notice of the determination or the determination being taken to have been made. **Schedule 1 [20] and [23]** omit the provisions being re-enacted.

New section 97A re-enacts provisions requiring notice of appeals made to the Court to be given to objectors and in the case of development requiring concurrence by a Minister or public authority or integrated development. It also requires notice to be given to a joint regional planning panel or the Planning Assessment Commission of appeals made to the Court concerning certain determinations made or reviewable by those bodies. A person given notice of an appeal is entitled to be heard at the appeal as if the person were a party to the appeal.

**Schedule 1 [22]** requires the Court, if an amended development application is filed in an appeal against a determination of a development application, to require the applicant to pay to the consent authority costs that are thrown away as a result of amending the

development application. Currently, the provision is expressed to require payment of costs incurred in respect of the assessment of, and proceedings relating to, the original development application the subject of the appeal.

**Schedule 2 Amendment of *Land and Environment Court Act 1979* No 204:**

**Schedule 2 [1]** inserts proposed section 34AA. New section 34AA provides for conciliation procedures to apply to proceedings concerning development applications, or modifications of development consents, for detached single dwellings and dual occupancies (including those involving subdivision) or alterations or additions to such dwellings or dual occupancies. They may also apply to other particular proceedings, if the Court so orders on application of a party or on its own motion. The conciliation procedures can occur without the consent of the parties and, if no agreement is reached through conciliation, the Commissioner of the Court may proceed to determine the proceedings. However, the Court or Commissioner may, if they think it appropriate in the circumstances of the case, determine at any time that the proceedings are not to be dealt with under the new section. In that case, the proceedings are to be dealt with by the Court. **Schedule 2 [2]** makes a consequential amendment.

**Schedule 2 [3]** enables regulations containing savings, transitional and other provisions to be made consequent on the enactment of the proposed Act. **Schedule 2 [4]** provides that the amendments made by the proposed Schedule do not apply to proceedings commenced before the commencement of new section 34AA.

**Schedule 3 Amendment of other Acts:**

**Schedule 3.1** covers amendments to the *Environmental Planning and Assessment Amendment Act 2008* No 36. **Schedule 3.2** covers amendments to the *Independent Commission Against Corruption Act 1988* No 35

## Issues Considered by the Committee

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

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

23. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the proposed Act on whatever day it chooses or not at all. However, the Committee understands from the Agreement in Principle speech that:

> "Commissioners will be specifically trained to ensure that they can fulfil the dual role of conciliator and arbitrator fairly and equitably without prejudice to either of the parties…A court practice note will be developed to address practical implementation issues and to ensure proper management of the scheme. The practice note will address such matters as requirements for on-site conferences; procedures for amending plans and submitting draft conditions of consent; the procedures for allowing neighbours, objectors and other members of the community to have their say; the role of the parties' experts and the means by which they can participate at different stages in the process; and requirements for parties to be suitably empowered to enter into binding agreements. This practice note will be developed in consultation with the court users group and court practitioners to ensure it addresses all the relevant implementation issues…Feedback

from consultations with stakeholders stressed the importance of ensuring that the new scheme is well publicised so that councils and applicants are aware of the new requirements for this class of appeal. In this regard a range of promotion initiatives is proposed, including promoting the scheme through the court users' group and other practitioner forums; on-line information on the court website; user-friendly brochures and information that will be available at the court registry and distributed to councils for display in public areas; and user-friendly information being available on the Department of Planning's website with links to the court's website for easy access to on-line forms".

24. **Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power.**

25. **The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the Legislation Review Act 1987.**

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

# 9. PUBLIC HOLIDAYS BILL 2010; SHOP TRADING AMENDMENT BILL 2010

| | |
|---|---|
| Date Introduced: | 10 November 2010 |
| House Introduced: | Legislative Assembly |
| Minister Responsible: | The Hon Paul Lynch MP |
| Portfolio: | Industrial Relations |

## Purpose and Description

1. The object of the *Public Holidays Bill 2010* is to replace the *Banks and Bank Holidays Act 1912* with an Act that provides for the public holidays that apply in the State (including provision for additional and substituted public holidays to be declared in any year for the whole or part of the State), as well as the declaring of local event days to signify days of special significance to the local community.

2. This Bill specifies the days to be public holidays for the 2011 calendar year as well how public holidays are to be determined from 2012 onward.

3. The Bill also provides for employee entitlements on public holidays.

4. Meanwhile, the object of the *Shop Trading Amendment Bill 2010* is to amend the *Shop Trading Act 2008* with respect to various retail-related activities on public holidays.

5. In particular, this Bill provides for the exemption of shops within a certain precinct from the requirement to be kept closed on Boxing Day as well as providing that the exemption for certain specified shops to open on a restricted trading day is subject to a condition that they be staffed by persons who have freely elected to work.

6. The amendment Bill also provides that nothing in the *Liquor Act 2007* operates to exempt a shop from a requirement in the principal Act, allows certain industrial organisations of employees to apply to the Administrative Decisions Tribunal for reviews of decisions relating to exemptions granted under the principal Act

7. The Bill makes some other amendments relating to the closure of financial institutions on Bank Holiday, clarifying that nothing in the *Liquor Act 2007* operates to exempt a shop from a requirement in the principal Act, and enabling the rights of employees to seek reviews in the Administrative Decisions Tribunal.

8. The *Public Holidays Bill 2010* is cognate with the *Shop Trading Amendment Bill 2010*.

### Background

9. The commencement of new public holidays entitlements on 1 January 2010 as part of the *Fair Work Act's* National Employment Standards, coupled with the progressive relaxation of restrictions on trading by banks, prompted New South Wales to reassess and clarify the operation and effect of its public holiday regime.

10. To ensure that any new scheme reflected community expectations, an independent review of public and bank holidays was undertaken by Professor Joellen Riley from the University of Sydney from May 2009 to October 2009. Both a discussion paper and a subsequent options paper were released for public discussion. A total of 271 submissions were provided in response to the inquiry.

11. The report was completed in October 2009 and canvassed various options for reform and made a series of recommendations about how to codify the public holidays regime.

12. The *Public Holidays Bill 2010* takes into account the findings of the report, compliant with standards set under the *Fair Work Act 2009.*

13. Meanwhile, the *Shop Trading Amendment Bill 2010* seeks to make amendments to the *Shop Trading Act 2008* to address a range of issues that have arisen in regards to its operation, particularly in relation to Boxing Day trading in the inner areas of Sydney.

14. In December 2009, a transitional regulation was made carrying forward the effect of a ministerial order made in 2007 which provided that Boxing Day trading was permitted for shops in an area called the Sydney commercial business district despite a presumptive ban on trading. However, that regulation was transitional in nature and it expired on 1 July 2010, thus requiring an amendment to the Bill to preserve the exemption.

15. The amendment Bill also gives effect to the Supreme Court finding in *Chambers Pty Limited v State of New South Wales* ([2010] NSWSC 271) where it was held that a packaged liquor store had to apply for an exemption to open on a restricted day under the *Shop Trading Act 2008*, notwithstanding any provisions of the *Liquor Act 2007*.

## The Bill

16. **Outline of Provisions – *Public Holidays Bill 2010***

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

**Clause 2** provides for the commencement of the proposed Act.

**Clause 3** defines certain words and expressions used in the proposed Act.

**Part 2 Public holidays**

**Clause 4** declares the standard public holidays that apply throughout the State. For 2011, the declared public holidays will be the same as currently apply under the *Banks and Bank Holidays Act 1912* except that Easter Sunday will be a public holiday and there will be a substituted day when Australia Day falls on a Saturday. From 1 January 2012, a revised list of standard public holidays will apply that incorporates the changes referred to in the Overview.

**Clause 5** authorises the Minister to declare additional public holidays in a particular year for the whole or a specified part of the State.

**Clause 6** authorises the Minister to change the date of a public holiday in a particular year by substituting another day for a public holiday.

**Clause 7** applies as laws of New South Wales provisions of the *Fair Work Act 2009* of the Commonwealth that entitle an employee to be absent from employment on a public holiday and to be paid while absent on a public holiday.

**Part 3 Miscellaneous**

**Clause 8** provides for the Minister to declare a local event day in a local government area at the request of the local council on the basis that the day is and will be observed as a day of special significance to the local community.

**Clause 9** provides for the delegation of functions of the Minister under the proposed Act.

**Clause 10** is a general regulation-making power.

**Clause 11** repeals the *Banks and Bank Holidays Act 1912*.

**Clause 12** provides for a review of the proposed Act 5 years after the date of assent to the proposed Act.

**Schedule 1 Savings, transitional and other provisions**

**Schedule 1** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

**Schedule 2 Amendment of Acts**

**Schedule 2** amends the Acts specified in the Schedule. The amendment of the *Public Holidays Act 2010* commences on 31 December 2011 and changes the standard public holidays as referred to in the Overview above.

## 17. Outline of Provisions – *Shop Trading Amendment Bill 2010*

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

**Clause 2** provides for the commencement of the proposed Act.

**Schedule 1 Amendment of Shop Trading Act 2008 No 49**
**Amendments relating to shop trading**

**Schedule 1 [5]** amends section 4 of the Principal Act so as to exempt shops located in the Sydney Trading Precinct from the requirement to be kept closed on Boxing Day.

**Schedule 1 [6]** inserts proposed section 6A into the Principal Act. The proposed section clarifies that nothing in the *Liquor Act 2007*, or in any packaged liquor licence under that Act, operates to exempt a shop from a requirement in the Principal Act to be kept closed.

**Schedule 1 [8]** amends section 7 of the Principal Act to make it a condition of an exemption for a shop carrying on business specified in Schedule 1 to the Principal Act to open on a restricted trading day that the shop must be staffed on that day only by persons who have freely elected to work on that day.

**Schedule 1 [10]** amends section 12 of the Principal Act to allow certain industrial organisations of employees to apply to the Administrative Decisions Tribunal for reviews of certain decisions of the Director-General of the Department of Services, Technology and Administration (the ***Director-General***) relating to exemptions under the Principal Act, including decisions to grant exemptions.

**Schedule 1 [11]** amends section 13 of the Principal Act to provide that a person is not taken to have freely elected to work on a restricted trading day merely because the person is required to do so by the terms of an industrial instrument. Currently, that section makes it a condition of an exemption from the requirement to close a shop on a restricted trading day that the shop must be staffed on that day only by persons who have freely elected to work on that day.

**Schedule 1 [14]** amends section 18 of the Principal Act so as to provide that, in proceedings for an offence against that Act, a shop will be taken not to be closed if goods are being received, or unpacked or otherwise prepared, for sale at the shop, or if stocktaking is being carried out in respect of goods offered or exposed for sale at the shop.

**Schedule 1 [16]** inserts proposed section 22B into the Principal Act. The proposed section provides that the State is not liable to pay compensation arising from the enactment or operation of the Principal Act or the proposed Act, the exercise by any person of a function under Part 2 or 3 of the Principal Act (or failure to exercise such a function) or any statement or conduct relating to the regulation of shop opening hours or restricted trading days.

**Schedule 1 [9]** makes a consequential amendment.

**Amendments relating to bank trading**

**Schedule 1 [2]** amends the name of the Principal Act by changing it from *Shop Trading Act 2008* to *Retail Trading Act 2008* to encompass provisions relating to retail bank trading.

**Schedule 1 [12]** inserts proposed Part 3A into the Principal Act which contains the following sections:

**Proposed section 14A** defines ***bank*** and ***financial institution*** for the purposes of proposed Part 3A.

**Proposed section 14B** provides that public holidays, Saturdays, Sundays and Bank Holiday (first Monday in August) are ***bank close days***. Good Friday, Easter Sunday, Anzac Day, Christmas Day and Boxing Day are also bank close days whether or not they are public holidays in a particular year. Proposed section 14B also provides that bank close days are bank holidays for the purposes of the *Bills of Exchange Act 1909* of the Commonwealth.

**Proposed section 14C** requires a bank to be kept closed for retail banking business on a bank close day unless the bank has an approval under proposed Part 3A to open and complies with any conditions of the approval.

**Proposed section 14D** extends Bank Holiday to certain financial institutions so as to require them to be kept closed for retail business on that day (subject to exceptions where 5 employees or less are employed or where there are alternative arrangements for employees to have a day off in lieu of Bank Holiday). Proposed section 14D also provides for the granting of approval for financial institutions to open on Bank Holiday and for that purpose applies the other provisions of proposed Part 3A to approvals for banks to open on Bank Holiday.

**Proposed section 14E** restricts the granting of approvals for banks to open on bank close days. An approval cannot be granted for a bank to open on Good Friday, Easter Sunday, Anzac Day before 1pm, Christmas Day or Boxing Day.

**Proposed section 14F** makes it a condition of an approval to open a bank on a bank close day that the bank must be staffed on that day only by persons who have freely elected to work on that day.

**Proposed section 14G** provides for the making of an application to the Director-General for an approval to open a bank on a bank close day.

**Proposed section 14H** provides for the matters to be considered by the Director-General in determining whether to approve the opening of a bank on a bank close day.

**Proposed section 14I** provides for the procedure for determining an application for an approval under proposed Part 3A.

**Proposed section 14J** provides for the duration of an approval under proposed Part 3A.

**Proposed section 14K** provides for the suspension or cancellation of an approval under proposed Part 3A and for the variation of the conditions of an approval.

**Proposed section 14L** provides for the review by the Administrative Decisions Tribunal of decisions of the Director-General under proposed Part 3A.

**Schedule 1 [13]** amends section 15 of the Principal Act to allow inspectors to require banks and financial institutions to produce records of the hours worked by their employees, business receipts and other information concerning the operation of the banks and financial institutions.

**Schedule 1 [15]** amends section 19 of the Principal Act to provide that certificates of the Director-General relating to approvals under proposed Part 3A are admissible as evidence of the matters so certified.

**Schedule 1 [1], [3], [4] and [7]** make consequential amendments.

**Savings and transitional provisions**

**Schedule 1 [17]** amends Schedule 2 to the Principal Act so as to allow regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

**Schedule 1 [18]** amends Schedule 2 to the Principal Act to insert transitional provisions consequent on the enactment of the proposed Act.

**Schedule 2 Amendment of *Shop Trading Regulation 2009***

**Schedule 2 [1]** amends the name of the Principal Regulation by changing it from *Shop Trading Regulation 2009* to *Retail Trading Regulation 2009* consequent on the enactment of the proposed Act.

**Schedule 2 [3]** inserts proposed clause 3A into the Principal Regulation. The proposed clause prescribes the Sydney Trading Precinct, so as to exempt shops located in that precinct from the requirement to be kept closed on Boxing Day.

**Schedule 2 [2] and [5]** make consequential amendments.

**Schedule 2 [4] and [6]** omit spent provisions.

# Issues Considered by the Committee

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

**Issue: Denial of Compensation**

18. The insertion of the proposed section 22B in the *Shop Trading Amendment Bill 2010* provides that compensation is not payable by or on behalf of the State arising directly or indirectly from operation of the amendments to the Act, any exercise or conduct by any person of a function related to the restriction of trade on certain days or any exemption to the restriction, or any statement or conduct relating to the regulation of shop opening hours or restricted trading days.

19. Proposed section 22B(2) provides that 'conduct' is defined to include 'any act or omission, whether unconscionable, misleading, deceptive or otherwise', and 'statement' is defined to include a representation 'whether negligent, false, misleading or otherwise'.

20. The Committee acknowledges the right of Government to be exempt from paying compensation to affected retailers for declaring public holidays and notes the public policy grounds to restrict retail trading on certain public holidays. However, the Committee does not support denial of compensation in circumstances where the Government, or any statutory agency acting on legislative authority, has engaged in conduct that is 'unconscionable, misleading or deceptive' or which makes statements that are 'negligent, false or misleading'.

21. **The Committee acknowledges the right of Government to be exempt from paying compensation to affected retailers for declaring public holidays and notes the public policy grounds to restrict retail trading on certain public holidays. However, the Committee does not support denial of compensation in circumstances where the Government, or any statutory agency acting on legislative authority, has engaged in conduct that is 'unconscionable, misleading or deceptive' or which makes statements that are 'negligent, false or misleading'.**

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

# 10. ROADS AMENDMENT (PRIVATE RAILWAYS) BILL 2010

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|---|---|
| Date Introduced: | 12 November 2010 |
| House Introduced: | Legislative Assembly |
| Minister Responsible: | The Hon David Borger MP |
| Portfolio: | Roads |

## Purpose and Description

1. The object of this Bill is to amend the *Roads Act 1993* to clarify that road work carried out under the *Roads Act 1993* by the Roads and Traffic Authority (RTA) may include the construction or installation of rail infrastructure on or in the vicinity of a road for the purposes of the use of the road as a road.

2. The Bill also clarifies that if the RTA carries out road work, over, below or in the vicinity of a private railway it is not to be taken that the private railway has been severed, closed or otherwise unused.

3. The Bill also ensures that any entitlement a person would have to compensation under the *Roads Act 1993* or the *Land Acquisition (Just Terms Compensation) Act 1991* resulting from the carrying out of the road work in relation to the private railway continues to apply.

### Background

4. The amendments proposed by this Bill are intended to facilitate the construction of the $1.7 billion Hunter Expressway.

5. In particular, the Bill is designed to provide legal certainty to works that will be undertaken as part of the construction of the expressway. In constructing the Hunter Expressway, specific works are required to realign the 900-metre long section of privately owned railway line. The realignment includes the construction of a new railway bridge over the proposed expressway.

6. Input was sought from the Department Justice and Attorney General and the Land and Property Management Authority regarding property and compensation issues to ensure that the Bill does not affect the rights to compensation to which the owners of the private railway may be entitled under the *Land Acquisition (Just Terms) Act 1991.*

### The Bill

7. **Outline of Provisions**

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

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

**Schedule 1 Amendment of *Roads Act 1993* No 33**

**Schedule 1 [1]** provides for the effect of road work on private railways. Specifically, it provides that:

> (a) a private railway is not taken to have been severed, closed or otherwise not used merely because the RTA carried out road work on, over, below or in the vicinity of the railway, and
>
> (b) any entitlement a person would have to compensation under the Principal Act or the *Land Acquisition (Just Terms Compensation) Act 1991* resulting from the carrying out of the road work in relation to the private railway continues to apply.

**Schedule 1 [2]** amends the definition of ***road work*** in the Dictionary at the end of the Principal Act to provide that road work includes the construction or installation of rail infrastructure on or in the vicinity of a road for the purposes of the use of the road as a road.

**Schedule 1 [3]** makes a related amendment to the definition of ***road work*** and provides that road work includes not only any kind of work, building or structure constructed or installed on or in the vicinity of a road for the purposes of the use of the road as a road but also any kind of work, building or structure that is relocated on or in the vicinity of the road for that purpose.

# Issues Considered by the Committee

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

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

# 11. STATE EMERGENCY AND RESCUE MANAGEMENT AMENDMENT BILL 2010

| | |
|---|---|
| Date Introduced: | 12 November 2010 |
| House Introduced: | Legislative Assembly |
| Minister Responsible: | The Hon Steve Whan MP |
| Portfolio: | Emergency Services |

## Purpose and Description

1. The object of this Bill is to amend the *State Emergency and Rescue Management Act 1989* to make various largely minor amendments that are primarily of an administrative or consequential nature.

2. These amendments include modifying the membership of the State Emergency Management Committee, redrafting its functions, clarifying the ex officio nature of certain positions in the State Emergency Service, modifying emergency management arrangements and enabling police officers to be aided or accompanied by assistance when taking safety measures in danger areas affected by emergency.

### Background

3. The *State Emergency and Rescue Management Act 1989* was introduced to establish the emergency bodies and the plans to guide the State and the Government in the management of emergencies and disasters.

4. The key body established under the Act is the State Emergency Management Committee – SEMC – which is responsible for coordinated planning and policy development for emergency management in New South Wales. The Committee includes heads or other senior executive officers from across the emergency services, including Police, Fire Brigades, Rural Fire Service and Ambulance, together with representatives from relevant Government agencies.

5. In the wake of the 2009 Victorian Bushfires, the SEMC commissioned a strategic review of the *State Emergency and Rescue Act 1989.* This review provided a number of clear insights into how the Act could be refocused and updated in alignment with best practice emergency management arrangements. The Bill seeks to implement key recommendations of this review in relation to the core roles and responsibilities of the SEMC.

### The Bill

6. **Outline of Provisions**

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

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

**Schedule 1 Amendment of *State Emergency and Rescue Management Act 1989* No 165**

**Amendments relating to State emergency management and administration**

**Schedule 1 [4] and [5]** provide that the person holding office as Chairperson of the State Emergency Management Committee (established under section 14 of the Principal Act) will no longer be an ex officio member of the State Disasters Council (established under section 11 of the Principal Act) but instead may be appointed as such a member by the Minister.

**Schedule 1 [7]** enables the Minister to nominate other persons as members of the State Emergency Management Committee in addition to the various ex officio members and agency representatives who currently comprise the Committee.

**Schedule 1 [8]** provides that any member of the Committee may be appointed by the Minister as Chairperson of the Committee.

**Schedule 1 [9]** streamlines the functions of the State Emergency Management Committee so as to provide a more strategic policy focus. As a consequence of the Committee's revised functions (which include reviewing the State Disaster Plan, or ***Displan***, and recommending alterations to Displan), **Schedule 1 [3] and [6]** modify the Minister's role in relation to Displan.

**Schedule 1 [10]** requires the Chief Executive, Emergency Management NSW to provide the annual report of the State Emergency Management Committee, as approved by the Committee, to the Minister instead of the Committee providing the report to the Minister.

**Schedule 1 [11]** makes it clear that the positions of the State Emergency Operations Controller and Deputy Controller are ex officio positions that are held by the holders of certain positions in the NSW Police Force (including persons acting in those Police Force positions). **Schedule 1 [13]** makes a similar amendment in relation to the positions of the State Emergency Recovery Controller (which is held by the Chief Executive, Emergency Management NSW) and Deputy Controller (which is held by a person holding a senior position in the Government Service). **Schedule 1 [2]** is a consequential amendment and **Schedule 1 [27]** removes redundant provisions relating to the Controllers and Deputy Controllers.

**Schedule 1 [12], [15] and [16]** provide that the Emergency Operations Controller at the State level or at a district or local level will, instead of providing assistance to the combat agency that is responsible for controlling the response to an emergency, be authorised to carry out functions specified by the combat agency concerned.

**Schedule 1 [14]** ensures that the local government representative on each District Emergency Management Committee is the Chairperson of the respective Local Emergency Management Committee.

**Schedule 1 [17]** provides that emergency services officers, who have certain functions under the Principal Act during a state of emergency, will include members of the Ambulance Service of NSW of or above the rank of station officer.

**Miscellaneous amendments**

**Schedule 1 [1], [18] and [24]** are statute law revision amendments that update or remove references to repealed legislation.

**Schedule 1 [19]** provides that any agency which manages or controls an accredited rescue unit must notify the police immediately after becoming aware of an incident involving the rescue of a person. At present, only the agencies that manage or control Fire Brigades or Ambulance Service accredited rescue units are required to notify the police of rescue incidents.

**Schedule 1 [20]** provides that the danger area in which police officers may exercise certain functions in relation to an emergency is the area specified by a senior police officer as the area affected by the emergency. **Schedule 1 [21]** is a consequential amendment.

**Schedule 1 [22]** provides that a police officer may exercise functions relating to the taking of safety measures in a danger area (for example, shutting off power supply) with the assistance of such persons as the police officer considers necessary.

**Schedule 1 [23]** makes it clear that staff may be employed under the *Public Sector Employment and Management Act 2002* to enable the State Emergency Recovery Controller to exercise his or her functions.

**Schedule 1 [25]** makes it clear that the public sector staff who are employed to enable the various emergency and rescue management organisations set up under the Principal Act to exercise their respective functions may also be employed to provide executive and operational support facilities for those organisations.

**Schedule 1 [26]** provides for the tabling of certain annual reports under the Principal Act when Parliament is not sitting.

**Schedule 1 [28]** enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.

**Schedule 1 [29]** preserves the appointment of the existing Chairperson of the State Emergency Management Committee.

# Issues Considered by the Committee

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

### Issue: Commencement by Proclamation

7. The Committee notes that the Act is to commence on a day or days to be appointed by proclamation. This may delegate to the Government the power to commence the Act on whatever day it chooses or not at all.

8. However, considering that the amendments foreshadowed by this Bill are largely minor in nature, and given that the Committee has not identified any other issue in this Bill that may unduly trespass on personal rights and liberties, the Committee does not regard the Minister's discretion to commence the Act by proclamation to be an inappropriate delegation of power in this instance.

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|---|---|
| 9. | **Considering that the amendments foreshadowed by this Bill are largely minor in nature, and given that the Committee has not identified any other issue in this Bill that may unduly trespass on personal rights and liberties, the Committee does not regard the Minister's discretion to commence the Act by proclamation to be an inappropriate delegation of power in this instance.** |

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

# 12. SUPERANNUATION ADMINISTRATION AUTHORITY CORPORATISATION AMENDMENT BILL 2010

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|---|---|
| Date Introduced: | 11 November 2010 |
| House Introduced: | Legislative Council |
| Minister Responsible: | Hon Michael Daley MP |
| Portfolio: | Finance |

## Purpose and Description

1. This Bill amends the *Superannuation Administration Authority Corporatisation Act 1999* to make further provision with respect to the functions of the Superannuation Administration Corporation.

2. The purpose this Bill is to expand the functions of Pillar Administration by allowing it to expand its administration functions to include other financial services besides superannuation.

3. Pillar Administration is not responsible for the investment of superannuation funds, and this Bill does not include amendments that would make this possible. The Bill builds on those administration functions that Pillar Administration does well in the superannuation industry by allowing it to provide similar products to other financial service providers, such as life insurance companies.

4. This Bill seeks to amend the Act to enable Pillar to provide administration and related services to financial services providers. These services include, but are not limited to, the following: collecting payments on behalf of financial service providers; providing information and advice to clients of financial services providers; keeping and maintaining client records; preparing financial statements on behalf of financial service providers; and processing claims and other transaction on behalf of financial service providers. The Bill also provides for Pillar to have such other functions as may be prescribed by the regulations.

### Background

5. Pillar Administration has existed for some 100 years, providing administration services for the management of retirement savings. It initially administered these funds accumulated by public sector employees. However, following the passage of the *Superannuation Administration Authority Corporatisation Act 1999*, Pillar Administration expanded its market to include private sector clients. The Act sets out the principal functions of Pillar Administration as "the development, promotion and conduct of its business of providing superannuation scheme administration and related services". Pillar currently provides such services to the trustees of superannuation funds.

6. It is intended that the expansion of Pillar's administration functions to include other financial services besides superannuation, will provide benefits to New South Wales taxpayers and the Illawarra region, where Pillar Administration is based.

7. Pillar Administration will then be able to offer a similar range of services provided by other industry players, enabling it to compete on a level playing field.

## The Bill

8. The object of this Bill is to amend the *Superannuation Administration Authority Corporatisation Act 1999* (the ***principal Act***) to enable the Superannuation Administration Corporation (the ***Corporation***) to provide administration and related services to financial service providers, in addition to its existing function of providing those services in relation to superannuation schemes.

9. **Outline of provisions**

**Clause 1** sets out the name (also called the short title) of the proposed Act. **Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Schedule 1 Amendment of *Superannuation Administration Authority Corporatisation Act 1999* No 5**

**Schedule 1 [4]** enables the Corporation to provide administration and related services to financial service providers. For that purpose, the Corporation may provide services such as collecting payments on behalf of financial service providers, providing information and advice to clients of financial service providers and keeping and maintaining client records. In addition, the Corporation is to have such other functions as may be prescribed by the regulations. **Schedule 1 [2], [3] and [6]** are consequential amendments.

**Schedule 1 [1]** omits a provision relating to the business of the Corporation that is unnecessary because the business of the Corporation is essentially to carry out its functions (which are set out in full in section 7 of the principal Act). As a consequence of that amendment, **Schedule 1 [5]** inserts a note that draws attention to the principal objectives of statutory State owned corporations, as set out in section 20E of the *State Owned Corporations Act 1989*.

# Issues Considered by the Committee

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

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

# 13. WATER MANAGEMENT AMENDMENT BILL 2010

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|---|---|
| Date Introduced: | 11 November 2010 |
| House Introduced: | Legislative Assembly |
| Minister Responsible: | Hon Phillip Costa MP |
| Portfolio: | Water |

## Purpose and Description

1. This Bill amends the Water *Management Act 2000* with respect to specific purpose access licences and other access licences, environmental water, offences relating to taking water and water meters and private irrigation and drainage bodies; and for other purposes.

2. It aims to cut red tape by applying a consistent structure to bodies that exercise water supply or drainage functions such as private irrigation boards, private drainage boards and private water trusts. The current governance arrangements for these bodies are complex and inconsistent with recent Commonwealth legislative reforms. This Bill renames these bodies "private water corporations" and consolidates their functions into a single governance structure.

3. Firstly, the legal status of the current irrigation boards, drainage boards and trusts will not change. They will operate in the same areas, own the same assets, have the same directors or trustees until their next election and be the same legal entity. Secondly, the proposed provisions relate only to internal governance. While the private water corporation or trust will have the power to take water and to go onto land and construct works, it will still need to hold water licences and approvals required under the legislation to perform those functions.

4. The other aspect of the reforms is that the powers available to water managers have been enhanced by enabling irrigation operators to comply with the Commonwealth market rules; and improving the framework for management of water supply works. New Commonwealth market rules require irrigation infrastructure operators to allow part of the group's water entitlement to be transformed into an individually held water licence on application by a member if that individual wishes to trade their individual entitlement.

5. This Bill gives the schemes the power to transform entitlements as follows: First, it allows members to apply to the corporation or trust to have their member's water entitlement determined. This entitlement is the share of the group entitlement that is available to the member. It does not include water such as conveyance water that is required to deliver the supply to a member but is not available for use by the member. Even where there are currently no formal arrangements as to water shares, there generally have been informal arrangements about water sharing in place. Second, the water supply scheme is required to determine only the individual member's entitlement in relation to irrigation water. There is no right to have the member's share

of stock and domestic water determined, but the scheme can do so if it wishes. If the member does not agree with the determination, they can lodge an appeal with the Land and Environment Court.

6. Third, once an entitlement is determined, the private water corporation or trust can apply under the trade provisions of the *Water Management Act 2000* to have part of the group licence subdivided and transferred to the member. The Act does not require the schemes to apply for transformation, and does not govern the terms on which transformation occurs. If a member has concerns about refusal to transform or the terms on which transformation has taken place, this becomes a matter for the Australian Competition and Consumer Commission. Lastly, the Bill gives the corporations and trusts powers to impose termination and delivery fees in relation to members who have elected to transform their entitlement.

7. The Bill does not prescribe what fee can be imposed. They are determined by the Commonwealth rules.

8. This Bill seeks to improve the framework for the management of water supply works. It gives the schemes much greater flexibility to amend and update their water supply works plan without need for government intervention. The water supply works plan is a document that defines the works and land that the corporation or trust manages. It is intended that the regulations will require a scheme to enable any member or person whose property is affected to view the works plan during business hours.

9. In relation to domestic and stock licence holders, no requirement for drought management plans will be imposed. Instead, farmers will decide for themselves, based on their own needs, how much of their stock water they wish to trade. Trade of domestic and stock licences will be allowed on a permanent basis. However, the farmer's water use will be required to be metered. A portion of the licence will be required to be retained for domestic use.

10. This Bill does not affect basic landholder rights. However, a person will be able to trade their stock and domestic licence only if they agree not to exercise basic landholder rights for stock and domestic water. The Agreement in Principle speech explained that this is a precaution to ensure people do not double dip, and, in doing so, reduce the water that is available to other users.

11. The Bill also facilitates the investment by the Commonwealth and other government bodies in environmental water recovery programs. The amending provisions will enable a licence for environmental purposes to be granted to the Commonwealth environmental water holder, or a State when it is necessary to give effect to agreements. Any licence granted to the State will be part of the licensed environmental water regime. This ensures that water secured by these licences will be used for environmental purposes.

12. There are refinements to existing offence provisions of the Act. They include closing loopholes in the current tier one offences, which target the deliberate, negligent or reckless theft of water or meter tampering; clarifying the current position that mining companies must hold a water access licence for water taken both directly and incidentally as a result of the mining operations; and improving the operation of the offence provision concerning faulty water meters, which allows greater flexibility for a

water user with a faulty meter to take water if they reported that their meter is not working and kept appropriate records as set out in the regulations.

## Background

13. The reforms take a three-tiered approach. At the top level, the *Water Management Act* sets the broad framework within which the irrigation and drainage functions are undertaken. At the middle level, the regulations will enable the Minister to impose requirements, where necessary, to provide fundamental safeguards for members and customers of schemes. At the lower level, the rules of each body will define the relationship between the members and the corporation or trust. These rules will be under the control of the scheme and its members and can be changed without amendments to the regulations or proclamations by the Governor. To ensure there are safeguards for members, the rules will need to comply with the requirements of the regulations. This is similar to the constitution of an association under the *Associations Incorporation Act*.

14. Many of the private irrigation districts and trusts have been operating for a long time. Therefore, they will not be burdened with a requirement to go out and survey the kilometres of supply channels and pipes that they administer to produce a works plan. Instead, the savings and transitional regulations will deem all works that are currently used by the irrigation board or trust to deliver water to be part of the works plan. A main feature of the works plan is that it will continue to apply, even if a former member has transformed their entitlements and terminated their water delivery rights. This is to ensure that a member selling their share does not prevent ongoing use and maintenance of channels or other water supply infrastructure that exist on their land.

15. The Bill will enable certain provisions to be commenced immediately while further work is done on the broader governance reforms. The Agreement in Principle speech explained that:

> The reforms are significant, and the Government will not commence every aspect of them until there are supports in place for the irrigation districts and trusts to ensure a seamless transition. There has been consultation with these groups and general support for the amendments. Following passage of the Bill, further consultation with stakeholders will occur about transitional issues and additional support that can be provided by the New South Wales Office of Water, such as fact sheets and model rules. As further work will be undertaken to ensure a smooth transition, schedule 1 to the Bill has been drafted to enable members of irrigation districts and trusts to commence transformation in the absence of the broader governance reforms. This means that it could be commenced at an earlier date.

16. The other component is enabling trade in special purpose access licences [SPALs]. The second main feature of the Bill is that it aims to open up opportunities to trade specific purpose access licences (SPALs). Special purpose access licences include water access licences held by local water utilities for the purpose of town water supply, major utilities for water supply and electricity generation, and by farmers for the purpose of domestic and stock use. The Agreement in Principle speech stated that:

> Currently the trade in special purpose access licences is highly restricted. Most types of trade are prohibited, which means that there is little or no incentive for licence holders to improve their water efficiency and use water wisely. By opening up opportunities to trade, these amendments allow licence holders to consider means by which they can

> make efficiencies and create savings. I can confirm that these opportunities to make efficiencies and create savings are voluntary only. No-one will be under any obligation or compulsion to do so.
>
> …Licence holders can then trade these savings on the water market, enabling this water to be available to be available for other users. Of course there will be safeguards to prevent abuse. Local water utilities and major utilities will need to establish scientifically and astringently that they will achieve the savings that they forecast. They will be required to do so through drought management plans, or integrated water cycle management plans, which will be scrutinised before being approved by the Minister. This requirement provides an incentive for such utilities to undertake better water planning. In addition, such utilities will not be allowed to permanently trade water. Trades will be allowed only for defined terms of, for example, three to five years under what will be known as term transfers. They will not be open-ended. These protections will ensure that the security of water supplied by such utilities will not be endangered.
>
> …Another safeguard is that such utilities will not be allowed to use their inactive entitlements to supplement the water they have traded. This will prevent double dipping, and a potential for growth of such use as a result of the trade. Inactive entitlements are those portions of an entitlement that are not used by the licence holder. For example, a town may have an entitlement that is divided into 40 per cent used, and 60 per cent inactive. If it can find efficiencies within the 40 per cent, say of 10 per cent, it may trade a proportion of that 10 per cent. However, the inactive 60 per cent will not be able to be used for the term of the trade.

17. Impacts on other water users could arise if the holder of a stock and domestic licence trades an inactive part of the licence and keeps taking the same volume of water and trigger a growth in use of the resource. To prevent this, it is proposed that a proportion of water must be committed to the environment to ensure that there are no inappropriate environmental or third party impacts caused by such trades. This proportion will be developed in consultation with stakeholders and implemented by regulation. However, total domestic and stock entitlement generally is only a small percentage of total valley entitlement.

18. To secure investment in these projects, licences need to be created that include water savings. The licences will offset the impacts of extraction reductions that will be implemented in the Commonwealth's proposed Basin Plan.

19. New accounting rules will also ensure that the environmental water is accounted for and will not adversely impact on the existing entitlements of users, and that the amendments are consistent with the arrangements under the Commonwealth's proposed Basin Plan.

20. According to the Agreement in Principle speech, the reforms aim to:

> respond to issues such as the new Commonwealth market rules, the proposed Commonwealth Basin Plan and reduced water availability that may arise from drought and climate change into the future; they help regional communities to participate in trade in water without breaching Commonwealth laws; they facilitate greater investment in water for the environment; and they strengthen the regulatory tools we have in place to ensure that the water market works to the benefit of all.

## The Bill

21. The object of this Bill is to amend the *Water Management Act 2000* (the ***Principal Act***) as follows:

(a) to facilitate the granting by the Minister of licences for environmental purposes for the purpose of State or Commonwealth agreements,

(b) to enable the transformation of irrigation entitlements of landholders in private irrigation districts of private irrigation boards or water supply districts of private water trusts to rights that can be traded under Commonwealth legislation,

(c) to clarify matters relating to accounting for environmental water,

(d) to remove restrictions relating to dealings in specific purpose access licences for water and to provide for other matters relating to dealings in access licences, including mandatory conditions of consent and the removal or variation of conditions of licences and approvals,

(e) to provide for the removal of domestic and stock rights as a consequence of a condition of consent to a dealing in a domestic and stock access licence,

(f) to re-enact offences relating to the taking of water,

(g) to make it clear that certain mining activities will require an access licence,

(h) to make each holder of a licence or approval liable for an offence if a licence or approval is contravened,

(i) to provide for offences relating to taking water when metering equipment is not working,

(j) to confer on irrigation corporations powers to appoint authorised officers for enforcement purposes and to impose penalty charges for taking corporation water illegally and damaging corporation works and to make other amendments consistent with the functions to be conferred on private water corporations,

(k) to make it an offence for an irrigation corporation to contravene the operating licence of the corporation,

(l) to repeal provisions establishing private irrigation boards, private irrigation districts and private drainage boards,

(m) to establish private water corporations and provide for the conversion of existing private water boards, private drainage boards and private water trusts to private water corporations,

(n) to make provisions applying to private water trusts consistent with those that will apply to private water corporations, including abolishing water supply districts of trusts,

(o) to make it clear that enforcement action may be taken outside the State, so long as the matter affects a matter under the Principal Act,

(p) to provide for appeals to the Land and Environment Court (the ***Court***) against decisions by irrigation and private water corporations imposing penalties and decisions by private water corporations and private water trusts about members' water entitlements,

(q) to enable the compulsory acquisition of land provisions to be used for acquisitions by the Ministerial Corporation on behalf of private water corporations and private water trusts,

(r) to make other minor and consequential amendments to the Principal Act and other Acts,

(s) to make provision of a savings and transitional nature consequent on the enactment of the proposed Act.

22. **Outline of provisions**

**Clause 1** sets out the name (also called the short title) of the proposed Act. **Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Schedule 1 Amendments to *Water Management Act 2000* No 92 relating to Commonwealth requirements:**

**Discretionary licences** are covered in Schedule 1 [1], [6], [7] and [9].

**Transformation of water entitlements of landholders in private irrigation schemes** are addressed in Schedule 1 [2], [3], [4], [5] and [8].

Schedule 1 [2] defines a landholder's water entitlement as the part of the share component of a private irrigation board's access licence that is available to the landholder of an irrigated holding within a private irrigation district.

Schedule 1 [4] defines a landholder's water entitlement as the part of the share component of a private water trust's access licence that is available to the landholder of an irrigated holding within a water supply district of the trust.

Schedule 1 [8] enables regulations containing savings and transitional provisions to be made consequent on the enactment of this proposed Act.

**Schedule 2 Other amendments to *Water Management Act 2000* No 92:**

**Environmental water** is addressed in Schedule 2 [1], [2], [3], [4], [5], [6], [7], [8], [9], [97] and [105].

**Domestic and stock rights** are covered by Schedule 2 [11], [12] and [40].

**Offences** are provided by Schedule 2 [13], [14], [15], [17], [51], [52], [53], [54], [55], [56] and [57].

**Access licences and approvals** are dealt with in Schedule 2 [18], [19], [20], [21], [22], [23], [24], [25], [26], [27], [28], [29], [30], [31], [32], [33], [38], [39], [40], [41], [43], [44], [58], [59], [60], [61], [62], [63], [64], [65] and [109].

**Irrigation corporations** are addressed in Schedule 2 [68], [69], [70], [71], [72], [73] and [74].

**Private water corporations** are covered in Schedule 2 [75]. The amendment inserts proposed Part 2 of Chapter 4. The proposed Part contains the following divisions:

**Part 2 Private water corporations:**

**Division 1 Preliminary**

**Division 2 Constitution and management of private water corporations**

**Division 3 Operational functions**

**Division 4 Sale and transformation of water entitlements**

**Division 5 Changes to private water corporations**

**Division 6 Rates and charges**

**Division 7 Finance**

**Division 8 Enforcement powers**

**Division 9 Winding up of private water corporations**

**Division 10 Miscellaneous**

**Private water trusts** are addressed in Schedule 2 [76], [77], [78], [79] and [80]. The amendment inserts proposed Divisions 2 – 9 of Part 4 of Chapter 4. The proposed Part contains the following divisions:

**Division 2 Management of private water trusts**

**Division 3 Operational functions**

**Division 4 Sale and transformation of water entitlements**

**Division 5 Changes to private water trusts**

**Division 6 Rates and charges**

**Division 7 Finance**

**Division 8 Winding up of private water trusts**

**Division 9 Miscellaneous**

**Appeals to Land and Environment Court** are dealt with in Schedule 2 [92], [93] and [94].

**Schedule 3 Amendment of other Acts:**

Schedule 3.1 *Farm Water Supplies Act 1946* No 22

Schedule 3.2 *Land and Environment Court Act 1979* No 204

Schedule 3.3 *Roads Act 1993* No 33

# Issues Considered by the Committee

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

**Issue: Strict Liability – Amendments to *Water Management Act 2000* - Schedule 2 [14] – proposed section 60B (2) and (3); Schedule 2 [15] – proposed section 60C (2) and (3); Schedule 2 [51] – proposed section 91A (4) and (5); Schedule 2 [52] – proposed section 91B (5); and Schedule 2 [54] – proposed section 91G:**

23. Proposed section 60B (2) reads that: If any term or condition of an access licence is contravened by any person, each holder of the access licence is guilty of an offence. Tier 2 penalty.

24. Under the *Water Management Act 2000*, section 363B provides the penalties where a Tier 2 penalty corresponds to a maximum penalty of: (i) in the case of a corporation, 10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, or (ii) in any other case, 2,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues.

25. The proposed section 60B (2) provides a strict liability offence where the prosecuting authority is not required to prove that the defendant intended to commit the offence. However, the Committee observes that under proposed section 60B (3), there is the availability of a defence if the accused establishes:

> (a) that the contravention of the term or condition was caused by another person, and
>
> (b) that the other person was not associated with the holder at the time the term or condition was contravened, and
>
> (c) that the holder took all reasonable steps to prevent the contravention of the term or condition. A person is associated with the holder for the purposes of this subsection (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the holder.

26. Strict liability offences are already contained under the current section 91A (1) and (2) of the *Water Management Act 2000* with regard to using water without, or otherwise than as authorised by, a water use approval. They attract a Tier 2 penalty.

27. The Bill's proposed section 91A (4) and (5) will now provide similar defences for the accused person in relation to the above strict liability offences, including the defence that the water was used pursuant to a basic landholder right.

28. Similarly, strict liability arises under the current section 91B (1) of the *Water Management Act 2000* in relation to constructing or using water supply work without a water supply work approval. This offence attracts a Tier 2 penalty. The Committee observes that under the Bill's proposed section 91B (5), there will be the availability of a defence of a basic landholder right for the accused person in the context of the strict liability offence already contained in section 91B (1).

29. **The Committee, therefore, notes the above numerous clauses in the Bill which provide for strict liability offences. The imposition of strict liability may give rise to concern as the prosecuting authority is not required to prove that the defendant intended to commit the offence, and may be seen as contrary to the right to the presumption of innocence. However, in some circumstances, the imposition of strict liability may be warranted after considering the community impact of the offence, the availability of defences and safeguards, and the type of penalty that may be imposed. Terms of imprisonment are generally considered inappropriate in relation to strict liability offences.**

30. **The Committee is of the view that where the above proposed strict liability offences have available defences and their penalties do not attract terms of imprisonment, along with the consideration of the community impact of the offences and compliance with the Bill's objective, the above proposed provisions may not be unduly trespassing on individual rights and liberties.**

31. **Strict liability also arises in proposed section 60C (2): A person who takes water from a water source to which this Part applies otherwise than in accordance with the water allocation for the access licence by which the taking of water from that water source is authorised is guilty of an offence. Tier 2 penalty.**

32. **Strict liability is again contained in proposed section 60C (3): If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (2), and the water supply work is nominated in relation to an access licence held by some other person, both persons are taken to have contravened that subsection.**

33. **However, there does not appear to be the availability of any corresponding defences for the strict liability offences contained in the above proposed section 60C (2) and (3). Accordingly, the Committee refers to Parliament to consider whether the proposed section 60C (2) and (3) of Schedule 2 [15] of the Bill may unduly trespass on the rights and liberties of those charged with such strict liability offences.**

**Issue: Removal of basic landholder right as a defence – Amendment to *Water Management Act 2000* – Schedule 2 [57] – proposed section 91M (2) – Section 91M General defence:**

34. Some of the Division 1A offences include: using water without, or otherwise than as authorised by a water use approval; constructing or using water supply work without, or otherwise than as authorised by a water supply work approval; constructing or using drainage work without, or otherwise than as authorised by a drainage work approval; constructing or using flood work without, or otherwise than as authorised by a flood work approval; carrying out controlled activity without, or otherwise than as

authorised by a controlled activity approval; carrying out aquifer interference activity without, or otherwise than as authorised by an aquifer interference approval; contravention of terms and conditions of approval; failure to install or maintain metering equipment; taking water when metering equipment not working.

35. The Committee notes that under the new section 91B (5) of the Bill, it proposes that a defence to a prosecution under subsection (1) is available if the accused person establishes that the water supply work was constructed or used pursuant to a basic landholder right. Similarly, under the proposed section 91A (4), it is a defence to a prosecution under subsection (1) if the accused person establishes that the water was used pursuant to a basic landholder right.

36. **However, proposed section 91M (2) will remove the currently available general defence of "the water was taken pursuant to a basic landholder right" in relation to the doing of anything without an approval, to a prosecution under the Division 1A offences (other than for defences available for offences under the new sections 91A (4) and 91B (5)).**

37. **Therefore, the Committee refers this to Parliament for consideration as to whether the proposed section 91M (2) of Schedule 2 [57] may constitute an undue trespass on the accused person's rights and liberties.**

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

**Issue: Excludes appeal – Amendments to *Water Management Act 2000* - Schedule 1 [6] – proposed section 368 (2)(c) and Schedule 2 [94] – proposed section 368 (2)(a1) - Section 368 Appeals to Land and Environment Court:**

38. Proposed section 368 (2)(c) of Schedule 1 [6] removes the right to appeal to the Land and Environment Court against a decision of the Minister to grant a licence under proposed section 63A or 63B, or to impose a discretionary condition on such a licence.

39. Proposed section 63A enables the Minister to grant an access licence to the Commonwealth or a person nominated by the Commonwealth, in order to give effect to an agreement entered into by or on behalf of the Sate, where the licence is to form part of the Commonwealth environmental water holdings. Proposed section 63B enables the Minister to grant an access licence to the State, or a public authority prescribed by the regulations, in order to give effect to an agreement entered into by or on behalf of the State, where the licence is to be used for certain environmental purposes.

40. Proposed section 368 (2)(a1) of Schedule 2 [94] provides that there is to be no right to appeal to the Land and Environment Court against a decision imposing a condition on consent to a dealing in an access licence, or any decision imposing, amending, revoking or suspending a mandatory condition of consent or a mandatory condition of an access licence or an approval, for purposes related to a dealing in an access licence.

41. **The Committee notes the importance of judicial review for protecting individual rights and in upholding the rule of law.**

42. **The Committee is also of the view that the above proposed sections appear broad and may have the potential to deny natural justice by removing the opportunity for review of a decision. Accordingly, the Committee asks Parliament to consider whether individual rights or liberties may be unduly dependent on non-reviewable decisions by removing appeals to the Land and Environment Court against decisions proposed by the new section 368 (2)(c) of Schedule 1 [6] and new section 368 (2)(a1) of Schedule 2 [94] of the Bill.**

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

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

43. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the proposed Act on whatever day it chooses or not at all. However, the Committee understands from the Agreement in Principle speech that:

> "The reforms are significant, and the Government will not commence every aspect of them until there are supports in place for the irrigation districts and trusts to ensure a seamless transition. There has been consultation with these groups and general support for the amendments. Following passage of the Bill, further consultation with stakeholders will occur about transitional issues and additional support that can be provided by the New South Wales Office of Water, such as fact sheets and model rules. As further work will be undertaken to ensure a smooth transition…"

44. **Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power.**

45. **The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the Legislation Review Act 1987.**

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

# Appendix 1: Index of Bills Reported on in 2010

| | Digest Number |
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| Adoption Amendment (Same Sex Couples) Bill 2010* | 10 |
| Adoption Amendment (Same Sex Couples) Bill (No. 2) 2010* | 11 |
| Appropriation Bill 2010 | 9 |
| Appropriation (Parliament) Bill 2010 | 9 |
| Appropriation (Special Offices) Bill 2010 | 9 |
| Australian Jockey and Sydney Turf Clubs Merger Bill 2010 | 15 |
| Banana Industry Repeal Bill 2010 | 8 |
| Building and Construction Industry Long Service Payments Amendment Bill 2009 | 1 |
| Carers Recognition Bill 2010* | 3 |
| Carers Recognition Bill 2010* | 5 |
| Carers (Recognition) Bill 2010 | 5 |
| Casino Control Amendment Bill 2010 | 2 |
| Central Coast Water Corporation Amendment Bill 2010 | 13 |
| Charter of Budget Honesty Amendment (Independent Election Costings) Bill 2010* | 5 |
| Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010 | 10 |
| Children and Young Persons (Care and Protection) Amendment (Homelessness Reporting Age) Bill 2010* | 15 |
| Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010* | 4 |
| Children (Education and Care Services National Law Application) Bill 2010 | 16 |
| Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010 | 12 |
| Coal Mine Health and Safety Amendment Bill 2010 | 4 |
| Coastal Protection and Other Legislation Amendment Bill 2010 | 9 |
| Coastal Protection and Other Legislation Amendment Bill 2010 (No 2) | 13 |
| Community Justice Centres Amendment Bill 2010 | 13 |
| Community Relations Commission and Principles of Multiculturalism Amendment Bill 2010 | 8 |
| Companion Animals Amendment (Dogs in Outside Eating Areas) Bill 2010* | 4 |
| Companion Animals Amendment (Outdoor Dining Areas) Bill 2010 | 5 |
| Constitution Amendment (Recognition of Aboriginal People) Bill 2010 | 12 |
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| | Digest Number |
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| Courts Legislation Amendment Bill 2010 | 9 |
| Credit (Commonwealth Powers) Bill 2010 | 2 |
| Crimes (Administration of Sentences) Amendment Bill 2010 | 2 |
| Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010 | 9 |
| Crimes Amendment (Child Pornography and Abuse Material) Bill 2010 | 3 |
| Crimes Amendment (Grievous Bodily Harm) Bill 2010* | 4 |
| Crimes Amendment (Police Pursuits) Bill 2010 | 2 |
| Crimes Amendment (Terrorism) Bill 2010 | 11 |
| Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010 | 10 |
| Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010 | 13 |
| Dust Diseases Tribunal Amendment (Damages – Deceased's Dependents) Bill 2010* | 16 |
| Duties Amendment (NSW Home Builders Bonus) Bill 2010 | 10 |
| Election Funding and Disclosures Amendment Bill 2010 | 15 |
| Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010 | 8 |
| Electricity Supply Amendment (Solar Bonus Scheme) Bill 2010 | 15 |
| Electronic Transactions Amendment Bill 2010 | 10 |
| Environmental Planning and Assessment Amendment (Development Consents) Bill 2010 | 5 |
| Evidence Amendment Bill 2010 | 11 |
| Fair Trading Amendment (Unfair Contract Terms) Bill 2010 | 9 |
| Firearms Legislation Amendment Bill 2010* | 8 |
| Food Amendment Bill 2010 | 16 |
| Game and Feral Animal Control Repeal Bill 2010* | 10 |
| Gas Supply Amendment Bill 2009 | 1 |
| Health Legislation Amendment Bill 2010 | 8 |
| Health Legislation Further Amendment Bill 2010 | 14 |
| Health Services Amendment (Local Health Networks) Bill 2010 | 14 |
| Home Building Amendment (Warranties and Insurance) Bill 2010 | 10 |
| Housing Amendment (Community Housing Providers) Bill 2009 | 1 |
| Industrial Relations Advisory Council Bill 2010 | 12 |
| Industrial Relations Amendment (Non-operative Awards) Bill 2010 | 16 |
| Industrial Relations Amendment (Public Sector Appeals) Bill 2010 | 9 |
| James Hardie Former Subsidiaries (Winding Up and Administration) Amendment Bill 2009 | 1 |

| | Digest Number |
|---|---|
| Jury Amendment Bill 2010 | 8 |
| Law Enforcement and National Security (Assumed Identities) Bill 2010 | 10 |
| Library Amendment (Arrangements for Mutual Provision of Library Services) Bill 2010* | 16 |
| Local Government Amendment (Environmental Upgrade Agreements) Bill 2010 | 16 |
| Macedonian Orthodox Church Property Trust Bill 2010* | 9 |
| Marine Parks Amendment (Moratorium) Bill 2010* | 8 |
| Mining and Petroleum Legislation Amendment (Land Access) Bill 2010 | 5 |
| Motor Accidents Compensation Amendment Bill 2010 | 13 |
| National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010 | 2 |
| National Park Estate (Riverina Red Gum Reservations) Bill 2010 | 5 |
| National Park Estate (South-Western Cypress Reservations) Bill 2010 | 16 |
| National Parks and Wildlife Amendment Bill 2010 | 2 |
| National Parks and Wildlife Amendment (Adjustment of Areas) Bill 2010 | 12 |
| National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010 | 8 |
| Nature Conservation Trust Amendment Bill 2010 | 14 |
| NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010 | 5 |
| Occupational Licensing (Adoption of National Law) Bill 2010 | 14 |
| Ombudsman Amendment (Removal of Legal Professional Privilege) Bill 2010* | 10 |
| Paediatric Patient Oversight (Vanessa's Law) Bill 2010* | 5 |
| Parliamentary Budget Officer Bill 2010 | 14 |
| Parliamentary Contributory Superannuation Amendment Bill 2010 | 10 |
| Parliamentary Electorates and Elections Amendment Bill 2010 | 4 |
| Personal Property Securities Legislation Amendment Bill 2010 | 10 |
| Planning Appeals Legislation Amendment Bill 2010 | 16 |
| Plant Diseases Amendment Bill 2010 | 10 |
| Plantations and Reafforestation Amendment Bill 2010 | 11 |
| Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010 | 9 |
| Police Regulation (Superannuation) Amendment Bill 2010 | 15 |
| Privacy and Government Information Legislation Amendment Bill 2010 | 10 |
| Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010 | 13 |
| Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010 | 13 |
| Public Holidays Bill 2010 | 16 |

| | Digest Number |
|---|---|
| Radiation Control Amendment Bill 2010 | 15 |
| Registrar-General Legislation (Amendment and Repeal) Bill 2010 | 4 |
| Relationships Register Bill 2010 | 5 |
| Residential Tenancies Bill 2010 | 8 |
| Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010 | 4 |
| Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010 | 13 |
| Roads Amendment (Private Railways) Bill 2010 | 16 |
| Shop Trading Amendment Bill 2010 | 16 |
| State Emergency and Rescue Management Amendment Bill 2010 | 16 |
| State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010 | 5 |
| State Revenue Legislation Amendment Bill 2010 | 9 |
| State Senate Bill 2010 | 2 |
| Statute Law (Miscellaneous Provisions) Bill 2010 | 9 |
| Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010 | 10 |
| Superannuation Administration Authority Corporatisation Amendment Bill 2010 | 16 |
| Superannuation Legislation Amendment Bill 2010 | 9 |
| Surrogacy Bill 2010 | 14 |
| Sydney Olympic Park Authority Amendment Bill 2009 | 1 |
| Terrorism (Police Powers) Amendment Bill 2010 | 10 |
| Totalizator Amendment Bill 2010 | 15 |
| Trees (Dispute Between Neighbours) Amendment Bill 2010 | 5 |
| University of Technology (Kuring-gai Campus) Bill 2010* | 14 |
| Veterinary Practice Amendment Bill 2010 | 13 |
| Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 | 3 |
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# Appendix 2: Index of Ministerial Correspondence on Bills

| Bill | Minister/Member | Letter sent | Reply received | Digest 2007 | Digest 2008 | Digest 2009 | Digest 2010 |
|---|---|---|---|---|---|---|---|
| APEC Meeting (Police Powers) Bill 2007 | Minister for Police | 03/07/07 | | 1 | | | |
| Casino Control Amendment Bill 2010 | Minister for Gaming and Racing and Attorney General | 08/03/10 | 18/03/10 | | | | 2, 5 |
| Civil Liability Legislation Amendment Bill 2008 | Attorney General | 28/10/08 | | | 12 | | |
| Contaminated Land Management Amendment Bill 2008 | Minister for Climate Change and the Environment | 22/09/08 | 03/12/08 | | 10 | 1 | |
| Court Suppression and Non-publication Orders Bill 2010 | Attorney General | 08/11/2010 | | | | | |
| Credit (Commonwealth Powers) | Minister for Fair Trading | 08/03/10 | | | | | 2 |
| Crimes (Administration of Sentences) Amendment Bill 2008 | Attorney General and Minister for Justice | 2/12/07 | | | 15 | | |
| Crimes (Administration of Sentences) Amendment Bill 2009 | Minister for Corrective Services | 08/08/09 | | | | 10 | |
| Crimes (Forensic Procedures) Amendment Bill 2008 | Minister for Police | 24/06/08 | 06/02/09 | | 9 | | |
| Criminal Procedure Amendment (Vulnerable Persons) Bill 2007 | Minister for Police | 29/06/07 | | 1 | | 2 | |
| Drug and Alcohol Treatment Bill 2007 | Minister for Health | 03/07/07 | 28/01/08 | 1 | 1 | | |
| Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008 | Minister for Planning | | 12/06/08 | | 8 | | |
| Guardianship Amendment Bill 2007 | Minister for Ageing, Minister for Disability Services | 29/06/07 | 15/11/07 | 1,7 | | | |
| Home Building Amendment | Minister for Fair Trading | | 30/10/08 | | 10, 13 | | |
| Liquor Legislation Amendment Bill 2008 | Minister for Gaming and Racing | 24/11/08 | 05/01/09 | | 14 | 2 | |
| Mental Health Bill 2007 | Minister Assisting the Minister for Health (Mental Health) | 03/07/07 | | 1 | | 2 | |

| Bill | Minister/Member | Letter sent | Reply received | Digest 2007 | Digest 2008 | Digest 2009 | Digest 2010 |
|---|---|---|---|---|---|---|---|
| Parking Space Levy Bill 2009 | Minister for Transport | 23/03/09 | 26/05/09 | | | 3, 8 | |
| Statute Law (Miscellaneous) Provisions Bill 2007 | Premier | 29/06/07 | 22/08/07 | 1,2 | | | |
| Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007 | Minister for Police | 03/07/07 | | 1 | | | |
| Water Management Amendment Bill 2008 | Minister for Water | 28/10/08 | 15/12/08 | | 12 | 2 | |

# Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2010

| | (i) Trespasses on rights | (ii) Insufficiently defined powers | (iii) Non reviewable decisions | (iv) Delegates powers | (v) Parliamentary scrutiny |
|---|---|---|---|---|---|
| Australian Jockey and Sydney Turf Clubs Merger Bill 2010 | | | | N | |
| Building and Construction Long Service Payments Amendment Bill 2009 | | | | N | |
| Casino Control Amendment Bill 2010 | N, R, C | | N, R | | |
| Central Coast Water Corporation Amendment Bill 2010 | | | | N | |
| Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010 | N | | | N | |
| Children and Young Persons (Care and Protection) Amendment (Homelessness Reporting Age) Bill 2010* | N, R | | | | |
| Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010* | N | | | | |
| Children (Education and Care Services National Law Application) Bill 2010 | | | | N | |
| Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010 | N, R | | | | |
| Coal Mine Health and Safety Amendment Bill 2010 | N, R | | | N, R | |
| Coastal Protection and Other Legislation Amendment Bill 2010 | N, R | N, R | | N | |
| Coastal Protection and Other Legislation Amendment Bill 2010 (No 2) | N, R | N, R | | N | |
| Community Justice Centres Amendment Bill 2010 | N | | | | |
| Court Information Bill 2010 | N, R | | | N | |
| Court Suppression and Non-publication Orders Bill 2010 | C | | | N | |
| Courts Legislation Amendment Bill 2010 | N, R | | | | |

| | (i) Trespasses on rights | (ii) Insufficiently defined powers | (iii) Non reviewable decisions | (iv) Delegates powers | (v) Parliamentary scrutiny |
|---|---|---|---|---|---|
| Credit (Commonwealth Powers) Bill 2010 | N, R, C | | | N, R, C | |
| Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010 | N, R | | N, R | N | |
| Crimes Amendment (Child Pornography and Abuse Material) Bill 2010 | N | | | N | |
| Crimes Amendment (Grievous Bodily Harm) Bill 2010* | N, R | | | | |
| Crimes Amendment (Police Pursuits) Bill 2010 | N, R | | | | |
| Crimes Amendment (Terrorism) Bill 2010 | N | | | | |
| Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010 | N, R | | | | |
| Election Funding and Disclosures Amendment Bill 2010 | N, R | | | | |
| Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010 | | | | N | |
| Electricity Supply Amendment (Solar Bonus Scheme) Bill 2010 | N, R | | | | |
| Electronic Transactions Amendment Bill 2010 | | | | N | |
| Environment Planning and Assessment Amendment (Development Consents) Bill 2010 | | | N, R | | |
| Evidence Amendment Bill 2010 | | | | N | |
| Fair Trading Amendment (Unfair Contract Terms) Bill 2010 | | | | N | |
| Food Amendment Bill 2010 | N | | | | |
| Game and Feral Animal Control Repeal Bill 2010 | N, R | | | | |
| Gas Supply Amendment Bill 2009 | | | | N | |
| Health Legislation Amendment Bill 2010 | N, R | | | N, R | |

| | (i) Trespasses on rights | (ii) Insufficiently defined powers | (iii) Non reviewable decisions | (iv) Delegates powers | (v) Parliamentary scrutiny |
|---|---|---|---|---|---|
| Health Legislation Further Amendment Bill 2010 | | | | N | |
| Health Services Amendment (Local Health Networks) Bill 2010 | | N | | N | |
| Home Building Amendment (Warranties and Insurance) Bill 2010 | N | | | | |
| Housing Amendment (Community Housing Providers) Bill 2009 | N | | | | |
| James Hardie Former Subsidiaries (Winding Up and Administration) Amendment 2009 | | | | N | |
| Jury Amendment Bill 2010 | N, R | | | N | |
| Local Government Amendment (Environmental Upgrade Agreements) Bill 2010 | | | | N | |
| Macedonian Orthodox Church Property Trust Bill 2010* | | | | N | |
| Mining and Petroleum Legislation Amendment (Land Access) Bill 2010 | N, R | | | | |
| National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010 | | | | N | N |
| National Parks and Wildlife Amendment Bill 2010 | N, R | | | N, R | |
| National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010 | | | | N | |
| NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010 | N, R | | | N | |
| Occupational Licensing (Adoption of National Law) Bill 2010 | | | | N | |
| Ombudsman Amendment (Removal of Legal Professional Privilege) Bill 2010* | N | | | | |
| Parliamentary Contributory Superannuation Amendment Bill 2010 | N | | | | |
| Personal Property Securities Legislation Amendment Bill 2010 | | | | N | |
| Planning Appeals Legislation Amendment Bill 2010 | | | | N | |

| | (i) Trespasses on rights | (ii) Insufficiently defined powers | (iii) Non reviewable decisions | (iv) Delegates powers | (v) Parliamentary scrutiny |
|---|---|---|---|---|---|
| Plantation and Reafforestation Amendment Bill 2010 | N, R | | | N | |
| Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010 | | | | N | |
| Police Regulation (Superannuation) Amendment Bill 2010 | N, R | | | | |
| Privacy and Government Information Legislation Amendment Bill 2010 | | | | N | |
| Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010 | N, R | | | N | |
| Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010 | | | | N | |
| Public Holidays Bill 2010 | N | | | | |
| Relationships Register Bill 2010 | N | | | N | |
| Residential Tenancies Bill 2010 | N, R | | | N, R | |
| Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010 | | | | N, R | |
| Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010 | | | | N | |
| Shop Trading Amendment Bill 2010 | N | | | | |
| State Emergency and Rescue Management Amendment Bill 2010 | | | | N | |
| Statute Law (Miscellaneous Provisions) Bill 2010 | N | | | | |
| Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010 | N, R | | | | |
| Superannuation Legislation Amendment Bill 2010 | | | | N | |
| Surrogacy Bill 2010 | | | | N | |
| Sydney Olympic Park Authority Amendment Bill 2009 | N, R | | | N | |

| | (i) Trespasses on rights | (ii) Insufficiently defined powers | (iii) Non reviewable decisions | (iv) Delegates powers | (v) Parliamentary scrutiny |
|---|---|---|---|---|---|
| Terrorism (Police Powers) Amendment Bill 2010 | | | | N | |
| Totalizator Amendment Bill 2010 | | | | N | |
| University of Technology (Kuring-gai Campus) Bill 2010 | N | | | | |
| Veterinary Practice Amendment Bill 2010 | N, R | | | | |
| Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 | N | | | N | |
| Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2) | | | | N | |
| Water Management Amendment Bill 2010 | N, R | | N, R | N | |
| Weapons and Firearms Legislation Amendment Bill 2010 | N, R | | | N | |
| Workers Compensation Legislation Amendment Bill 2010 | | | | N | |

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

# Appendix 4: Index of correspondence on regulations

| Regulation | Minister/Correspondent | Letter sent | Reply | Digest 2008 | Digest 2009 | Digest 2010 |
|---|---|---|---|---|---|---|
| Companion Animals Regulation 2008 | Minister for Local Government | 28/10/08 | | 12 | | |
| Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010 | Attorney General | 23/02/10 | 28/04/10 | | | 1, 5 |
| Fisheries Management Legislation Amendment (Fishing Closures) Regulation 2009 | Minister for Primary Industries | 23/11/09 | 11/01/10 | | 16 | 1 |
| Liquor Regulation 2008 | Minister for Gaming and Racing and Minister for Sport and Recreation | 22/09/08 | 5/01/09 | 10 | 2 | |
| Retirement Villages Regulation 2009 | Minister for Fair Trading | 22/02/10 | | | | 1, 8 |
| Tow Truck Industry Regulation 2008 | Minister for Roads | 22/09/08 | | 10 | | |