

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 15 of 2008

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Chair: Mr Allan Shearan MP

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* Denotes Private Member’s Bill

MEMBERSHIP & STAFF

Chair	Allan Shearan MP, Member for Londonderry
Deputy	Paul Pearce MP, Member for Coogee
Members	Amanda Fazio MLC Robert Furolo MP, Member for Lakemba Sylvia Hale MLC Judy Hopwood MP, Member for Hornsby Robyn Parker MLC Russell Turner MP, Member for Orange
Staff	Catherine Watson, Committee Manager Carrie Chan, Senior Committee Officer Jim Jefferis, Senior Committee Officer Amy Bauder, Committee Officer Millie Yeoh, Assistant Committee Officer
Panel of Legal Advisers	
The Committee retains a panel of legal advisers to provide advice on Bills as required.	
Contact Details	Legislation Review Committee Legislative Assembly Parliament House Macquarie Street Sydney NSW 2000
Telephone	02 9230 3308
Facsimile	02 9230 3052
Email	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc/digests

FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations:

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

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 2008

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

Appendix 2: Index of Ministerial Correspondence on Bills for 2008

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 2008

This table specifies the action the Committee has taken with respect to Bills that received comment in 2008 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

Appendix 4: Index of correspondence on Regulations reported on in 2008

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. Combat Sports Bill 2008

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

- | |
|---|
| <p>11. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.</p> |
|---|

2. Courts and Crimes Legislation Further Amendment Bill 2008

Issue: Retrospectivity - Schedule 3 [7] amendment of Births, Deaths and Marriages Registration Act 1995 – proposed Part 5 – Provisions consequent on enactment of Courts and Crimes Legislation Further Amendment Act 2008 – proposed clause 18 – Orders for registration under section 19:

- | |
|---|
| <p>42. The Committee will always be concerned where the law is changed retrospectively in a manner that adversely affects any person. The Committee notes that clause 18 of new Part 5 in Schedule 3 [7] and proposed section 19 (1A) of Schedule 3 [2] will apply retrospectively to applications before the commencement of the amendment.</p> <p>43. However, without making these amendments retrospective, the integrity of the Register will be put at risk. Although the Births, Deaths and Marriages Registration Act 1995 sets out some limited circumstances where a birth occurring outside NSW may be registered (for example, a birth occurring in an aircraft travelling to NSW), it must be remembered that the primary objective of the Act is to register events that occur within NSW.</p> <p>44. The power of the District Court to order the registration of a birth was always intended to apply only in relation to births that occurred within NSW. Without this amendment being retrospective, the consequences will be an increase in the risk of fraud. If it is not retrospective, it will leave the door open for anyone to challenge the Registry's decisions of the past not to register a life event occurring outside NSW. If these overseas events of the past are registered, it will lead to the creation of multiple identities and compromise the integrity of the Register. As has been made clear previously, this amendment seeks to regularise what is the current practice.</p> |
|---|

Issue: Retrospectivity - Schedule 4 [4] Amendment of Confiscation of Proceeds of Crime Act 1989 – Schedule 1, proposed Part 3 Provision consequent on enactment of Courts and Crimes Legislation Further Amendment Act 2008 - Clause 7 – Proceedings for offences:

46. The Committee is usually concerned where the law is changed retrospectively in a manner that adversely affects any person. However, the Committee concludes that in this instance, there is no undue trespass on individual rights or liberties. The Committee notes that the increase of the jurisdiction of the Local Court means that it can deal with breach offences if the proceeds of crime or property do not exceed the civil jurisdictional limit of the Local Court (\$60,000). This will allow the Local Court to deal with the majority of prosecutions for breach of freezing notices and restraining orders and leave the Supreme Court to deal with offences of more appropriately substantial values.

Issue: Retrospectivity - Schedule 6 [7] Amendment of Criminal Appeal Act 1912 – proposed clause 14:

49. The Committee is usually concerned where the law is changed retrospectively in a manner that adversely affects any person. However, the Committee is of the view that with regard to the above amendment, there appears to be no undue trespass on individual rights or liberties since the amendment allows all sentences imposed by the Drug Court to be dealt with by the Court of Criminal Appeal rather than by two different jurisdictions depending on how the matter was dealt with by the Drug Court.

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

51. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about the proposed section and schedules which will be commenced by proclamation as provided in proposed section 2 (2), and asks Parliament to consider whether commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

3. Crimes Amendment (Sexual Offences) Bill 2008

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

37. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

4. Crimes (Administration of Sentences) Amendment Bill 2008

Issue: Schedule 1 [23], [24] Proposed section 193A – Right to Privacy

11. The Committee is concerned that Proposed section 193A has the potential to allow wider access to an inmate's confidential documentation. The Committee seeks further information of the Minister as to the circumstances in which this approval may be granted.

Issue: Clause 2 – Commencement by proclamation

13. Although there may be good reasons why such discretion is required the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation is an inappropriate delegation of legislative power.

5. Crimes (Domestic and Personal Violence) Amendment Bill 2008

Issue: Property - Schedule 1 [5] – proposed section 35; Schedule 2.4 [2] – amends section 4(1) *Firearms Act 1996* and Schedule 2.5 [2] – amends section 4(1) *Weapons Prohibition Act 1998*

15. The amendments under Schedule 1 [5]; Schedule 2.4 [2] and Schedule 2.5 [2] impact the ability of persons to hold firearms or weapons under the Firearms Act 1996 and Weapons Prohibition Act 1998. However, the Committee is of the strong view that given the purpose of the Bill, namely to protect victims of violence, these proposed amendments do not unduly trespass on personal rights and liberties.

6. Fines Further Amendment Bill 2008

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

28. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

7. Homebush Motor Racing (Sydney 400) Bill 2008

Issue:– Right to Compensation - Clauses 32 and 33

11. The provisions of clause 32 and 33 limiting the payment of compensation represent, in the Committee's opinion, a reasonable balance between protecting personal rights and making the fullest possible commercial use of the Sydney park precinct. Therefore, the Committee considers that these not trespass unduly on personal rights and liberties.

Issue - Exercise of legislative power to Parliamentary scrutiny - Clause 45 - exemption of regulations from assessment under the Subordinate Legislation Act 1989

13. Due to the obligation placed on the promoter to consult and assess the impact of the event, the Committee considers that the exemption of regulations from a regulatory impact statement is appropriate in this instance.

Issue - Retrospectivity - Schedule 2 – retrospective operation of regulations

15. While the Committee is always concerned about retrospective operation of legislation, it is satisfied that these regulation making powers do not trespass unduly on personal rights and liberties

Issue: Commencement of the Act on a day or day to be appointed proclamation by proclamation - Clause 2

17. Although there may be good reasons why such discretion is required the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.

8. Independent Commission Against Corruption Amendment Bill 2008

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

9. Institute of Teachers Amendment Bill 2008

Issue: Retrospectivity; Procedural Fairness - Schedule 1 [26], proposed section 5; Schedule 1 [8] – proposed section 24; Schedule 1 [9] – proposed section 24A

17. The Committee will always be concerned with any retrospective effect of legislation that may adversely impact on personal rights, however balancing the interests of children and young people, the Committee does not consider this proposed provision to unduly trespass on personal rights, including those of procedural fairness.

Issue: Definition of Words – Matters which should be regarded by Parliament – Schedule 1 [1], proposed section 3

19. The Committee is concerned that proposed section 3 delegates the definition of “serious misconduct” to be prescribed by regulation. This definition forms the basis of all disciplinary proceedings and should be defined in the bill.

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

21. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

10. Paediatric Patient Oversight (Vanessa's Law) Bill 2008*

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

11. State Revenue and Other Legislation Amendment (Budget Measures) Bill 2008

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

12. Superannuation Administration Amendment (Chief Executive) Bill 2008

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

13. Transport administration amendment (Metro rail) bill 2008

Issue: Clause 2 – Commencement by proclamation

8. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asked Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

14. Workers Compensation Legislation Amendment (Benefits) Bill 2008

Retrospectivity – Schedule 1 [10] and Schedule 2 [6]

Strict Liability - Schedule 1 [9] – proposed sections 172A(1), 172A(5) and 172A(6) – Method of giving security

20. The Committee notes that imposing strict or absolute liability is often considered to be contrary to the fundamental right to be presumed innocent until proven guilty as a person is presumed to have committed an offence irrespective of their intention. However, given the public interest of the proposed provisions, namely to protect the Workers Compensation scheme as well as the optional nature of the premium calculation method for employers under proposed section 168A, the Committee concludes that personal rights and liberties are not unduly trespassed by proposed section 172A(1) and 172A(5).

Part One – Bills

SECTION A: COMMENT ON BILLS

1. COMBAT SPORTS BILL 2008

Date Introduced:	27 November 2008
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Kevin Greene MP
Portfolio:	Sport and Recreation

Purpose and Description

1. The object of this Bill is to replace the *Boxing and Wrestling Control Act 1986* (the **repealed Act**) with legislation that provides for the regulation of the conduct of professional combat sports, and wrestling and amateur combat sport contests, and in particular:
 - (a) to enable regulations to be made extending the definition of **combat sport** to cover combative sports in addition to fist fighting and kick boxing, which are already covered by the repealed Act, thereby widening the ambit of the proposed Act, and
 - (b) to replace the Boxing Authority of New South Wales with a new body to be called the Combat Sports Authority of New South Wales (the **Authority**), and
 - (c) to enable the Authority to control the industry by an enhanced system of registration of combatants (including, for example, boxers) and other industry participants (including, for example, promoters and trainers), and
 - (d) to provide a series of controls through the registration system, including by way of the following:
 - (i) registration of combatants and other industry participants on a permanent rather than an annual basis,
 - (ii) imposing conditions on registration,
 - (iii) imposing fines,
 - (iv) suspension or cancellation of registration, and
 - (e) to provide an additional control by empowering the Authority to disqualify persons from participating in activities relating to the industry, and
 - (f) to remove the prohibition on women from registration as boxers and taking part in boxing contests, and
 - (g) to increase the penalties for certain offences.

2. The heading to various clauses of the Bill refers to corresponding sections or other provisions of the repealed Act (“cf 1986 Act s...”). However, this indicates that the general subject matter is dealt with in the corresponding section or other provision, and does not indicate that the subject matter is dealt with in the same or a similar manner.

Background

3. The Bill will establish a broader regulatory coverage of combat sports and will create a Combat Sports Authority to replace the existing Boxing Authority of New South Wales.
4. The principles established in the Boxing and Wrestling Control Act 1986 will continue in the new Act. Members of the Boxing Authority currently attend the promotions, check the fitting of the gloves and ensure that all activities relating to the preparation of the boxers, including supervision of activities in the change rooms, are managed properly. By capturing a range of other sports within the legislation, the New South Wales Government aims to ensure that those same safety standards are maintained across the industry.
5. The definition of “combat sports” used in the new Act will extend the existing regulatory coverage of boxing, kickboxing and wrestling to include a range of other sports such as Muay Thai, mixed martial arts and cage fighting.
6. A feature of the legislation is the permanent registration of combat sport combatants and participants. All people participating in combat sports will be required to register from the beginning of the 2010 calendar year.
7. The Bill removes the exclusion of women from amateur and professional boxing and kickboxing. Penalties for conducting illegal contests are also being significantly increased.
8. Following the passage of the legislation, a new Combat Sports Authority will be established with nine members, including at least two members drawn from combat sports outside the sport of boxing. The Combat Sports Authority will have increased powers in addressing a range of breaches of the Act and it may refer matters for prosecution where an offender is unregistered. It may also impose penalties on any registered combatants or industry participants who fail to fulfil their obligations to conduct themselves in a professional manner.
9. There will be transitional arrangements associated with the new changes. The authority will continue to receive administrative support from the Department of the Arts, Sport and Recreation. Following passage of the legislation, the department will initiate recruitment and accreditation of officials, initially through seeking expressions of interest. The Combat Sports Regulation will be developed, and will list those sports to be subject to the regulatory system, including sports for which there is currently no government regulation, such as Muay Thai, cage fighting, extreme fighting, mixed martial arts and others.

The Bill

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, including the following:

- (a) **combat sport** covers fist fighting; kick boxing; activities prescribed by the regulations; and sparring in any of those styles,
- (b) **combatant** covers a contestant at a professional combat sport contest,
- (c) **industry participant** covers anyone engaged in a profession, occupation or business relating to a combat sport,
- (d) **professional combat sport contest** covers a combat sport contest for a monetary prize; a combat sport contest otherwise than for a monetary prize where a contestant has been at any time a participant in a contest for a monetary prize; a combat sport contest for gain or reward that the Authority determines is to be treated as a professional combat sport contest under clause 4; and an event of a class prescribed by the regulations,
- (e) **amateur combat sport contest** covers a combat sport contest other than a professional combat sport contest,
- (f) **wrestling contest** covers a contest, display or exhibition of wrestling, whether or not for a monetary prize or other reward.

Clause 4 specifies the manner and circumstances in which the Authority may determine that a proposed or advertised contest, display or exhibition of a combat sport should be treated as a professional combat sport contest for the purposes of the proposed Act.

Part 2 Registration of combatants

Division 1 Registration

Clause 5 makes it an offence for an unregistered combatant to engage in a professional combat sport contest.

Clause 6 makes it a disciplinary breach attracting a fine for a registered combatant to engage in a professional combat sport contest if the combatant is not registered as a combatant of the relevant class.

Clause 7 provides for classes of combatants to be prescribed for registration purposes. These are referred to as **prescribed classes**.

Clause 8 provides for applications to be made by persons aged 18 or over to be registered as a combatant of a prescribed class. An application must be accompanied by a medical certificate of fitness and the prescribed fee.

Clause 9 provides for the determination of an application for registration as a combatant of a prescribed class, by grant or refusal of registration by the Authority.

Clause 10 permits the Authority to impose conditions on registration as a combatant, for health and safety reasons and for other prescribed reasons.

Clause 11 provides that registration as a combatant remains in force indefinitely, until cancelled. However, provision is made for registration for a fixed period for health and safety reasons.

Clause 12 requires registered combatants to forward annual returns to the Authority. An annual return is to be accompanied by a medical certificate of fitness and the prescribed fee.

Clause 13 sets out a show cause scheme for regulating registered combatants. This includes making an order to pay a fine for certain contraventions, imposing a condition on registration, suspending registration and cancelling registration.

Clause 14 provides for regulating registered combatants for health or safety reasons without using the show cause process. This includes imposing a condition on registration, suspending registration or cancelling registration.

Clause 15 provides that, if the registration of a combatant of a prescribed class is suspended, the combatant remains registered but is prevented from engaging in a professional combat sport contest as a combatant of that class.

Clause 16 authorises the Authority to lift the suspension of the registration of a combatant if satisfied that it is appropriate to do so.

Clause 17 requires the Authority to keep a register of combatants.

Division 2 Medical record books and cards

Clause 18 requires the Authority to issue medical record books to registered combatants.

Clause 19 empowers the regulations to make provision for medical record books and medical record cards for registered combatants. These matters were dealt with in the repealed Act.

Part 3 Registration of industry participants

Clause 20 makes it an offence for an unregistered industry participant to carry on the business of, or be employed as, an industry participant.

Clause 21 makes it a disciplinary breach attracting a fine for a registered industry participant to carry on the business of, or be employed as, an industry participant of a prescribed class if the registered industry participant is not registered as an industry participant of that class.

Clause 22 provides for classes of industry participants to be prescribed for registration purposes. These are referred to as *prescribed classes*.

Clause 23 provides for applications to be made by persons to be registered as an industry participant of a prescribed class. An application must be accompanied by the prescribed fee.

Clause 24 provides for the determination of an application for registration as an industry participant of a prescribed class, by grant or refusal of registration by the Authority.

Clause 25 authorises regulations to be made prescribing conditions with which an applicant for registration as an industry participant must comply before being registered (for example, a condition requiring the applicant to have successfully completed a course of training).

Clause 26 permits the Authority to impose conditions on registration as an industry participant for prescribed reasons.

Clause 27 provides that registration as an industry participant remains in force indefinitely, unless cancelled.

Clause 28 requires registered industry participants to forward annual returns to the Authority. An annual return is to be accompanied by the prescribed fee.

Clause 29 sets out a show cause scheme for regulating registered industry participants. This includes making an order to pay a fine for certain contraventions, imposing a condition on registration, suspending registration or canceling registration.

Clause 30 provides that, if the registration of an industry participant of a prescribed class is suspended, the industry participant remains registered but is prevented from carrying on the business of, or being employed as, an industry participant.

Clause 31 authorises the Authority to lift the suspension of the registration of an industry participant if satisfied that it is appropriate to do so.

Clause 32 requires the Authority to keep a register of industry participants.

Part 4 Professional combat sport contests

Division 1 Permit to promote professional combat sport contest

Clause 33 has the effect that a single permit can be granted for an event that consists of two or more professional combat sport contests, as well as for an event that consists of only one such contest.

Clause 34 makes it an offence for an unregistered person, and a disciplinary breach attracting a fine for a registered person, to promote a professional combat sport contest without a permit.

Clause 35 provides for an application to be made by a promoter for a permit to promote a professional combat sport contest. An application must be accompanied by the prescribed fee and be made not less than 21 days before the date of the proposed contest.

Clause 36 provides for the determination of an application for a permit, by the grant of or refusal to grant a permit by the Authority.

Clause 37 requires the Authority to notify the Commissioner of Police of the grant of a permit.

Division 2 General regulation of professional combat sport contests

Clause 38 authorises regulations to be made concerning the conduct of professional combat sport contests, and in particular for the health and safety of combatants. Provision may be made requiring weigh-ins to be held, requiring a combat sport inspector to be present at a weigh-in and contest, and requiring a medical practitioner to be present at a contest (including any weigh-in immediately before the contest).

Division 3 Health and safety of combatants at professional combat sport contests

The proposed Division contains particular provisions for the protection of the health and safety of combatants at professional combat sport contests.

Clause 39 requires a combatant to request and undergo a medical examination within 24 hours before the start of a professional combat sport contest in which the combatant is to participate.

Clause 40 authorises the Authority to require a combatant to undergo medical examinations.

Clause 41 sets out functions of a medical practitioner carrying out a medical examination referred to in clauses 39 and 40.

Clause 42 requires a combatant not to engage in a particular contest, or contests or sparring before a specified date, if a medical certificate given under clause 40 or 41 so recommends.

Clause 43 makes it an offence for a promoter to permit a combatant to engage in a contest if the combatant has not undergone the medical examination referred to in clause 39.

Clause 44 requires a promoter to examine a combatant's medical record book before a contest.

Clause 45 makes it an offence for a promoter to permit a combatant to engage in a contest if a medical practitioner has certified that the combatant is not medically fit to engage in the contest.

Clause 46 requires a combatant to undergo a medical examination after a contest.

Clause 47 requires a promoter to arrange a medical examination after a contest where a combatant is rendered unconscious or not able to undergo the medical examination referred to in clause 46.

Clause 48 sets out functions of a medical practitioner carrying out a medical examination referred to in clauses 46 and 47.

Clause 49 requires a combatant not to engage in contests or sparring if a medical certificate given under clause 48 so recommends.

Division 4 Record of professional combat sport contest

Clause 50 provides for a contest result sheet to be prepared by a combat sport inspector and a medical practitioner present at a professional combat sport contest.

Clause 51 requires the contest result sheet to be sent to the Authority.

Division 5 Prohibition of professional combat sport contests at certain places

Clause 52 makes it an offence for an unregistered person, and a disciplinary breach attracting a fine for a registered person, to promote or engage in a professional combat sport contest at a place, or place of a class or description, prescribed by the regulations.

Part 5 Amateur combat sport contests, and amateur and professional wrestling contests

Clause 53 states that the proposed Part applies to amateur combat sport contests and to wrestling contests held for public entertainment. However, the proposed Part does not apply to a wrestling contest that is a professional combat sport contest.

Clause 54 makes it an offence for an unregistered person, and a disciplinary breach attracting a fine for a registered person, to promote an amateur combat sport contest or a wrestling contest without a permit.

Clause 55 provides for an application to be made to the Minister for a permit to promote an amateur combat sport contest or wrestling contest. An application must be made not less than 21 days before the date of the proposed contest.

Clause 56 provides for the determination by the Minister of an application for a permit, by the grant or refusal to grant a permit (this power may be delegated).

Part 6 Disqualification

Clause 57 provides a show cause scheme for the disqualification of registered persons or previously registered persons from participating in classes of activities specified by the Authority relating to combat sports, sparring or wrestling.

Clause 58 makes it an offence for an unregistered person, and a disciplinary breach attracting a fine for a registered person, to participate in an activity specified in an order of disqualification applying to the person.

Part 7 Review by Administrative Decisions Tribunal

Clause 59 permits a person to apply to the Administrative Decisions Tribunal for a review of a decision made under the Act and specified in the clause. Consequential amendments are made to the *Administrative Decisions Tribunal Act 1997* for this purpose (see clause 76 and Schedule 2).

Part 8 Combat Sports Authority

Clause 60 constitutes the Combat Sports Authority of New South Wales. The Authority is a corporation that is subject to the control and direction of the Minister (except as regards the contents of reports or recommendations to the Minister). The Authority is to consist of between 7 and 9 part-time members appointed by the Governor. One of the members is to be appointed as Chairperson, and one is to be a medical practitioner. Schedule 1 contains provisions relating to the constitution and procedure of the Authority.

Part 9 Miscellaneous

Issues Considered by the Committee

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

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

10. 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 Act on whatever day it chooses or not at all. While there may be good

reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

- 11. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill¹ commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.**

The Committee makes no further comment on this Bill.

¹ Except as provided by subsection (2): Schedule 1 [18], and Schedule 1 [116] to the extent that it inserts clause 44 into Schedule 1 to the *Gaming Machines Act 2001*, commence (or are taken to have commenced) on 1 December 2008.

2. COURTS AND CRIMES LEGISLATION FURTHER AMENDMENT BILL 2008

Date Introduced:	27 November 2008
House Introduced:	Legislative Council
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General and Justice

Purpose and Description

1. This Bill amends various Acts in relation to courts, crimes and civil and criminal procedure.

Amendments to clarify appointment as judicial members of the Administrative Decisions Tribunal

2. Schedule 1 clarifies the qualifications necessary for appointment as a judicial member of the Administrative Decisions Tribunal. Section 14 of the Act allows a judicial officer, being a current judge or magistrate of a New South Wales court, to be appointed as a judicial member of the tribunal. An amendment is made to section 14 to provide that the reference to judicial officer includes a retired judicial officer. This makes it consistent with section 17 of the Act, which refers to the appointment of persons who have held a judicial office as a judicial member. The amendment does not alter the criteria for eligibility for appointment.

Amendments to *Supreme Court Act 1970* on age limit for acting judges

3. This Bill amends the *Supreme Court Act 1970* to increase the age limit (from 75 years to 77 years of age) for acting judges who retire at the compulsory retirement age. Section 37 of the *Supreme Court Act 1970* provides that an acting judge may not be appointed beyond the age of 75 years. The age limit of acting judges will be increased to 77 years, provided that the acting judge retired at the statutory retirement age. The statutory retirement age for judges in New South Wales courts is 72 years and 70 years in Commonwealth courts. The distinction between those reaching the statutory retirement age and those who do not has regard to the duration that the judicial officer has been retired from permanent duties.
4. It is appropriate that some age limits apply in respect of permanent judges in view of the difficulties in removing a judge whose ability may be in decline. The increase in the age limit for acting judges to 77 years will ensure that the Supreme Court is able to maintain a sufficient pool of retired judges as acting judges to assist the operation of the court.

Amendments to the Drug Court and the Dust Disease Tribunal appointments

5. Schedule 9 and 10 amend the Drug Court Act and the Dust Disease Tribunal Act by expanding the eligibility of appointment to sit in these courts and tribunals. Currently, only a judge of the District Court may be appointed to the Drug Court or the Dust

Disease Tribunal. This Bill will amend the appointment provisions to allow any judge of a New South Wales court to be appointed to either the Drug Court or the Dust Disease Tribunal.

Amendments to the *Bail Act 1978*

6. Schedule 2 makes two amendments to the *Bail Act 1978*. Items [2] to [4] of schedule 2 amend section 22A of the *Bail Act 1978* to clarify that a court is to refuse to entertain an application for bail by an accused person if an application in relation to the offence has already been made and dealt with by a court of the same jurisdiction. A court is not to refuse, under this section, to entertain an application for bail because one has been rejected by a court of another jurisdiction. This ambiguity was highlighted in the District Court (*R v Petrovski* [2008] NSWDC 110). Schedule 4 makes an amendment consequential to the amendments to section 22A.

Amendments to the *Births, Deaths and Marriages Registration Act 1995*

7. The Bill amends the *Births, Deaths and Marriages Registration Act 1995* to clarify that the District Court may only direct the Registrar of Births, Deaths and Marriages to register a birth if the birth occurred in New South Wales. This aims to ensure the integrity of the register and to protect against multiple recordings of births. It is unnecessary for overseas adoptions to be registered on the New South Wales register of births. Overseas born adoptees will have a birth certificate from their country of origin and a certificate of adoption. They can also rely on their Australian citizenship or visa for official purposes. These documents have the same status as a birth certificate. The amendment will have effect retrospectively by providing that the registrar is not required to comply with an order that contravenes the new restriction, regardless of whether the order was made before or after the commencement of the amendment.
8. The second amendment to the *Births, Deaths and Marriages Registration Act* will give the registrar a power to issue certificates to children whose adoption is registered in New South Wales. These certificates take the form of a birth certificate, but record the child's adoptive parents and any adoptive siblings and new name as though they were the child's at birth. The registrar has adopted the practice of issuing such certificates for many years. This amendment gives legislative force to the practice and will validate existing certificates that have been issued in accordance with this practice.

Amendment to the jurisdiction on dealing with proceeds of crime

9. The *Confiscation of Proceeds of Crime Act 1989* creates a legislative framework to require offenders to pay to the State the benefits of crime and to forfeit property used in crime. A freezing notice and a restraining order may be made to ensure that a person does not dispose of such property. It is an offence for a person to breach a freezing notice or restraining order. Subsections 74(2) and (3) of the Act allow offences for a breach of a freezing notice or restraining order to be brought before the Local Court but only if the value of the tainted property does not exceed \$10,000. Schedule 4 of this Bill increases the jurisdiction of the Local Court so that it can deal with breach offences if the proceeds of crime or property do not exceed the civil jurisdictional limit of the Local Court, which is currently \$60,000. The increase in jurisdiction will mean that the Local Court will be able to deal with the majority of

prosecutions for breach of freezing notices and restraining orders. The Supreme Court will deal with offences only where the value of such property is substantial (over \$60,000).

Amendments to the *Crimes Act 1900*

10. Schedule 5 makes two amendments to the Crimes Act. Item [1] extends the definition of "conveyance" for the purposes of the offence of taking and driving a conveyance to include military vehicles. This aims to ensure all military vehicles, such as tanks and armoured personnel carriers, are protected from theft and joyriding by section 154A of the Crimes Act.
11. Item [2] of schedule 5 creates two new offences in the Crimes Act involving damaging property whilst in the company of another person or persons. The offence will carry 6 years imprisonment as a maximum penalty. Where the property damage is occasioned by fire or explosives, the offence will carry 11 years imprisonment.

Amendment to the appeal process from the Drug Court

12. Schedule 5 to the Bill amends the *Criminal Appeal Act 1912* to address an anomaly in the appeal process from the Drug Court, which was highlighted by the Court of Criminal Appeal in the case of *Bell v R* [2007] NSWCCA 369. The court found that the sentences imposed by the Drug Court pursuant to the exercise of its jurisdiction under section 24 of the Drug Court Act could not be appealed to the Court of Criminal Appeal. However, the court found that appeals against sentences under part 2 of the Drug Court Act could be brought before the Court of Criminal Appeal, while an appeal against sentences imposed under the Drug Court's summary jurisdiction under section 24 of the Act must be brought in the District Court. This meant the offender had to take appeals in two different jurisdictions depending on how their matter was dealt with by the Drug Court. The amendment allows all sentences imposed by the Drug Court to be dealt with by the Court of Criminal Appeal.

Amendments to *Criminal Procedure Act 1986*

13. Schedule 7 to the Bill makes minor amendments to criminal procedure. The first relates to the procedures for the issue of subpoenas for production. Section 222 of the *Criminal Procedure Act 1986* provides for the issue of subpoenas. A subpoena may be returnable on a future date when the proceedings have been listed or, with leave of the registrar, on any other date. However, there is no obligation on a party requesting the issue of a subpoena to inform the other party of its issue. The other party may be unaware of the issue of a subpoena. Section 222 is amended to introduce an obligation on the party requesting the issue of the subpoena to serve a copy of the subpoena on the other party. This is consistent with the obligation that exists in the civil jurisdiction of the court.
14. The second amendment relates to procedures for issuing arrest warrants. The *Crimes and Courts Legislation Amendment Act 2006* was assented to on 29 November 2006 and will introduce time frames for the expiration of arrest warrants. Chapter 4, part 4, of the Criminal Procedure Act currently applies to proceedings before the Local Court. This Bill will extend the application of part 4 to other courts so that provisions relating to arrest warrants apply uniformly. The bill also introduces transitional provisions to provide expiration time frames for warrants issued prior to

the commencement of schedule 1.11 to the *Crimes and Courts Legislation Amendment Act 2006*. It provides that arrest warrants issued prior to the commencement of the new legislation will expire after a period of 20 years after issue. This is consistent with the practice that allowed police to return unexecuted warrants to the court after a period of 20 years.

15. The other amendment is Item [10] of Schedule 7, which amends the *Criminal Procedure Act 1986* to prescribe the common law offence of false imprisonment as an offence which is tried summarily in the Local Court unless either the prosecutor or the accused elects to have the matter dealt with on indictment. Currently, the offence could only be prosecuted on indictment in the District or Supreme Court.

Amendments to the *Crown Prosecutors Act 1986* and the *Public Defenders Act 1995*

16. This Bill amends the *Crown Prosecutors Act 1986* and the *Public Defenders Act 1995* to ensure that Crown Prosecutors and Public Defenders can be suspended and removed from office for unsatisfactory performance and misconduct. This aims to amend the *Crown Prosecutors Act 1986* to allow the Director of Public Prosecutions to suspend Crown Prosecutors, Deputy Senior Crown Prosecutors and the Senior Crown Prosecutor whenever grounds for removal from office are suspected. A similar amendment has been made to the *Public Defenders Act 1995* to allow the Senior Public Defender to suspend Public Defenders and Deputy Senior Public Defenders from office where it is suspected that grounds for removal from office exist.
17. The Governor's power to remove Public Defenders differs slightly from the grounds that apply in relation to Crown Prosecutors. The Governor has the power to remove a Public Defender from office on grounds of unsatisfactory performance. However, this power does not exist in relation to Crown Prosecutors. The Bill will allow the Governor to remove a Crown Prosecutor for unsatisfactory performance. The grounds for removal or suspension of Crown Prosecutors will mirror the grounds for removal or suspension of Public Defenders. This ensures that there is an appropriate level of accountability for the conduct of these statutory officers. The introduction of a power of suspension aims to ensure that management can respond immediately to any allegation of serious misconduct or criminal behaviour.

Amendments to the *Evidence Amendment Act* and to clarify definition of Australian lawyer

18. The *Evidence Amendment Act 1997* implements the recommendations of the 2005 report of the Australian Law Reform Commission, the New South Wales Law Reform Commission and the Victorian Law Reform Commission entitled "Uniform Evidence Law." The amendments will commence in conjunction with amendments to the Commonwealth law. This Bill makes amendments to give effect to the recommendations and to ensure consistency with the Commonwealth Act. Recommendation 14-9 of the report was to clarify the meaning of "lawyer" in the *Evidence Act 1995* to make clear whether the lawyer must hold a current practising certificate, or whether it is sufficient to be admitted as a practitioner on the roll. An Australian lawyer is defined in the *Legal Profession Act 2004* as a person who is admitted to the legal profession under that Act or a corresponding law. Similar amendments are made in the Bill to clarify references to Australian lawyers contained in the *Mental Health Act 2007* and the *Pharmacy Practice Act 2006*.

19. The *Evidence Amendment Act 2007* expands the protection afforded by a certificate issued by a court when persons are compelled to give evidence that tends to incriminate them. Currently, the Evidence Act provides that a certificate given by a court under section 128 protects against that evidence being used in any other court proceedings in New South Wales. The certificate, however, does not prevent the evidence being used in other proceedings, such as disciplinary proceedings, not before a New South Wales Court. The *Evidence Amendment Act 2007* is intended to expand the protection provided by the certificate so that the evidence cannot be used in any proceedings before a person or body authorised to hear, receive and examine evidence. Items [1] to [3] of schedule 11 correct the omissions in the original amending Act to give effect to this proposal.

Amendments to *Industrial Relations Act 1996*

20. The Bill amends the *Industrial Relations Act 1996* to bring the procedures for contempt before the Industrial Court into line with the procedures that apply in the Supreme Court. In the decision of *Industrial Registrar v Matters*—[2007] NSWIR Comm 250—the Industrial Court found that proceedings for contempt of court were statute barred as they had been commenced more than 12 months after the alleged conduct. Proceedings in relation to contempt before the Supreme Court and other New South Wales courts are dealt with as a common law offence where no time limitation applies. Contempt before the Industrial Commission is a statutory offence under section 180 of the *Industrial Relations Act 1996*. Section 398 of the Act provides a 12-month time limit for commencing proceedings for any offence under the Act including contempt. This Bill will remove the application of section 398 to contempt proceedings to ensure consistency in procedures for contempt between the Industrial Court and other courts.

Amendments to the *Land and Environment Court Act*, the *Mining Act* and the *Petroleum (Onshore) Act* and to transfer the jurisdiction of the Mining Warden to the Land and Environment Court

21. The Bill amends the *Land and Environment Court Act 1979*, the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* to transfer the jurisdiction of the Mining Warden to the Land and Environment Court. Mining wardens deal with a broad range of disputes between miners and landholders in matters such as boundaries and rights to minerals and water. Members of the Local Court magistracy have undertaken the role of Chief Mining Warden.
22. Decision has been made to transfer the jurisdiction of the Mining Warden to the Land and Environment Court. The Land and Environment Court deals with areas of law similar in nature to that dealt with by the Mining Warden such as claims formerly dealt with by the Coal Compensation Board and the Mines Subsidence Board.
23. The Bill amends the *Land and Environment Court Act* to ensure that the Land and Environment Court will have processes to accommodate the mining disputes. It establishes a new class 8 to deal specifically with matters under the *Mining Act* and the *Petroleum (Onshore) Act*. A commissioner will be qualified to deal with matters in class 8 if the commissioner is an Australian lawyer. When dealing with mining matters a commissioner may be referred to as a Commissioner for Mining. The new class 8 will deal with civil disputes relating to mining matters. Class 8 will pick up the civil procedures that are currently available in other classes of the Land and

Environment Court under the *Civil Procedure Act 2005* and the Uniform Civil Procedure Rules.

24. In addition to the power to determine disputes, the Mining Warden has inquiry functions. These provisions have been repealed so that only the adjudicative functions of the Mining Warden have been transferred to the Land and Environment Court. Local Courts will also retain jurisdiction to deal with monetary claims arising from mining disputes up to the value of \$60,000 and will be capable of dealing with criminal prosecutions in the same way as the former Mining Warden.

Amendment to the power of Land and Environment Court in relation to easements

25. The Bill amends section 40 of the Land and Environment Court Act in relation to the power of the court to impose easements. Currently, applications for an easement over land can be made where the court has made a determination to grant or modify a development consent on an appeal under the Act. This Bill will amend the Act to provide that applications for an easement over land may be made where an appeal under sections 96, 96A, 96AA or 97 is pending before the court.

Amendment to *Local Courts Act 1982* in relation to resigning or retiring magistrates

26. The *Local Court Act 2007* provides that when a magistrate either resigns or retires from office the magistrate may, despite vacating office, continue to hear and determine any proceedings that the magistrate has either heard or partly heard. This ensures that magistrates can conclude cases they are dealing with rather than requiring another magistrate to recommence proceedings. The new Local Court Act is not anticipated to commence until next year. This Bill introduces a similar provision in the *Local Courts Act 1982* in the meantime.

Amendments to the *Mental Health Act 2007* to transfer the function of mental health inquiries from Local Court magistrates to the Mental Health Review Tribunal (MHRT)

27. This Bill amends the *Mental Health Act 2007* to transfer the function of conducting mental health inquiries from magistrates of the Local Court to the Mental Health Review Tribunal. Part 2 of division 3 of the Mental Health Act requires a person to be brought before a magistrate for a mental health inquiry if medical examiners find that the person is mentally ill and is to be involuntarily detained. A magistrate must then conduct a mental health inquiry to determine whether or not, on the balance of probabilities, the person is a mentally ill person. The tribunal (MHRT) is a specialist body with greater knowledge and experience in mental health care issues.
28. The transfer of mental health inquiries to the tribunal aims to achieve efficiencies as the tribunal has the capacity to hold inquiries with the aid of audiovisual link technology. The tribunal will have the capacity to require authorised medical officers of a mental health facility to provide additional information and medical reports for the purpose of an inquiry. Mental health inquiries will be conducted by a single member of the tribunal who is either the president, a deputy president or a member who is an Australian lawyer. Consequential amendments are also made to the *Protected Estates Act 1983*, the *Mental Health Legislation Amendment (Forensic Provisions) Act 2008* and the *Mental Health (Criminal Procedure) Act 1990*.

Amendments to the *Young Offenders Act 1997*

29. Schedule 28 amends the *Young Offenders Act 1997* to provide consistency with respect to the age at which a child can choose the identity of his or her support person. Item [1] of schedule 28 will allow children aged 14 to choose the adult who accompanies them whilst a formal caution is explained by police. Item [2] of schedule 28 will allow children over the age of 14 to choose the adult who accompanies them whilst a Youth Justice Conference is explained by police.

Amendments to the *Surveillance Devices Act 2007*

30. Items [1] and [2] of schedule 27 amend the *Surveillance Devices Act 2007* to clarify that the cameras and audio recorders built into tasers issued to police can be used to monitor their use. These cameras and recording devices are an added protection against the misuse of tasers. The recording devices attached to tasers are not permitted by this amendment to be used for covert surveillance unrelated to the use of the taser.
31. Items [3] to [5] of schedule 27 are clarifications to the *Surveillance Devices Act 2007*. They make it clear that the power to enter premises to install a surveillance device extends to premises that provide access to vehicles and objects within vehicles that are under surveillance.

Background

32. Section 22A of the Bail Act was amended in 2007 to require a court to refuse to entertain an application for bail unless there were new facts or circumstances since the previous application or the applicant had no legal representation at the first time. Section 22A is aimed at preventing forum shopping to save victims from the trauma of repeated bail applications. When circumstances have changed, then an accused is able to apply for bail. The current amendment does not affect the operation of this aspect.
33. The Bill also amends the *Births, Deaths and Marriages Registration Act 1995* to clarify that the District Court may only direct the Registrar of Births, Deaths and Marriages to register a birth if the birth occurred in New South Wales. This approach is to ensure the integrity of the register and to protect against duplicate birth registrations which can create the opportunity for fraud and multiple identities.
34. According to the Second Reading speech, an application has been made to the court seeking orders to register an adopted child who was born overseas but is now resident in New South Wales. It is unnecessary for overseas adoptions to be registered on the New South Wales register of births. Overseas born adoptees will have a birth certificate from their country of origin and a certificate of adoption. These documents have the same status as a birth certificate.
35. In 2006, it became apparent that because Crown Prosecutors are statutory officers appointed under the Crown Prosecutors Act, neither the Director of Public Prosecutions nor any other officer, had the power to suspend him from office while the allegations were being investigated. Similarly, in relation to Public Defenders, there is no power for the Senior Public Defender to suspend a Public Defender if allegations regarding their competency to hold office are being investigated. Therefore, this Bill will aim to address these gaps.

36. From the Second Reading speech:

The *Courts and Crimes Legislation Further Amendment Bill 2008* provides for miscellaneous amendments to courts and crimes-related legislation and is part of the Government's regular legislative review and monitoring program. The bill will amend a number of Acts in order to improve the operation of the courts. The bill will also make several amendments to criminal law and procedure in order to improve the administration of the criminal justice system.

The Bill

37. The objects of this Bill are as follows:

- (a) to amend the *Administrative Decisions Tribunal Act 1997* so as to enable a retired judge of a New South Wales Court to be appointed as a judicial member of the Administrative Decisions Tribunal,
- (b) to amend the *Bail Act 1978* so as:
 - (i) to provide for bail decisions of a superior court to be reviewed by the Court of Criminal Appeal, and
 - (ii) to make it clear that restrictions on multiple applications for bail apply only to applications in courts of the same jurisdiction, not applications in other courts,
- (c) to amend the *Births, Deaths and Marriages Registration Act 1995* so as:
 - (i) to restrict the District Court's power to make certain orders with respect to the registration of births, and
 - (ii) to enable a new form of birth certificate to be issued in relation to adopted persons,
- (d) to amend the *Confiscation of Proceeds of Crime Act 1989* so as to enable a Local Court to deal with applications for restraining orders in relation to property having a value of up to the Court's jurisdictional limit when sitting in its General Division (currently \$60,000),
- (e) to amend the *Crimes Act 1900* so as:
 - (i) to provide that tanks and other military vehicles are "conveyances" for the purposes of the offence of taking a conveyance without the consent of its owner, and
 - (ii) to create a new offence of intentionally or recklessly destroying or damaging property in company,
- (f) to amend the *Criminal Appeal Act 1912* so as to confer jurisdiction on the Court of Criminal Appeal to deal with appeals (by offenders and the Crown) against sentences imposed by the Drug Court when exercising the criminal jurisdiction of the District Court or a Local Court,
- (g) to amend the *Criminal Procedure Act 1986* so as:
 - (i) to provide that the common law offence of false imprisonment is to be tried summarily in a Local Court unless either the prosecutor or the defendant elects to have the matter dealt with on indictment, and

- (ii) to extend the provisions of that Act with respect to warrants to those issued by the District Court or the Supreme Court, and
 - (iii) to provide for certain existing warrants to expire 20 years after they were issued,
- (h) to amend the *Crown Prosecutors Act 1986* so as to enable the Director of Public Prosecutions to suspend a Crown Prosecutor from duty if he or she is being considered for removal from office,
- (i) to amend the *Drug Court Act 1998* so as to enable Judges of the Supreme Court and District Court (and other NSW courts of equivalent status) to be appointed as Judges of the Drug Court (such appointments currently being limited to Judges of the District Court),
- (j) to amend the *Dust Diseases Tribunal Act 1989* so as to enable Judges of the Supreme Court and District Court (and other NSW courts of equivalent status) to be appointed as members of the Dust Diseases Tribunal (such appointments currently being limited to Judges of the District Court),
- (k) to amend section 190 of the *Evidence Act 1995* so as to bring it into line with other provisions to be inserted into that Act by the *Evidence Amendment Act 2007*,
- (l) to amend the *Evidence Amendment Act 2007* so as to remove certain inconsistencies in expression,
- (m) to amend the *Industrial Relations Act 1996* so as to provide that proceedings for contempt of the Industrial Relations Commission must be commenced within 6 months from when the offence was alleged to have occurred (rather than 12 months, as is currently the case),
- (n) to amend the *Land and Environment Court Act 1979* so as:
 - (i) to provide for the exercise of the jurisdiction to be conferred on it in relation to matters arising under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*, and
 - (ii) to restore the power of the Land and Environment Court to grant easements over land if an appeal involving the grant or modification of development consent has already been determined by the Court,
- (o) to amend the *Local Courts Act 1982* so as to enable a person who vacates the office of Magistrate to continue to hear part-heard proceedings that were commenced before the person vacated office,
- (p) to amend the *Mental Health Act 2007* with respect to:
 - (i) the conduct of mental health inquiries by the Mental Health Review Tribunal instead of Magistrates, and
 - (ii) the qualifications for appointment of a “legal” member of the Mental Health Review Tribunal,
- (q) to amend the *Mental Health (Criminal Procedure) Act 1990* so as to make amendments consequential on the changes to mental health inquiries,

- (r) to amend the *Mental Health Legislation Amendment (Forensic Provisions) Act 2008* so as to make an amendment consequential on the changes to mental health inquiries,
- (s) to amend the *Mining Act 1992* so as to transfer to the Land and Environment Court the jurisdiction currently conferred by that Act on wardens and Wardens' Courts,
- (t) to amend the *Mining Amendment Act 2008* as a consequence of the transfer of jurisdiction referred to in paragraph (s),
- (u) to amend the *Miscellaneous Acts (Local Court) Amendment Act 2007* so as to make consequential amendments,
- (v) to amend the *Petroleum (Onshore) Act 1991* so as to transfer to the Land and Environment Court the jurisdiction currently conferred by that Act on wardens and Wardens' Courts,
- (w) to amend the *Pharmacy Practice Act 2006* with respect to the qualifications for appointment of the Chairperson and Deputy Chairperson of the Pharmacy Tribunal,
- (x) to amend the *Protected Estates Act 1983* so as to make amendments consequential on the changes to mental health inquiries,
- (y) to amend the *Public Defenders Act 1995* so as:
 - (i) to maintain consistency with the provisions of the *Crown Prosecutors Act 1986* in relation to the vacation of office by a Public Defender, and
 - (ii) to enable the Senior Public Defender to suspend a Public Defender from duty if he or she is being considered for removal from office,
- (z) to amend the *Supreme Court Act 1970* so as to extend the age restrictions in relation to a retired Judge being appointed as an acting Judge,
- (aa) to amend the *Surveillance Devices Act 2007* so as:
 - (i) to provide that certain prohibitions in that Act on the installation, use and maintenance of listening devices and optical surveillance devices do not apply to the use of a listening device or an optical surveillance device integrated into a Police Taser, and
 - (ii) to make it clear that a surveillance device warrant or retrieval warrant that authorises entry into a vehicle also authorises entry into premises adjoining or providing access to the vehicle,
- (ab) to amend the *Young Offenders Act 1997* so as to provide that the adult present when certain explanations under that Act are given to a child may be chosen by the child if he or she is 14 years or over, rather than 16 years or over as is currently the case.
- (ac) to amend a number of Acts and instruments as a consequence of the transfer of jurisdiction referred to in paragraph (s).

Schedule 1 Amendment of *Administrative Decisions Tribunal Act 1997* No 76
Schedule 2 Amendment of *Bail Act 1978* No 161
Schedule 3 Amendment of *Births, Deaths and Marriages Registration Act 1995* No 62
Schedule 4 Amendment of *Confiscation of Proceeds of Crime Act 1989* No 90
Schedule 5 Amendment of *Crimes Act 1900* No 40
Schedule 6 Amendment of *Criminal Appeal Act 1912* No 16
Schedule 7 Amendment of *Criminal Procedure Act 1986* No 209
Schedule 8 Amendment of *Crown Prosecutors Act 1986* No 208
Schedule 9 Amendment of *Drug Court Act 1998* No 150
Schedule 10 Amendment of *Dust Diseases Tribunal Act 1989* No 63
Schedule 11 Amendment of *Evidence Act 1995* No 25
Schedule 12 Amendment of *Evidence Amendment Act 2007* No 46
Schedule 13 Amendment of *Industrial Relations Act 1996* No 17
Schedule 14 Amendment of *Land and Environment Court Act 1979* No 204
Schedule 15 Amendment of *Local Courts Act 1982* No 164
Schedule 16 Amendment of *Mental Health Act 2007* No 8
Schedule 17 Amendment of *Mental Health (Criminal Procedure) Act 1990* No 10
Schedule 18 Amendment of *Mental Health Legislation Amendment (Forensic Provisions) Act 2008* No 79
Schedule 19 Amendment of *Mining Act 1992* No 29
Schedule 20 Amendment of *Mining Amendment Act 2008* No 19
Schedule 21 Amendment of *Miscellaneous Acts (Local Court) Amendment Act 2007* No 94
Schedule 22 Amendment of *Petroleum (Onshore) Act 1991* No 84
Schedule 23 Amendment of *Pharmacy Practice Act 2006* No 59
Schedule 24 Amendment of *Protected Estates Act 1983* No 179
Schedule 25 Amendment of *Public Defenders Act 1995* No 28
Schedule 26 Amendment of *Supreme Court Act 1970* No 52
Schedule 27 Amendment of *Surveillance Devices Act 2007* No 64
Schedule 28 Amendment of *Young Offenders Act 1997* No 54
Schedule 29 Amendment of other Acts and instruments consequent on the abolition of Wardens Courts

Issues Considered by the Committee

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

Issue: Retrospectivity - Schedule 3 [7] amendment of Births, Deaths and Marriages Registration Act 1995 – proposed Part 5 – Provisions consequent on enactment of Courts and Crimes Legislation Further Amendment Act 2008 – proposed clause 18 – Orders for registration under section 19:

38. Proposed clause 18 of new Part 5 reads: The Registrar is not obliged to comply with an order under section 19 (1) (a) made before the commencement of section 19 (1A), as inserted by the *Courts and Crimes Legislation Further Amendment Act 2008*, if such an order could not have lawfully been made after that commencement.
39. The new section 19 (1A) to be inserted in the *Births, Deaths and Marriages Registration Act 1995*, reads: (1A) Such an order may only be made in respect of a birth: (a) in the case of an order under subsection (1)(a), if the birth occurred in the State, in an aircraft during a flight to an airport in the State or on a ship during a

voyage to a port in the State, and (b) in the case of an order under subsection (1)(b), if the birth has been registered under this Act.

40. This amends section 19 of the Act to restrict the District Court's power to order registration of a birth to births occurring within, or while in transit to, New South Wales, and to restrict the District Court's power to order the inclusion in the Births, Deaths and Marriages Register of information about a child's birth or parents to information concerning a birth that is already registered.
41. The new section 19 (1A) removes any obligation on the Registrar of Births, Deaths and Marriages to comply with a court order with respect to the registration of a birth that was made before the proposed amendment to section 19 if such an order could not lawfully be made under amended section 19.

42. The Committee will always be concerned where the law is changed retrospectively in a manner that adversely affects any person. The Committee notes that clause 18 of new Part 5 in Schedule 3 [7] and proposed section 19 (1A) of Schedule 3 [2] will apply retrospectively to applications before the commencement of the amendment.

43. However, without making these amendments retrospective, the integrity of the Register will be put at risk. Although the Births, Deaths and Marriages Registration Act 1995 sets out some limited circumstances where a birth occurring outside NSW may be registered (for example, a birth occurring in an aircraft travelling to NSW), it must be remembered that the primary objective of the Act is to register events that occur within NSW.

44. The power of the District Court to order the registration of a birth was always intended to apply only in relation to births that occurred within NSW. Without this amendment being retrospective, the consequences will be an increase in the risk of fraud. If it is not retrospective, it will leave the door open for anyone to challenge the Registry's decisions of the past not to register a life event occurring outside NSW. If these overseas events of the past are registered, it will lead to the creation of multiple identities and compromise the integrity of the Register. As has been made clear previously, this amendment seeks to regularise what is the current practice.

Issue: Retrospectivity - Schedule 4 [4] Amendment of Confiscation of Proceeds of Crime Act 1989 – Schedule 1, proposed Part 3 Provision consequent on enactment of Courts and Crimes Legislation Further Amendment Act 2008 - Clause 7 – Proceedings for offences:

45. Clause 7 reads: Section 74, as amended by Schedule 4 to the Courts and Crimes Legislation Further Amendment Act 2008, extends to proceedings commenced before the commencement of that Schedule.

46. The Committee is usually concerned where the law is changed retrospectively in a manner that adversely affects any person. However, the Committee concludes that in this instance, there is no undue trespass on individual rights or liberties. The Committee notes that the increase of the jurisdiction of the Local Court means that it can deal with breach offences if the proceeds of crime or property do not exceed the civil jurisdictional limit of the Local Court (\$60,000). This will allow the Local Court to deal with the majority of prosecutions for breach of freezing notices and restraining orders and leave the Supreme Court to deal with offences of more appropriately substantial values.

Issue: Retrospectivity - Schedule 6 [7] Amendment of Criminal Appeal Act 1912 – proposed clause 14:

47. Clause 14 reads: An amendment made to this Act by Schedule 6 to the *Courts and Crimes Legislation Further Amendment Act 2008* extends to a sentence imposed before the commencement of the amendment but does not apply to any appeal proceedings commenced before the commencement of the amendment.
48. Schedule 5 to the Bill amends the *Criminal Appeal Act 1912* to address an anomaly in the appeal process from the Drug Court, which was highlighted by the Court of Criminal Appeal in the case of *Bell v R* [2007] NSWCCA 369. The court found that appeals against sentences under part 2 of the Drug Court Act could be brought before the Court of Criminal Appeal, but an appeal against sentences imposed under the Drug Court's summary jurisdiction under section 24 of the Act must be brought in the District Court. This meant the offender had to take appeals in two different jurisdictions depending on how their matter was dealt with by the Drug Court. The amendment allows all sentences imposed by the Drug Court to be dealt with by the Court of Criminal Appeal.

49. The Committee is usually concerned where the law is changed retrospectively in a manner that adversely affects any person. However, the Committee is of the view that with regard to the above amendment, there appears to be no undue trespass on individual rights or liberties since the amendment allows all sentences imposed by the Drug Court to be dealt with by the Court of Criminal Appeal rather than by two different jurisdictions depending on how the matter was dealt with by the Drug Court.

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

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

50. The Committee notes that the proposed Act is to commence on the date of assent², except as provided by the following subsection (2)³, which will commence on a day or days to be appointed by proclamation. This may delegate to the government the

² Subsection (3): Schedule 7 [11] commences on: (a) the date of assent to this Act, or (b) the date of commencement of Schedule 1.11 [21] to the *Crimes and Courts Legislation Amendment Act 2006*, whichever is the later. Subsection (4): Schedule 11 commences on: (a) the date of assent to this Act, or (b) the date of commencement of Schedule 1 [81] to the *Evidence Amendment Act 2007*, whichever is the later.

³ Subsection (2) reads: Section 4, and Schedules 4, 14 [1] – [8] and [10] – [15], 16, 17, 19, 22, 24 and 29, commence on a day or days to be appointed by proclamation.

power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

- 51. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about the proposed section and schedules which will be commenced by proclamation as provided in proposed section 2 (2)⁴, and asks Parliament to consider whether commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.**

The Committee makes no further comment on this Bill.

⁴ Section 4, and Schedules 4, 14 [1] – [8] and [10] – [15], 16, 17, 19, 22, 24 and 29, commence on a day or days to be appointed by proclamation.

3. CRIMES AMENDMENT (SEXUAL OFFENCES) BILL 2008

Date Introduced:	26 November 2008
House Introduced:	Legislative Council
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Justice

Purpose and Description

1. This Bill amends the *Crimes Act 1900* and other criminal legislation to make further provision with respect to sexual offences, sentencing and other matters.
2. Schedule 1 amends the *Crimes Act 1900*. This Bill provides for an aggravated offence of having sexual intercourse with a child under the age of 10 years. Factors of aggravation for this offence include: inflicting actual bodily harm on the child; threatening the child with a weapon; committing the offence in company; committing the offence against a child with a serious physical or intellectual disability; taking advantage of the child being under the influence of drugs or alcohol to commit the offence; or kidnapping or otherwise depriving the child of their liberty either before or after committing the offence. Committing such an aggravated offence against a child under the age of 10, the maximum penalty will be imprisonment for life.
3. An additional two circumstances of aggravation for the offence of aggravated sexual assault are inserted in section 61J of the *Crimes Act 1900*. These additional factors are breaking and entering into someone's home and committing a sexual assault, and kidnapping. The maximum penalty for an offence under these provisions is 20 years imprisonment. The offence of aggravated indecent assault with the effect that the maximum penalty for any indecent assault committed on a child under the age of 16 years is now 10 years imprisonment. There will no longer be any difference in penalty between an indecent assault committed against a child under the age of 10 years, or an indecent assault committed against a child between the ages of 10 and 16.
4. A new subsection (2A) will be created in the section 61O offence of aggravated act of indecency. The Bill provides for a maximum penalty of 10 years imprisonment for acts of indecency committed with or towards a person under the age of 16 years for the purposes of the production of child pornography. It also makes it an offence for a person to incite a person under the age of 16 to an act of indecency with or towards that person or another person.
5. The alternative verdict provisions are amended in section 61Q of the *Crimes Act 1900* to allow a jury to find that a person charged with an offence of aggravated act of indecency for the purposes of child pornography under new section 61O (2A) of the Crimes Act, and if the jury is not satisfied on the evidence that the accused is guilty of this offence but is satisfied that he or she is guilty of an offence with either a different circumstance of aggravation provided for by section 61O subsection (2), or the general offence of act of indecency under section 61N, is then guilty of these later

- offences. The accused will then be punished according to the maximum penalties available for these later offences, not the penalty for the offence under section 61O (2A).
6. The offence is divided in the current section 66A of the Crimes Act, that of sexual intercourse with child under the age of 10, into a general offence and an aggravated form of the offence. This general offence will now be in the new subsection 66A (1), which retains the maximum penalty of 25 years. The aggravated offence will be contained in a new subsection 66A (2), which provides for a maximum penalty of life imprisonment when the offence of sexual intercourse with a child under the age of 10 is committed in circumstances of aggravation. Subsection (4) of section 66A clarifies that a person sentenced to imprisonment for life for an offence under subsection (2) is to serve that sentence for the term of his or her natural life. Subsection (5) makes it clear that nothing in this section affects the operation of section 21 of the *Crimes (Sentencing Procedures) Act 1999*, which authorises the passing of a lesser sentence than imprisonment for life, and subsection (6) states that nothing in section 66A affects the prerogative of mercy.
 7. Subsection (7) deals with alternative verdicts in the case where a person has been charged with another offence against the *Crimes Act 1900* but is found guilty by way of the alternative provisions of section 61Q. This subsection clarifies that in these situations, the maximum penalty that may be imposed on the person found guilty under this section is the penalty for the offence with which the person was originally charged.
 8. An additional aggravating circumstance of kidnapping is inserted for the offence under section 66C of the Crimes Act 1900 of sexual intercourse with a child between the ages of 10 and 16. The alternative verdict provisions contained in section 66E of the *Crimes Act 1900* are amended as a result of the new aggravated form of the offence of sexual intercourse with a child under the age of 10 years under section 66A of the *Crimes Act 1900*.
 9. A new offence of "meeting child following grooming" is created under section 66EB. New subsection (2B) of section 66EB clarifies that, for the purposes of the new offence in proposed subsection (2A), "grooming behaviour" means that the adult has engaged in conduct that exposed the child to indecent material. The maximum penalty for this offence will be 15 years imprisonment if the child is under the age of 14 years and imprisonment for 12 years in any other case. The penalty for the offence of causing sexual servitude where circumstances of aggravation are present will be increased from 19 to 20 years imprisonment. The circumstances of aggravation are when the victim is under the age of 18 years or has a cognitive impairment.
 10. A new division 10B is created, which deals with persons who incite others to commit sexual offences. Subsection (1) of new section 80G specifies that a person charged with inciting the commission of a sexual offence under division 10A or division 15A of the Crimes Act will be liable to the same penalty as for the offence they incited. Subsection (2) states that to be found guilty, the person must intend that the offence be committed. Subsection (5) provides for the offences that are excluded from the operation of this division. Subsection (5) (a) clarifies that it is not an offence to incite the commission of an offence under section 61N (act of indecency), or section 61O (aggravated act of indecency), as these sections contain incitement provisions. The

exclusion of these sections from the incitement offence makes it clear that this provision does not extend criminal liability to inciting an act of incitement.

11. The incitement provisions also do not apply to the operation of offences of attempting to commit a sexual offence under sections 61P, 66B, 66D, 66F(4), 73(4), 78B and 80 or the offence of procuring or grooming a child under 16 years for unlawful sexual activity under section 66EB of the *Crimes Act 1900*. These are preparatory crimes committed in the preparation of actual sexual abuse.
12. The word "pornography" will be removed from the heading of division 15. This means the division will be called "Child prostitution" and only contains child prostitution offences. In addition, the definition of "material" will be removed from this division as it now applies to division 15A "Child pornography".
13. The maximum penalty for an act of child prostitution involving a child under the age of 14 years will be increased to 14 years imprisonment under section 91E (the offence of obtaining benefit from child prostitution). For the offence of obtaining benefit from child prostitution, contrary to section 91E(3) the age of the child must be specified in the charge, otherwise, the penalty of 14 years will not apply and the appropriate penalty will be 10 years.
14. The Bill clarifies that a child in the context of the child pornography offences is a person under the age of 16 years. It also clarifies that the term "material" in these sections includes any film, printed matter, electronic data or any other thing, including any computer image or other depiction.
15. The current definition of "child pornography" in section 91H will be replaced to clarify that child pornography includes material that appears to depict or describe offensive material, and includes a person who is or appears to be a child. This aims to ensure that all forms of child pornography are included in this definition, even images that have been digitally altered to either make someone appear to be under 16 years or to make a child appear to be in a pornographic context.
16. Definition of the term "produce" is provided in relation to child pornography to ensure that all forms of production of child pornography are captured by the definition, including both real images of children being abused and also manipulated or computer-generated images. The Bill aims to ensure that all images, including pseudo images, are covered by this section and not just for the purposes of those who produce child pornography, as covered by the amendments, but also for those who possess or disseminate such material. This section aims to clarify that the definition of child pornography in section 91H includes images of a child that have been altered or manipulated or an image that appears to be a child. The maximum penalty for possession of child pornography will be increased to 10 years imprisonment.
17. A new division 15B is created in the *Crimes Act 1900* (voyeurism and related offences). The first section of this new division is the definition section under proposed section 91I. The new offence of voyeurism is contained in proposed section 91J and makes it an offence for any person who, for the purposes of obtaining sexual arousal or sexual gratification, observes another person who is engaged in a private act knowing that the person being observed does not consent to being observed. The

maximum penalty for this offence is 100 penalty units or imprisonment for two years or both. Subsection (2) states that this offence is a summary offence.

18. Subsection (3) states that the aggravated form of the offence of voyeurism is five years imprisonment. Subsection (4) details with the aggravating circumstances in this situation: the person observed was a child or the offender constructed or adapted the fabric of any building for the purpose of facilitating the commission of the offence.
19. Subsection (5) is an alternative verdict provision and subsection (6) deals with the law of attempt and specifies that a person who attempts to commit either a general or aggravated form of the offence is liable to the penalty provided for the actual offence.
20. New section 91K creates the offence of filming a person engaged in a private act. The general form of this offence replaces the offence of filming for indecent purposes, which was previously in section 21G of the *Summary Offences Act 1988*. This has been transferred from the *Summary Offences Act* in order for the offence to include factors of aggravation. The maximum penalty for this offence is 100 penalty units or imprisonment for two years or both. Subsection (2) states that this offence is a summary offence. Subsection (3) states that the aggravated form of the offence of filming a person engaged in a private act is five years imprisonment. The aggravating factors are the same as those for the new voyeurism offence in section 91J. Subsections (5) and (6) mirror the alternative verdict and attempt provisions in the voyeurism offences under section 91J.
21. New section 91L creates the offence of filming a person's private parts. Subsection (1) is the general form of the offence and creates an offence of filming a person's private parts for sexual gratification. This covers behaviour known as upskirting. The maximum penalty for this general form of the offence is 100 penalty units or imprisonment for two years or both. Subsection (2) states that this offence is a summary offence. Subsection (3) states that the aggravated form of the offence is five years imprisonment with the same aggravating factors as those for the offences of voyeurism and filming a person engaged in a private act. Subsections (5) and (6) are equivalent in alternative verdict and attempt provisions provided for in sections 91K and 91L. Subsection (7) provides that the person cannot be convicted of both an offence against this section and an offence under section 91K in respect of conduct occurring on the same occasion.
22. Section 91M creates the offence provisions for the offence of installing a device to facilitate observing or filming, which was previously in section 21H of the *Summary Offences Act 1988*. This offence is transferred from that Act along with the offence of filming a person engaged in a private act because it is a statutory alternative to offences under the proposed sections 91J, 91K and 91L—respectively, the offences of voyeurism, filming a person engaged in a private act, and filming a person's private parts. All of these offences will now be grouped together in the same legislation.
23. Schedule 2 amends other pieces of criminal legislation. Item [1] of schedule 2.1 includes the proposed sections 91J, 91K and 91L of the Crimes Act (the offences of voyeurism, filming a person engaged in a private act and filming a person's private parts) to be in the definition of class 2 offences under the *Child Protection (Offenders Registration) Act 2000* where the person who was being observed or filmed was then a child. Class 2 offences are registrable offences for the purposes of the *Child Protection (Offenders Registration) Act 2000*.

24. Item [2] of schedule 2.1 places the general version of these offences under sections 91J, 91K and 91L in section 3A (2) (c) (iii) of the *Child Protection (Offenders Registration) Act 2000* so that because someone has been convicted of a single instance of one of these offences does not mean they are necessarily a registrable person under the Act. Schedule 2.2 clarifies that the table of standard non-parole period does not apply in respect of offences committed by children.
25. Part 2.3 in schedule 2 inserts offences under sections 91J, 91K, 91L or 91M of the Crimes Act 1900 committed against, with, or in the presence of a child as included in the definition of reportable conduct in section 33 (1) of the *Commission for Children and Young People Act 1998*.
26. Item [1] of schedule 2.4 ensures that a sex offender's good prior character or lack of previous convictions are not to be taken into account as mitigating factors in sentencing if the court is satisfied that the fact concerned was of assistance to the offender in the commission of the sex offence against the child.
27. Item [2] of schedule 2.4 clarifies the offences that are classified as child sexual offences for the purposes of the *Crimes (Sentencing Procedure) Act 1999*. These include the new offences of voyeurism, filming a person engaged in a private act, and filming a person's private parts, when such offences were conducted against a person under the age of 16. Item [3] of schedule 2.4 ensures that any mandatory requirements for supervision of sex offenders are to be disregarded in the sentencing of the child sex offender.
28. Item [4] of schedule 2.4 makes amendments to section 54D (2) of the *Crimes (Sentencing Procedure) Act 1999* to clarify that the table of standard non-parole periods does not apply to the sentencing of an offender in respect of an offence, if the offender was under the age of 18 years at the time the offence was committed. Item [5] of schedule 2.4 clarifies that the specified standard non-parole period of 15 years imprisonment in part 4, division 1A applies to both the general offence of sexual intercourse with a child under 10 years of age, contrary to section 66A (1) of the *Crimes Act 1900*, and to the aggravated version of the offence under section 66A (2).
29. Item [6] of schedule 2.4 inserts section 66A (2), which relates to aggravated sexual intercourse with a child under 10 years, into the schedule of existing life sentences in the *Crimes (Sentencing Procedure) Act 1999*. Item [1] of schedule 2.5 inserts the offences against sections 91J, 91K and 91L of the *Crimes Act 1900*, the offences of voyeurism, filming a person engaged in a private act and filming a person's private parts in relation to the observing or filming of a child, into the definition of an offence of a sexual nature in the *Crimes (Serious Sex Offenders) Act 2006*. The amendment in schedule 2.9 includes the offence of persistent child sex abuse against section 66EA of the *Crimes Act 1900* among the child sexual assault offences to which the *Pre-Trial Diversion of Offenders Act 1985* applies.

Background

30. This Bill arises out of the recommendations of the New South Wales Sentencing Council to amend the *Crimes Act 1900* and the *Crimes (Sentencing Procedure) Act 1999*. In September 2007, the Sentencing Council was asked to conduct a review of the penalties attaching to sexual offences. The terms of reference included an

examination of whether there are any anomalies or gaps in the current framework of sexual assault offences and penalties, and advice on whether or not "good character" as a mitigating factor has an impact on sentences and sentence length, and if so, whether there needs to be a legislative response.

31. Part 1 of the Sentencing Council report was handed down in August 2008 and Part 2, which examined alternative sentencing regimes in overseas jurisdictions and possible responses to address repeat offending committed by serious sex offenders, will be released at a later date. In its report, the Sentencing Council made 39 recommendations in relation to sexual penalties and offences. This Bill implements the majority of those recommendations. The remaining recommendations have been referred to two working groups: one to examine issues in relation to child pornography offences, and the other to consider a broader review of sexual offences in the *Crimes Act 1900*.
32. Last year the Government introduced legislation to criminalise the behaviour of adults who groom and procure children for the purpose of engaging in unlawful sexual activity. The New South Wales legislation has a wider application than the Commonwealth legislation to ensure that all grooming and procuring activities are criminalised, rather than just those confined to the Internet.
33. In the examination of gaps in the current framework of sexual offences, the Sentencing Council identified an additional offence in the United Kingdom legislation in relation to grooming and procuring that does not appear in New South Wales legislation. The new offence covers behaviour where an adult has "groomed" a child, either over the Internet or through other means, and then travels to meet the child with the intention of procuring the child for an unlawful sexual activity. The maximum penalty for this new offence is imprisonment for 15 years if the child was under 14 years of age, and 12 years if the child was between 14 and 16 years of age.
34. From the Second Reading Speech:

The Sentencing Council noted in its report that the differing penalties for child pornography possession between New South Wales State law, currently five years, and Commonwealth law, 10 years, causes problems in the Local Court, where an offender may be charged with offences under both Acts in relation to the same kinds of material. The historical reason for the difference in these maximum penalties is that the Commonwealth offence required that the material had to be produced or possessed for use "through a carriage service". The New South Wales offences are currently split into possession, with a five-year penalty, and production or dissemination, which carries a 10-year penalty. The bill increases the maximum penalty for possession of child pornographic material to 10 years. These substantial penalties send a strong message to the courts that child pornography should not be tolerated. This penalty reflects the seriousness of this crime. Any person who knowingly possesses images of a child being sexually abused is perpetuating such abuse and also providing a continuing market for such material. The Government is of the view that the criminality involved in that behaviour is the same as if the offender had produced the material themselves.

The Bill

35. The object of this Bill is to amend the *Crimes Act 1900* and other criminal legislation as follows:

- (a) to provide for an aggravated offence of having sexual intercourse with a child under the age of 10 years, with a maximum penalty of imprisonment for life,
- (b) to make kidnapping (or deprivation of liberty) an additional circumstance in which sexual intercourse with a child aged between 10 and 16 years is treated as an aggravated offence,
- (c) to make breaking and entering, and kidnapping (or deprivation of liberty), additional circumstances in which sexual intercourse without a person's consent is treated as an aggravated offence,
- (d) to create a new offence of aggravated act of indecency, with a maximum penalty of 10 years imprisonment, where an act of indecency is committed with or towards a child under the age of 16 years and the offender knows that the act of indecency is being filmed for the purposes of the production of child pornography,
- (e) to increase the maximum penalty for the offence of indecent assault against a child aged between 10 and 16 years,
- (f) to create a new offence of meeting a child, or travelling to meet a child, following grooming that child for sexual purposes,
- (g) to increase the maximum penalty for the aggravated offence of causing a person to enter into or remain in sexual servitude,
- (h) to create a specific statutory offence of inciting a person to commit a sexual offence (carrying the same maximum penalty as the offence incited),
- (i) to increase the maximum penalty for the offence of receiving money or a material benefit derived from child prostitution, where the offence involves a child under the age of 14 years,
- (j) to increase the maximum penalty for possession of child pornography and make other changes to child pornography offences,
- (k) to create new offences of voyeurism and filming a person's private parts and to transfer to the *Crimes Act 1900* and extend the existing offence of filming a person engaged in a private act,
- (l) to make various changes with respect to the sentencing of sex offenders and young offenders,
- (m) to provide for other miscellaneous matters (including consequential and savings and transitional matters).

Outline of provisions

Schedule 1 Amendment of Crimes Act 1900:

Aggravated sexual offences

Schedule 1 [9] creates a new aggravated offence of having sexual intercourse with a child under the age of 10 years. The existing (non-aggravated) offence carries a maximum penalty of 25 years imprisonment. The new offence will carry a maximum penalty of imprisonment for life. The circumstances that will make the offence an aggravated offence are as follows:

- (a) at the time of, or immediately before or after, the commission of the offence, the alleged offender intentionally or recklessly inflicts actual bodily harm on the alleged victim or any other person who is present or nearby,
- (b) at the time of, or immediately before or after, the commission of the offence, the alleged offender threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument,
- (c) the alleged offender is in the company of another person or persons,

- (d) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender,
- (e) the alleged victim has a serious physical disability,
- (f) the alleged victim has a serious intellectual disability (or what is now referred to as a cognitive impairment),
- (g) the alleged offender took advantage of the alleged victim being under the influence of alcohol or a drug in order to commit the offence,
- (h) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence.

These circumstances of aggravation are identical to the existing circumstances in which the offence of having sexual intercourse with a person aged between 10 and 16 years becomes an aggravated offence, with the addition of the last factor, namely, that the offender deprives the victim of his or her liberty before or after the commission of the offence. **Schedule 1 [11]** adds this additional circumstance of aggravation to the offence of having sexual intercourse with a person aged between 10 and 16 years, so that the circumstances of aggravation relating to the 2 offences remain consistent.

Schedule 1 [1] provides for additional circumstances in which the offence of having sexual intercourse with another person, without that person's consent, becomes an aggravated offence. The additional circumstances are:

- (a) the alleged offender breaks and enters into any dwelling-house or other building with the intention of committing the offence or any other serious indictable offence, or
- (b) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence.

Schedule 1 [5] creates a new aggravated act of indecency offence of committing an act of indecency with or towards a child under the age of 16 years, or inciting a child under that age to an act of indecency, where the offender knows that the act of indecency is being filmed for the purposes of the production of child pornography.

The maximum penalty for this offence is imprisonment for 10 years (consistent with the penalties for the production of child pornography).

Schedule 1 [3] increases the maximum penalty for the offence of indecent assault against a child aged between 10 and 16 years to 10 years imprisonment (so that it is the same as the maximum penalty for the offence of indecent assault against a child under the age of 10 years). At present the maximum penalty for this offence is 7 years imprisonment.

Schedule 1 [2], [4], [6], [7], [8], [17] and [32] make consequential and related amendments to the amendments described above.

Child grooming

Schedule 1 [14] creates a new offence of intentionally meeting a child under the age of 16 years, or travelling to meet a child under the age of 16 years, after grooming the child for sexual purposes. A person grooms a child if the person engages in conduct (for example, by communication over the internet) that exposes the child to indecent material. Only adults can be convicted of this offence. The offence carries a higher penalty than the offence of grooming a child for sexual purposes. The maximum penalty for the offence will be imprisonment for 15 years (in the case of a child under the age of 14 years) or imprisonment for 12 years (in any other case). **Schedule 1 [15] and [16]** are consequential amendments.

Causing sexual servitude

Schedule 1 [18] increases the maximum penalty for the offence of causing a person to enter into or remain in sexual servitude from 19 years imprisonment to 20 years imprisonment. Circumstances of aggravation are that the victim is under the age of 18 years or has a cognitive impairment.

Incitement to commit sexual offence

Schedule 1 [19] provides for a specific offence of inciting a person to commit a sexual offence. Sexual offences are offences against Division 10 of Part 3 of the *Crimes Act 1900* (such as sexual assault, sexual intercourse with children, indecent assault and acts of indecency), offences against Division 10A of that Part (sexual servitude) and offences against Division 15A of that Part (child pornography offences). The incitement offence will carry the same maximum penalty as the offence incited. The offence of incitement will not apply to offences in the nature of attempt or offences that are themselves constituted by inciting another person to do something (such as inciting a person to commit an act of indecency).

Child prostitution

Schedule 1 [22] increases the maximum penalty for receiving money or any other material benefit that is derived from an act of prostitution from 10 years imprisonment to 14 years imprisonment, if the offence involves a child under the age of 14 years. **Schedule 1 [23]** requires the age of the child to be set out in the charge for the offence, if the higher maximum penalty is sought.

Child pornography

Schedule 1 [27] increases the maximum penalty for being in possession of child pornography from 5 years imprisonment to 10 years imprisonment. As the offence will now carry the same maximum penalty as producing or disseminating child pornography, the 2 child pornography offences (one being the offence of possession of child pornography, and the other being the offence of production or dissemination of child pornography) are merged into a single offence.

Schedule 1 [25] and [30] make amendments to clarify that the child pornography offence extends to material that appears to depict or describe a child (a person under the age of 16 years) in a pornographic manner. This includes where an image of a person is manipulated in a manner to make the person appear to be a child or appear to be engaged in a sexual activity, in a sexual context or a victim of torture, cruelty or physical abuse.

Schedule 1 [26] defines “produce”, for the purposes of the offences relating to production of child pornography, to include filming, photographing, printing or otherwise making child pornography, altering or manipulating an image for the purpose of making child pornography, or entering into an agreement or arrangement to do any of those things.

Schedule 1 [24] is a law revision amendment that creates a separate Division for the child pornography offences. Currently, the child pornography offences are contained in the same Division as child prostitution offences. The offences are placed in a separate Division as the child prostitution offences relate to persons under the age of 18 years, and the child pornography offences relate to persons under the age of 16 years. **Schedule 1 [13], [20], [21], [28] and [29]** are consequential amendments to the amendments described above.

Voyeurism and related offences

Schedule 1 [31] provides for new offences of observing or filming a person engaged in a private act. A person is engaged in a private act if:

- (a) the person is in a state of undress, using the toilet, showering or bathing, engaged in a sexual act of a kind not ordinarily done in public, or engaged in any other like activity, and
- (b) the circumstances are such that a reasonable person would reasonably expect to be afforded privacy.

The new offence of voyeurism is constituted by observing a person who is engaged in a private act without the consent of the person observed and knowing that the person observed does not consent. It will be necessary to prove that the person observing the private act did so for the purpose of obtaining sexual arousal or sexual gratification. The offence will be a summary offence punishable by a maximum penalty of 100 penalty units (currently \$11,000) or 2 years imprisonment, or both.

There will also be an aggravated offence that may be prosecuted on indictment. The aggravated offence is committed if the person observed is a child under the age of 16 years or the offender constructs or adapts the fabric of a building for the purpose of facilitating the commission of the offence. The aggravated offence will carry a maximum penalty of 5 years imprisonment.

The amendments also provide for an offence of filming a person who is engaged in a private act. The offence is constituted by filming a person who is engaged in a private act without the consent of the person filmed and knowing that the person filmed does not consent. It will be necessary to prove the person filming did so for the purpose of obtaining sexual arousal or sexual gratification or enabling another person to obtain sexual arousal or sexual gratification. This behaviour is already an offence under the *Summary Offences Act 1988*, so the new offence is partly a re-enactment in the *Crimes Act 1900* of the existing summary offence. It will continue to be a summary offence with the same maximum penalty as it currently carries (100 penalty units or imprisonment for 2 years, or both).

However, the amendments also create a new aggravated version of the offence that may be prosecuted on indictment. The aggravated offence is committed if the person filmed is a child under the age of 16 years or the offender constructs or adapts the fabric of a building for the purpose of facilitating the commission of the offence. The aggravated offence will carry a maximum penalty of 5 years imprisonment.

The amendments also create a new offence of filming a person's private parts (that is, the person's genital or anal area, whether bare or covered in underwear) in circumstances where a reasonable person would reasonably expect the person's private parts could not be filmed. Similar to the voyeurism and other filming offence described above, the offence will apply if the offender filmed the person's private parts for the purpose of obtaining, or enabling another person to obtain, sexual arousal or sexual gratification, and did so without the consent of the person filmed, and knowing that the person filmed did not consent. The offence will be a summary offence with a maximum penalty of 100 penalty units or imprisonment for 2 years, or both. There will also be an aggravated offence which may be prosecuted on indictment. The aggravated offence is committed if the person filmed is a child under the age of 16 years or the offender constructs or adapts the fabric of a building for the purpose of facilitating the commission of the offence. The aggravated offence will carry a maximum penalty of 5 years imprisonment.

The amendments also provide for an offence of installing a device, or constructing or adapting the fabric of a building, for the purpose of enabling a person to commit one of the

above offences. This will be a summary offence with a maximum penalty of 100 penalty units or imprisonment for 2 years, or both.

Miscellaneous

Schedule 1 [33] provides for savings and transitional matters.

Schedule 2 Amendment of other Acts and instrument:

- (a) the *Child Protection (Offenders Registration) Act 2000*,
- (b) the *Children (Criminal Proceedings) Act 1987*,
- (c) the *Commission for Children and Young People Act 1998*,
- (d) the *Crimes (Sentencing Procedure) Act 1999*,
- (e) the *Crimes (Serious Sex Offenders) Act 2006*,
- (f) the *Criminal Assets Recovery Act 1990*,
- (g) the *Criminal Procedure Act 1986*,
- (h) the *Firearms Regulation 2006*,
- (i) the *Pre-Trial Diversion of Offenders Act 1985*,
- (j) the *Summary Offences Act 1988*.

Some of the amendments relate to new proposals regarding sentencing, pre-trial diversion of offenders, and the prosecution of offences on indictment and some are consequential to the other amendments set out in this Bill.

Issues Considered by the Committee

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

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

36. The Committee notes that the proposed Act, except as provided by subsection (2)⁵, 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. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

37. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill⁶ commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

The Committee makes no further comment on this Bill.

⁵ Proposed section 2 (2) reads: Schedule 1[10] commences on the commencement of Schedule 1 [9] or, if Schedule 1 [1] to the *Crimes Amendment (Cognitive Impairment – Sexual Offences) Act 2008* has not commenced when Schedule 1 [9] to this Act commences, on the commencement of Schedule 1 [1] to the *Crimes Amendment (Cognitive Impairment – Sexual Offences) Act 2008*.

⁶ Except as provided by proposed section 2 (2) - as above.

4. CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT BILL 2008

Date Introduced:	27 November 2008
House Introduced:	Legislative Council
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General and Minister for Justice

Purpose and Description

1. The purpose of this Bill is to make provision for the establishment and management of residential facilities to accommodate certain inmates prior to release from custody and persons subject to non-custodial orders or parole orders. Residential facilities are a new type of facility, which will be established by the Governor by proclamation. Item [27] of Schedule 1 provides that the Commissioner of Corrective Services has the care, direction, control and management of residential facilities. A manager of a residential facility will be employed under the *Public Sector Employment and Management Act 2002*. The provisions of the Act, which deal with imprisonment by way of full-time detention, will apply to residential facilities and to the inmates of them in the same way as these provisions apply to correctional centres. The regulations may also provide for the application to residential facilities of other provisions of the act that apply to correctional centres.
2. The Bill extends the scope of the existing regulation making powers in respect of the seizure and forfeiture of any property, including drugs, that is unlawfully in the possession of an inmate or other person or that is brought into or found within a correctional centre or correctional complex. At present, the Act permits the regulations to provide for the circumstances in which it is lawful for an inmate to acquire property, and to provide for the seizure, forfeiture and disposal of property unlawfully brought into a correctional Centre. The regulation making powers are now extended to any property, including money, found within, or sent to or delivered to, a correctional centre that is unlawful for an inmate to acquire and any drug or anything reasonably suspected of being a drug that is in the possession of an inmate or in the possession of any other person in the correctional centre or sent or delivered to a correctional centre or correctional complex.
3. Under the existing provisions in the Act a victim of a serious offender is entitled to be given access to documents held by the parole authority in respect to the offender relating to the measures the offender has taken, or is taking, to address his or her offending behaviour. Under the amendments in Schedule 1[23] and [24] the agent of the victim, who is authorised in writing by the victim and the Commissioner, may access the documents on the victim's behalf.
4. The Bill provides that the Commissioner may appoint any member of staff of the Department to be a residential facility officer to supervise persons residing at a

residential facility or to exercise other functions in relation to the residential facility. This is consistent with the fact that residential facilities are not correctional centres.

5. The Bill confirms that immigration detainees under the *Migration Act 1958* of the Commonwealth and persons sentenced to imprisonment under the *Defence Force Discipline Act 1982* of the Commonwealth may be held in correctional centres.
6. At present, section 110 of the Act provides that a community service order remains in force until the offender has performed the required number of hours of work, unless sooner revoked. Schedule 110 will now provide that a community service order expires if the relevant maximum, generally 12 or 18 months expires, even if this occurs before the inmate has completed the required number of hours of work. However, the application can be made to the Local Court to extend the period of an order.

Background

7. The Minister in his Second Reading speech stressed that corrective services is concerned not only with the incarceration of the recalcitrant and worst categories of offenders in full time imprisonment, but also with administering sentences to be served within the community, and with providing offenders with opportunities and resources to assist in breaking their crime cycles. He said the Department of corrective services has been developing a number of alternative accommodation facilities and that these new residential facilities have a very different purpose from the traditional correctional Centre. He instanced the residential facility at Tabulam on the NSW North Coast. That initiative, he said, is designed to assist predominantly young aboriginal offenders by addressing the underlying causes of their offending behaviour.
8. Item [32] of Schedule 1 requires the Commissioner to determine from time to time the functions of a residential facility officer. The Minister said that in the interests of the safety of those persons residing or working there, the types of duties and functions such an officer may perform could include, but are not limited to, searching the facility for contraband such as drugs and alcohol, and administering drug and alcohol testing of the non-custodial residents.
9. In his speech, the Minister said that the proposed amendments contained in the Bill in item [3] of Schedule 1 put beyond doubt that Part 2 of the *Crimes (Administration of Sentences) Act*, which pertains to full-time incarceration, apply to a person sentenced to imprisonment under the Commonwealth *Defence Force Discipline Act 1982* who is committed to a correctional centre to serve that sentence; and an immigration detainee within the meaning of the Commonwealth *Migration Act* who is held in a correctional Centre under that Act. Item [4] of Schedule 1 provides that a defence force detainee is a convicted inmate for the purpose of the *Crimes (Administration of Sentences) Act*.

The Bill

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.

Clause 3 is a formal provision that gives effect to the amendments to the Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Crimes (Administration of Sentences) Act 1999

Residential facilities

Schedule 1 [32] establishes a new type of facility for offenders, known as residential facilities, that will accommodate certain inmates prior to their release from custody and other offenders who are subject to non-custodial orders (such as good behaviour bonds) or parole orders (non-custodial residents). Residential facilities will be proclaimed by the Governor. Part 2 of the Act (Imprisonment by way of full-time detention) will apply to residential facilities and to inmates (other than non-custodial residents) accommodated in residential facilities in the same way as it applies to correctional centres and inmates held in correctional centres, subject to minor modifications, and any other modifications prescribed by the regulations. The regulations may also provide for the application to residential facilities of other provisions of the Act that apply to correctional centres. A manager of each residential facility is to be employed under the *Public Sector Employment and Management Act 2002*. The Commissioner may appoint persons to supervise residents of residential facilities, and may determine their functions from time to time, which may include the functions of a correctional officer.

Schedule 1 [27] provides that the Commissioner of Corrective Services (the Commissioner) has the care, direction, control and management of residential facilities.

Schedule 1 [2], [34] and [35] are consequential amendments.

Seizure and forfeiture of property

At present, the Act permits the regulations to provide for the circumstances in which it is lawful for an inmate to acquire or retain property, and to provide for the seizure, forfeiture and disposal of property unlawfully brought into a correctional centre.

Schedule 1 [9] extends those regulation-making powers, so that the regulations may provide for the seizure, forfeiture and destruction or other disposal of:

- (a) any property (including money) found within, or sent to or delivered to, a correctional centre or correctional complex that it is unlawful for an inmate to acquire or retain possession of, and
- (b) any drug, or any thing reasonably suspected of being a drug, that is:
 - (i) in the possession of an inmate, or
 - (ii) in the possession of any other person in a correctional centre or correctional complex, or
 - (iii) found within a correctional centre or correctional complex, or
 - (iv) sent to or delivered to a correctional centre or correctional complex.

The Act also allows the Commissioner to confiscate any property unlawfully in the possession of an inmate and this property becomes the property of the State and may be disposed of as the Commissioner directs. Schedule 1 [6] makes it clear that such property may be destroyed or otherwise disposed of.

Immigration and Defence Force detainees

Schedule 1 [3] puts it beyond doubt that Part 2 of the Act (which applies to full-time inmates in a correctional centre) applies:

- (a) to a person sentenced to imprisonment under the *Defence Force Discipline Act 1982* of the Commonwealth who is committed to a correctional centre to serve that sentence, and
- (b) to an immigration detainee within the meaning of the *Migration Act 1958* of the Commonwealth who is held in a correctional centre under that Act.

Schedule 1 [4] provides that a Defence Force detainee is a convicted inmate for the purposes of the Act. Section 6 of the Act provides that the general manager of a correctional centre can direct convicted inmates to perform work. Schedule 1 [1] amends the definition of convicted inmate accordingly.

Parole matters

Currently, a victim of a serious offender is entitled to be given access to all documents held by the Parole Authority in respect of the offender relating to the measures the offender has taken, or is taking, to address his or her offending behaviour.

Schedule 1 [23] and [24] provide that an agent of the victim, who is authorised in writing by the victim and the Commissioner, may access the documents on the victim's behalf. A victim may revoke an authorisation at any time by notice in writing to the Commissioner.

Schedule 1 [15]–[22] provide that an inmate, who is still in custody after his or her initial parole eligibility date, becomes eligible for release on parole on every anniversary of his or her parole eligibility date, and no sooner (subject to manifest injustice considerations). If the Parole Authority orders the release of the offender, on an annual review of the offender's case, the release order will not take effect until the anniversary of the offender's parole eligibility date.

Schedule 1 [36] provides that members appointed to the Parole Authority (that is, judicial members and community members) may be appointed for a period of up to 3 years. At present, appointed members have a fixed term of 3 years.

The Parole Authority is made up of at least 4 judicial members (including the Chairperson), at least 10 community members and at least 2 official members (from the NSW Police Force and the Probation and Parole Service). However, not all members attend each Parole Authority meeting. Currently, the Act provides that a meeting of the Parole Authority is to consist of the Chairperson, no more than 4 community members and no more than 2 official members (that is, a maximum total of 7 members at most meetings).

Schedule 1 [37] provides that no more than 2 community members may attend a meeting, so that the maximum number of members at most Parole Authority meetings is 5. The Chairperson continues to be able to convene up to 6 meetings of the Parole Authority each year at which all community and official members may attend.

Community service orders

At present, section 110 of the Act provides that a community service order remains in force until the offender has performed the required number of hours of work, unless sooner revoked.

Schedule 1 [10] provides that a community service order expires if the relevant maximum period (generally 12 or 18 months) expires, even if that occurs before the inmate has completed the required number of hours of work.

Schedule 1 [13] provides, however, that if an application is made to the Local Court to extend the period of an order and the relevant maximum period expires before the

application is determined, the community service order is taken to remain in force until the application is determined by the Court.

Schedule 1 [12] and [14] ensure that an application to extend or revoke a community service order can still be heard if the relevant maximum period has expired.

Schedule 1 [11] is a consequential amendment.

Inmates' money

Schedule 1 [7] removes the requirement that money received by a correctional officer or other member of staff on an inmate's behalf must be deposited in an authorised deposit-taking institution and held for the inmate, if it is unlawful for the inmate to receive that money while in custody. The Act currently permits the regulations to provide for the circumstances in which an inmate may lawfully possess property while in custody. Schedule 1 [8] makes it clear that property includes any money, so that the regulations can prohibit inmates from receiving money while in custody.

Other amendments

Schedule 1 [26] provides that the regulations may require any of the functions of the Serious Offenders Review Council that relate to segregated and protective custody of inmates to be exercised by the Chairperson alone.

Schedule 1 [25] is a consequential amendment.

Schedule 1 [28]–[31] provide for correctional staff to be tested for steroids, as well as alcohol and prohibited drugs.

Section 252 of the Act provides that a person in custody may be accommodated in a correctional centre, police station or court cell complex while being transferred from one place or another, if it is necessary or convenient to do so.

Schedule 1 [33] provides that a person under 18 years of age who is being transferred to a juvenile correctional centre may also be temporarily held in a children's detention centre.

Schedule 1 [5] makes it clear that the general manager of a correctional centre may direct a convicted inmate to perform community service or other work within the correctional centre, within the correctional complex but outside the correctional centre, or outside the correctional complex.

Schedule 1 [4] provides that an inmate, who is aged 21 years or more and who is sentenced to full-time imprisonment in a correctional centre by the Children's Court, is a convicted inmate. Under the Act, the general manager of a correctional centre may direct a convicted inmate to perform work.

Schedule 1 [1] amends the definition of convicted inmate accordingly.

Schedule 1 [38] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [39] contains savings and transitional provisions.

Schedule 2 Amendment of other Acts

Detention Centres

Section 9A of the Children (Detention Centres) Act 1987 provides that the following persons are not to be detained in a juvenile detention centre:

- (a) a person aged 21 years or over who is subject to an arrest warrant of any kind,
- (b) a person aged between 18 and 21 years who is subject to an arrest warrant of a certain kind (including, for example, a warrant for an alleged breach of a probation order, good behaviour bond or community service order or an alleged escape from custody).

Under Part 13 of the Crimes (Administration of Sentences) Act 1999, these persons may be held in correctional centres.

Schedule 2.1 [2] clarifies that section 9A applies to a person arrested in relation to an alleged escape from custody (under section 39 of the Crimes (*Administration of Sentences*) Act 1999) only if the person is arrested pursuant to a warrant.

Schedule 2.1 [3] extends the operation of section 9A to:

- (a) a person aged between 18 and 21 years who is the subject of an arrest warrant issued because of a suspension or revocation of parole or a failure to appear at a parole hearing, and
- (b) a person aged between 18 and 21 years who is the subject of an order or warrant made or issued for an escape from a detention centre. Accordingly, a person between 18 and 21 years who is arrested pursuant to one of these warrants or orders is not to be detained in a children's detention centre.

Schedule 2.1 [1] and [5] are consequential amendments.

Schedule 2.1 [4] provides that if a detainee, who is being detained as a result of the revocation of his or her parole by the Children's Court, is transferred to a correctional centre, the Children's Court is to continue to exercise the functions of the Parole Authority with respect to the revocation of that parole. This includes, for instance, the function of reviewing that revocation.

Places of detention

Part 4A of the Summary Offences Act 1988 makes provision for offences relating to places of detention, which are defined as correctional centres, correctional complexes and periodic detention centres.

Schedule 2.2 amends the definition of **place of detention** to include a residential facility.

Issues Considered by the Committee

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

Issue: Schedule 1 [23], [24] Proposed section 193A – Right to Privacy

10. The proposed section allows for a victim of a serious offender to authorise a person to act as his or her agent, with the written approval of the Commissioner, for the purpose of accessing documents held by the Parole Authority in relation to the offender. The Bill does not specify in what circumstances this approval will be granted such as whether there must be a good reason for an agent to be appointed and if that agent must have a personal or professional relationship to the victim.

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| <ol style="list-style-type: none">11. The Committee is concerned that Proposed section 193A has the potential to allow wider access to an inmate's confidential documentation. The Committee seeks further information of the Minister as to the circumstances in which this approval may be granted. |
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Delegation of legislative powers [s 8A(1)(b)(iv) LRA]**Issue: Clause 2 – Commencement by proclamation**

12. 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 Act on whatever day it chooses or not at all.

13. Although there may be good reasons why such discretion is required the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation is an inappropriate delegation of legislative power.

The Committee makes no further comment on this Bill.

5. CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT BILL 2008

Date Introduced:	27 November 2008
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Verity Firth MP
Portfolio:	Education and Training

Purpose and Description

1. The *Crimes (Domestic and Personal Violence) Amendment Bill 2008* (the Bill) amends the *Crimes (Domestic and Personal Violence) Act 2007* (the Act) with respect to applications for and the issuing of orders under the Act.
2. The object of the Bill is to amend the Act:
 - (a) to include the offence of stalking or intimidating a person as a personal violence offence for the purposes of that Act, and
 - (b) to require a provisional order to be served (where practical) on the person for whose protection it was issued; and
 - (c) to clarify who may apply for an ancillary property recovery order; and
 - (d) to enable an authorised officer to make an interim apprehended domestic violence order that protects not just the person for whom the order was sought but also other persons with whom he or she has a domestic relationship; and
 - (e) to require an authorised officer when making an interim apprehended domestic violence order to include as protected persons under the order any children with whom the person for whom the order was sought has a domestic relationship unless there are good reasons for not doing so; and
 - (f) to clarify that an applicant to a court for an apprehended domestic violence order in relation to himself or herself may also apply for the order to be made in relation to another person with whom the applicant has a domestic relationship; and
 - (g) to enact further savings and transitional provisions as consequence of the enactment of that Act.
3. This Bill also amends the *Firearms Act 1996* and the *Weapons Prohibition Act 1998* to provide that a licence or permit issued under those Acts is suspended automatically on the making of a provisional order against the licence or permit holder by an authorised officer under the Act (previously known as a telephone interim order). Currently, the *Firearms Act 1996* and *Weapons Prohibition Act 1998* provide that such licences or permits are only suspended automatically on the making of an interim apprehended violence order by a court and do not include a provisional order made by an authorized officer under Part 7 of the Act.⁷

Background

⁷ Under section 3 of the Act, interim apprehended violence order means an interim or provisional order. A provisional order means an interim apprehended domestic violence order or an interim apprehended personal violence order made by an authorised officer under Part 7 of the Act.

4. The *Crimes (Domestic and Personal Violence) Act 2007* commenced on 10 March 2008. The object of the Act was to repeal and re-enact part 15A of the *Crimes Act 1900*, which dealt with the issuing of apprehended domestic violence orders and apprehended personal violence orders as well as the enforcement of those orders.⁸ According to the Agreement in Principle Speech, since the Act became operational earlier this year, a number of stakeholders have made suggestions for further reform. These suggestions were recommended to the Government in consultation with the Apprehended Violence Legal Issues Coordinating Committee (an interagency group with non-government and government membership).
5. The Bill amends section 4 of the Act to include in the definition of personal violence offence an offence of stalking or intimidating another person with the intention of causing the other person to fear physical or mental harm (section 13 of the Act).
6. The Bill also amends section 31 of the Act to require a provisional order to be served (if practical) on the person for whose protection it was issued. Currently section 31 only provides for the order to be served on the defendant.
7. Section 35 of the Act is amended by the Bill to include a power for a court or authorised officer when making an apprehended violence order to prohibit or restrict the possession of prohibited weapons by the defendant (the current section 35(2)(d) only covers firearms).
8. The Bill removes the provision in section 35(4) of the Act that enables a court or an authorised officer when making an apprehended violence order that prohibits or restricts the possession of firearms by the defendant, to require the disposal of the firearms and the surrender of licences held under the *Firearms Act 1996* and the *Weapons Prohibition Act 1998*. According to the Agreement in Principle Speech, there is no longer a need for section 35(4) to remain because under the proposals firearms and weapons must be surrendered under the amendments in Schedule 2. The amendments in Schedule 2 provide that a licence under the *Firearms Act 1996* or permit under the *Weapons Prohibition Act 1998* will be automatically suspended on the making of an apprehended violence order (including a provisional order) against the licence or permit holder.⁹
9. The Bill amends section 37 of the Act to provide that an ancillary property recovery order may be made by a court or an authorised officer when making an apprehended domestic violence order or interim apprehended domestic violence order on the application of a police officer, the protected person or the defendant. This clarifies any confusion about how a property recovery order can be made under the section and upon whose application.

⁸ See Legislation Review Committee Digest No 1 of 2007 at page 7. Section 3 of the Act provides that an apprehended domestic violence order is an order under Part 4 of the Act and an apprehended personal violence order is an order under Part 5 of the Act. An apprehended violence order means a final apprehended violence order or an interim apprehended violence order.

⁹ The amendments in proposed section 35 refer to sections 23 and 24 *Firearms Act 1996* and sections 17 and 18 of the *Weapons Prohibition Act 1998*. These provisions deal with the suspension of a licence or permit on the making of an interim or final apprehended violence order. The amendments in Schedule 2 clarify that the interim apprehended violence order includes a provision order.

10. The Bill also substitutes section 38 of the Act to enable an authorised officer or court to make an apprehended violence order¹⁰ not only for the protection of the person for whom the order is sought but also for the protection of other persons with whom they have a domestic relationship. In the agreement in Principle Speech, the Minister highlighted that these amendments clarify that section 38 applies in relation to provisional orders and authorised officers, and is not limited to orders made by a court. Currently section 38 makes such provision but only in relation to a court making an apprehended violence order.
11. The proposed section 38 also provides that a court that makes an apprehended domestic violence order or a court or authorised officer that makes an interim order, must include as a protected person any child with whom the person for whose protection the order was sought has a domestic relationship unless they are satisfied that there are good reasons for not doing so. Under proposed section 38(3), the court or authorised officer must provide these reasons.
12. The Bill also amends section 48 of the Act to clarify that an individual (as well as a police officer) who applies to a court for an apprehended violence order for their own protection may also apply for the order to be made for the protection of another person with whom they have a domestic relationship. In June 2007, the Supreme Court in *Peach v Wymer & Ors* addressed whether a person applying for an apprehended violence order for him or herself, could also make an application for an apprehended violence order on behalf of another person with whom they had a domestic relationship.¹¹ The court found that only a police officer was authorised to make such an application.
13. The Bill also amends the *Commission for Children and Young People Act 1998*, the *Crimes (Sentencing Procedure) Act 1999*, the *Firearms Act 1996* and the *Weapons Prohibition Act 1998* to clarify that certain references in those Acts to apprehended violence orders under the Act will include references to apprehended violence orders under repealed part 15A of the *Crimes Act 1900*.

The Bill

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Crimes (Domestic and Personal Violence) Act 2007* set out in Schedule 1.

¹⁰ This includes an interim order (see section 3 of the Act).

¹¹ *Peach v Wymer & Ors* [2007] NSWSC 690. Part 15A Crimes Act 1900 was amended after commencement of proceedings, but before the hearing in the Local Court. Accordingly, the case dealt with section 562ZQ Crimes Act 1900 ('Making of application for order'), which is now repealed. In the case, Mr Wymer sought orders for the protection of himself and his wife against apprehended violence by Mr Peach. The case in the Supreme Court related to whether the Local Court had jurisdiction to make an order to protect Mrs Wymer because she was not a complainant. The Court held that the Local Court did not have jurisdiction to make an order to protect Ms Wymer. Justice Adams stated at paragraph 5: 'The purpose of s 562ZQ(2) is obvious. Given the possible range of circumstances that might lead to a desire for a protective order, the nature of the order, and the potential for intermeddling or vexatious applications, it is plainly desirable that only persons with a direct interest in such an order should be permitted to take proceedings, with the police left to apply for orders in other cases'.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and Regulation set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Crimes (Domestic and Personal Violence) Act 2007

Schedule 1 [1] amends section 4 of the Act to include in the definition of personal violence offence an offence under section 13 of that Act of stalking or intimidating another person with the intention of causing the other person to fear physical or mental harm.

Schedule 1 [2] amends section 31 of the Act to require a provisional order to be served (if practical) on the person for whose protection it was issued. Currently that section only provides for the order to be served on the defendant.

Schedule 1 [3] amends section 35 of the Act to include a power for a court or authorised officer when making an apprehended violence order to prohibit or restrict the possession of prohibited weapons by the defendant. Currently, that power only covers firearms.

Schedule 1 [4] amends section 35 of the Act to remove the provision that enables a court or an authorised officer when making an apprehended violence order that prohibits or restricts the possession of firearms by the defendant to require the disposal of the firearms and the surrender of licences and permits held under the *Firearms Act 1996* and the *Weapons Prohibition Act 1998*. Amendments made to those Acts by Schedule 2 extend the provisions of those Acts that provide for the automatic suspension of such licences and permits on the making of an interim apprehended violence order by a court so that the suspension will also occur on the making of a provisional apprehended violence order by an authorised officer. On suspension of such a licence or permit, the firearms or weapons concerned must be surrendered to the police and may be seized by the police.

Schedule 1 [5] makes a consequential amendment.

Schedule 1 [6] amends section 37 of the Act to provide that an ancillary property recovery order may be made by a court or an authorised officer when making an apprehended domestic violence order or interim apprehended domestic violence order or on the application of a police officer, the protected person or the defendant.

Schedule 1 [7] substitutes section 38 of the Act to enable an authorised officer to make an interim apprehended violence order not only for the protection of the person for whom the order is sought but also for the protection of other persons with whom he or she has a domestic relationship. The proposed section also provides that an authorised officer making such an order is to include as a protected person under the order any child with whom the person for whose protection the order was sought has a domestic relationship unless satisfied that there are good reasons for not doing so. Reasons for not doing so must be given. Currently, section 38 makes such provision but only in relation to a court making an apprehended violence order.

Schedule 1 [8] amends section 48 of the Act to make it clear that a person who applies to a court for an apprehended violence order for his or her own protection may also apply for the order to be made for the protection of another person with whom he or she has a domestic relationship.

Schedule 1 [9] amends Schedule 1 to the Act to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [10]–[13] amend Schedule 1 to the Act to make further savings, transitional and other provisions consequent on the enactment of the Act and on the proposed Act.

Schedule 2 Amendment of other Acts and Regulation

Schedule 2.1 substitutes the definition of personal violence offence in clause 10 of the *Bail Regulation 2008* as a consequence of the enactment of the Act.

Schedule 2.2, 2.3, 2.4 [1] and 2.5 [1] amend the *Commission for Children and Young People Act 1998*, the *Crimes (Sentencing Procedure) Act 1999*, the *Firearms Act 1996* and the *Weapons Prohibition Act 1998*, respectively, to make it clear that certain references in those Acts to apprehended violence orders under the Act will include references to apprehended violence orders under the repealed Part 15A of the *Crimes Act 1900*.

Schedule 2.4 [2] amends the definition of interim apprehended violence order in section 4 (1) of the *Firearms Act 1996* so that the term will mean an interim apprehended violence order within the meaning of the Act. The result of the amendment is to include provisional orders made by authorised officers in the definition, which will mean that a licence under the *Firearms Act 1996* will be suspended automatically under section 23 of that Act on the making of a provisional order against the licence holder.

Schedule 2.5 [2] amends the definition of interim apprehended violence order in section 4 (1) of the *Weapons Prohibition Act 1998* so that the term will mean an interim apprehended violence order within the meaning of the Act. The result of the amendment is to include provisional orders made by authorised officers in the definition, which will mean that a permit under the *Weapons Prohibition Act 1998* will be suspended automatically under section 17 of that Act on the making of a provisional order against the permit holder.

Issues Considered by the Committee

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

Issue: Property - Schedule 1 [5] – proposed section 35; Schedule 2.4 [2] – amends section 4(1) *Firearms Act 1996* and Schedule 2.5 [2] – amends section 4(1) *Weapons Prohibition Act 1998*

14. The amendments in Schedules 1 [5]; 2.4 [2] and 2.5 [2] provide for the automatic suspension of a licence under the *Firearms Act 1996* on the making of a provisional order against the licence holder and the automatic suspension of a permit under the *Weapons Prohibition Act 1998* on the making of a provisional order against the permit holder. On the suspension or revocation of such licences or permits, the firearms or weapons must be surrendered to the police and may be seized by the police.

15. **The amendments under Schedule 1 [5]; Schedule 2.4 [2] and Schedule 2.5 [2] impact the ability of persons to hold firearms or weapons under the *Firearms Act 1996* and *Weapons Prohibition Act 1998*. However, the Committee is of the strong view that given the purpose of the Bill, namely to protect victims of violence, these proposed amendments do not unduly trespass on personal rights and liberties.**

The Committee makes no further comment on this Bill.

6. FINES FURTHER AMENDMENT BILL 2008

Date Introduced:	27 November 2008
House Introduced:	Legislative Council
Minister Responsible:	The Hon John Hatzistergos MP
Portfolio:	Attorney General

Purpose and Description

1. The Bill amends the Fines Act 1996 and other laws to make provision with respect to fines and their enforcement.
2. The object of this Bill is to amend the *Fines Act 1996* (the Act) as follows:
 - (a) to permit persons in receipt of certain Government benefits to elect to pay fines in regular instalments from those benefits,
 - (b) to provide for the giving of official cautions in certain circumstances as an alternative to issuing a penalty notice,
 - (c) to provide for an internal review of a decision to issue a penalty notice in certain circumstances,
 - (d) to provide for a review of a decision to issue a penalty notice before a penalty notice enforcement order is annulled in certain circumstances if no internal review of the decision has taken place,
 - (e) to provide for the trial of a scheme to allow persons belonging to certain vulnerable groups to mitigate a fine by undertaking activities under a work and development order,
 - (f) to extend the power to write off fines to enable fines to be partially written off.
3. This Bill also amends:
 - (a) the *Crimes (Administration of Sentences) Act 1999* to permit information obtained in the administration of that Act to be disclosed to the State Debt Recovery Office, and
 - (b) the *Fines Regulation 2005* to provide for the waiver, postponement or refund of costs and fees, to provide that an internal review of a decision to issue a penalty notice is not required if the penalty notice was issued by a police officer and to provide for a trial period for work and development orders and the maximum number of such orders that may be made during that period, and
 - (c) the *Road Transport (Driver Licensing) Act 1998* and regulation under that Act to create separate offences in relation to suspended or cancelled driver licences where the suspension or cancellation occurs under the Principal Act.

Background

4. As stated by the Attorney General in the Second Reading Speech dated 27 November 2008:

The primary purpose of the Fines Further Amendment Bill 2008 is to improve the system for the administration and enforcement of court fines and penalty notices. Specifically, the amendments are intended to increase the recovery of court fines and penalty notices

from low-income earners; divert vulnerable groups out of the fine and penalty notice system and provide them with meaningful and effective non-monetary sanctions; reduce enforcement costs by providing better-targeted fine payment and mitigation options; and reduce the incidence of secondary offending brought about by fine default.

5. Several reports and inquiries have examined the fines and penalty notice system.¹² These highlighted the disproportionate impact that the fine and penalty notice system has on the vulnerable people such as the homeless, people with a mental illness and people with intellectual disabilities. Often, when these people do not address their fine debt, they automatically progress through the strict hierarchy of sanctions, and their debt increases, which results in additional hardship.
6. As noted by the Sentencing Council, the imposition of a fine or penalty notice on an already disadvantaged person often lead to excessive interaction with the criminal justice system. As highlighted in the Second Reading Speech, this is particularly undesirable, given that fines and penalty notices are intended to be penalties for minor infractions or for offences that do not warrant imprisonment. The New South Wales Sentencing Council stated in its report that:

It is clear beyond question that current enforcement procedures applicable to fines and penalties contribute to the difficulties of vulnerable people, particularly the unemployed, the young, prisoners, the Aboriginal community and those with intellectual or mental disability.

7. The Sentencing Council's also highlighted the issue of secondary offending, which occurs when people who have had their licence or vehicle registration suspended or cancelled because of fine default continue to drive. Driving without a valid licence or a properly registered vehicle is a serious offence that can ultimately lead to imprisonment. If a person lacks the means or the organisational skills to pay a fine or penalty notice, they will inevitably fall into default and attract licence sanctions, which impacts their ability to attend to day-to-day necessities.

The availability of Centrepay

8. Accordingly, the Bill makes a number of amendments to extend the availability of Centrepay. Centrepay is a means of allowing periodic deductions to be made from Centrelink payments. According to the Second Reading Speech, this will improve the recovery rate for fines and penalties incurred by welfare recipients, with a consequent reduction in the amount of enforcement action taken. For operational reasons,

¹² These reports include the following: the report of the Sentencing Council on the effectiveness of fines as a sentencing option, released in October 2006; the report by the Homeless Persons Legal Service and the Public Interest Advocacy Centre entitled "Not Such a Fine Thing", released in April 2006; and the report of the Standing Committee on Law and Justice entitled "Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations", released in March 2006.

By way of background, penalty notices are on-the-spot tickets for offences such as riding a bicycle on a footpath and parking offences. There is no court hearing when a penalty notice is issued unless a person elects to have the matter dealt with by the Local Court. In such circumstances, a court may impose court fines if a person is found guilty of an offence following a hearing. If a person does not respond, the debt is referred to the State Debt Recovery Office (SDRO) for enforcement action under the *Fines Act 1996*. The SDRO imposes sanctions including suspension of a driver licence, cancellation of car registration, property seizure, garnisheeing bank accounts, community service orders, or imprisonment if a person breaches a CSO.

Centrepay is only available when a fine has progressed to enforcement. Accordingly, The Bill amends the *Fines Act 1996* to allow the early referral of a court fine or penalty notice to the SDRO to enter a time-to-pay arrangement using Centrepay.

The Issuing of Cautions

9. Schedule 1 [8], proposed section 19A of the Bill makes amendments to the *Fines Act 1996* so that appropriate officers (not including police officers) who issue penalty notices may instead issue cautions in appropriate circumstances. Under the proposal, an officer will be able to issue a formal caution to a person where they reasonably believe that a penalty notice offence has been committed and that it is appropriate that the person receive a formal caution rather than a penalty notice in the circumstances of the case and with regard to applicable guidelines.
10. Accordingly, the Bill provides that the Attorney General will make guidelines regarding the use of cautions. Further, agencies may also make or adopt their own guidelines, provided that they are consistent with those made by the Attorney General. According to the Second Reading Speech, the guidelines will require officers to consider matters such as the seriousness or triviality of the offending conduct; whether the person has voluntarily complied with a request to stop the offending conduct; whether the commission of the offence was knowing and deliberate; the age of the person; and other specified circumstances, for example, intellectual disability, homelessness.
11. The guidelines relating to cautions will not apply to police officers, given that police discretion in this regard is already dealt with in legislation and in police training and operating procedures. The amendments will also not affect the powers of the issuing agency to take other action they would otherwise be permitted to take in respect of the offence. For example, if it later transpires that a person's conduct was more serious than was originally thought, an appropriate officer could issue a penalty notice, or commence court proceedings in respect of the offence.

Internal Review of Penalty Notices

12. Proposed Schedule 1 [10] of the Bill introduces a scheme for the internal review of penalty notices. In the report of the Sentencing Council there were concerns regarding the lack of clear legislative power or procedures for internal review of penalty notices. The Sentencing Council recommended that all issuing agencies be empowered to conduct internal reviews of penalty notices, and that the grounds for review be clearly identified. Accordingly the Bill introduces a standard, statutory process for the review of penalty notices.
13. The amendments provide that a person may apply for a penalty notice to be withdrawn under proposed section 24A. On review, the agency may confirm the decision to issue a penalty notice, withdraw the penalty notice, or issue an official caution in place of the penalty notice. If the application for review raises concerns about someone's ability to drive, the State Debt Recovery Office will refer the matter to the Roads and Traffic Authority for consideration.
14. As stated in the Second Reading Speech, before the internal review provisions come into force, the Government will make regulations, which clarify which penalty notices will be subject to the internal review process under the *Fines Act 1996*. The

regulations will exempt certain penalty notices from the process because some agencies that already have effective internal review processes may prefer not to modify their practices.

15. The Bill will add a new provision regarding the review of penalty notices after enforcement action has commenced. When enforcement commences, a person no longer has the right to elect to have the matter dealt with by a court. The *Fines Act 1996* provides an exception in cases where the person was unable to exercise the right to court-elect before the enforcement order was made. In those cases, the enforcement order is annulled and the SDRO must refer the matter to court. In many cases, referral to court is an inefficient use of resources. The Bill amends section 49A of the *Fines Act* to provide that in any case where an enforcement order seems eligible for annulment, the SDRO or the issuing agency must review the original penalty notice to determine whether it should be withdrawn instead of referring it to a court.

Work and Development Orders

16. Schedule 1 [22] of the Bill proposes a trial work and development order scheme. This scheme will allow eligible people who are experiencing hardship to apply to address their fine and penalty notice debts by doing unpaid work for charitable and other organisations, or by participating in certain courses or treatment.
17. Currently under the *Fines Act 1996* a fine/penalty notice defaulter may apply to the State Debt Recovery Office for a time to pay arrangement or to have their entire debt written off. In the Second Reading Speech, it was highlighted that these options are not well adapted to the needs of people who are experiencing acute economic hardship, who are homeless, or who have an intellectual disability, cognitive impairment or mental illness.
18. The Sentencing Council's report strongly supported the need for alternatives to monetary penalties for impecunious or other suitable offenders, for example a community service option. The proposed trial of work and development orders will operate for two years and will only be available to people who are homeless, have a mental illness, an intellectual disability or cognitive impairment, or who are otherwise experiencing acute economic hardship. Schedule 2 [9] provides that the maximum number of work and development orders that can be made during the two-year period is 2,000.
19. A work and development order under proposed section 99B will require a person to undertake unpaid work with an approved organisation; mental health or other medical treatment; an educational, vocational or life skills course; financial or other counselling; drug and alcohol treatment; or a mentoring program if the person is under 25 years of age. Proposed section 99F of the Bill addresses Civil Liability relating to involvement in the work and development order scheme.
20. The work or development to be undertaken will be proposed by the applicant in his or her application according to guidelines that will govern the scheme and the application will need to be made with the support of an approved organisation or, in the case of mental health or medical treatment, a medical professional or registered psychologist. There will be an hourly rate at which voluntary work can diminish a fine or penalty notice debt. Fine and penalty notice debts will also be reduced according

to the duration of a person's participation in courses or treatment, as set out in the scheme guidelines.

21. If a person fails to complete their work and development order, the SDRO will be able to recommence enforcement action against the person. According to the Second Reading Speech, penalties will apply for providing false or misleading information to the SDRO in relation to applications for a work and development order, or in reports about the progress of such orders.
22. An example of how the scheme will work is as follows: an eligible person would approach a non-government organisation that is participating in the scheme. The St Vincent de Paul Society and Father Chris Riley's Youth off the Streets have confirmed that they will seek to participate in the scheme, and a number of other organisations have also expressed an interest in participating. Together with the participating organisation, the person would identify what unpaid work is available and suitable for the person's circumstances and skills. The organisation and the person would then make a joint application to the SDRO for a work and development order outlining the proposed work, the number of hours of unpaid work, supervision arrangements and proof of eligibility for the scheme. If the application were accepted, the SDRO would make a work and development order and suspend enforcement action while the order is in force. The organisation would report to the SDRO once the order is fulfilled and the person will be taken to have paid their fine and penalty notice debt.

New Offence of Driving While Licence is Suspended or Cancelled Due to Fine Default

23. Schedule 2.3 of the Bill inserts a new offence of driving while licence suspended or cancelled due to fine default. The *Fines Act 1996* provides that if a court fine or penalty notice is not paid after the due date and reminder letter, the person is considered to be in default and their matter is referred to the SDRO where an enforcement order is made. If the amount is still not paid the person's driver licence can be suspended. It is a criminal offence in New South Wales to drive with a suspended or cancelled licence.
24. The current offence of driving while licence suspended or cancelled does not distinguish between licence suspension for unsafe driving and licence suspension for fine default. This is problematic because the lack of a specific offence prevents an accurate assessment of the extent to which fine default leads to secondary offending. It also prevents courts from imposing appropriate sanctions for this offence to reflect the lower threat to the community posed by those who have lost their licence through fine default as compared to those who have lost their licence because of unsafe driving.
25. Accordingly, the Bill amends the *Road Transport (Driver Licensing) Act 1998* to create a specific offence of driving whilst suspended due to fine default. The penalties for the new offence would still include minimum disqualification periods, however these would be lower than those which currently apply under section 25 A (2) of the *Road Transport (Driver Licensing) Act 1998* to reflect the fact that licence suspension for fine default is less serious than, for example, suspension due to driving offences.
26. The new offence will also include requirements that courts consider certain factors when determining the period of disqualification that should apply to the new offence.

Those factors could include the impact that a lengthy disqualification would have on employment and the offender's ability to pay the outstanding debt, which will ensure that where, for example, a person has ample means to pay the fine the courts take this fact into account in determining whether the person should be disqualified for more than the statutory minimum period.

The Bill

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 except for a number of provisions that are specified to commence on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to each Act and Regulation set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced.

Schedule 1 Amendment of Fines Act 1996

Schedule 1 [1] inserts a number of definitions into the Act consequential on other amendments to that Act made by the proposed Act.

Schedule 1 [3] and [4] permit the registrar of a court that has imposed a fine on a person to refer the matter to the SDRO for the making of a court fine enforcement order if the person is applying for a work and development order in respect of the amount owing under the fine or the person is in receipt of a Government benefit and is applying for an order under section 100 (Time to pay) of the Act in respect of the amount. The SDRO may make a court fine enforcement order in respect of such a person but only if it determines to make the work and development order or order under section 100 of the Act that is sought by the person. If the SDRO does not make the court fine enforcement order it is to refer the matter back to the registrar.

Schedule 1 [14] permits the SDRO to make a penalty notice enforcement order if it receives, in respect of an amount owed by a person under a penalty notice, an application for a work and development order in respect of the amount or, if the person is in receipt of a Government benefit, an application for an order under section 100 (Time to pay) of the Act. The SDRO may make a penalty notice enforcement order in respect of such a person but only if it determines to make the work and development order or order under section 100 of the Act that is sought by the person. If a penalty notice enforcement order is made in these circumstances, the person subject to the order can no longer elect to have the matter dealt with by a court in accordance with section 23A of the Act and the decision to issue the penalty notice can no longer be the subject of an internal review.

Schedule 1 [17] and [23] make consequential amendments.

Schedule 1 [24] permits the SDRO to allow a person in receipt of a Government benefit to pay the fine in instalments as a regular direct debit from that benefit.

Schedule 1 [8] provides that an appropriate officer may give a person an **official caution** rather than issue a penalty notice if the officer believes on reasonable grounds that the person has committed an offence in relation to which a penalty notice may be issued and it is appropriate to give an official caution in the circumstances. The giving of an official caution does not preclude other action in relation to the offence.

Schedule 1 [5] and [6] make consequential amendments.

Schedule 1 [9] provides that a notice is a penalty notice for the purposes of the Principal Act if it is issued under a statutory provision that declares the notice to be a penalty notice for the purposes of that Act or, if at the time the notice was issued, it was issued under such a provision.

Schedule 1 [10] provides that a person may apply for an **internal review** of a decision to issue a penalty notice. The application is to be made to the issuing agency in respect of the penalty notice (being the agency in or by which the appropriate officer who issued the penalty notice is employed or engaged) or to the State Debt Recovery Office. An agency that receives an application is not required to conduct an internal review if the agency notifies the applicant in writing, within 10 days of receiving the application, that it has decided not to conduct an internal review and gives reasons for its decision.

An internal review is also not required in prescribed circumstances or if an internal review has already been conducted. If a review is to be conducted, it is to be conducted by a person who was not involved in making the decision that is the subject of the review. When reviewing a decision, a reviewing agency may request additional information from the applicant. Following a review the reviewing agency may confirm the decision to issue a penalty notice or may withdraw the penalty notice. It must withdraw a penalty notice if any of the following grounds are made out:

- (a) the penalty notice was issued contrary to law,
- (b) the issue of the penalty notice involved a mistake of identity,
- (c) the penalty notice should not have been issued, having regard to the exceptional circumstances relating to the offence,
- (d) the person to whom the penalty notice was issued is unable because the person has an intellectual disability, a mental illness, a cognitive impairment or is homeless:
 - (i) to understand that the person's conduct constituted an offence, or
 - (ii) to control such conduct,
- (e) an official caution should have been given instead of a penalty notice,
- (f) any other ground prescribed by the regulations.

A reviewing agency may, at its discretion, also decide to withdraw a penalty notice on any other ground. A reviewing agency is to notify the applicant in writing of the outcome of the review within 42 days of receipt of the application, or within 56 days if additional information has been requested. If a penalty notice is withdrawn, any penalty reminder notice is taken to be withdrawn and any amount paid under the notice is to be refunded.

Also, any action taken by the Roads and Traffic Authority to record demerit points against the person, because of that payment, is to be reversed. When withdrawing a penalty notice, a reviewing agency may give an official caution in its place. The proposed amendments do not prevent an agency from conducting a review of a decision to issue a penalty notice, or to withdraw a penalty notice, on its own motion. If a reviewing agency withdraws a penalty notice on its own motion after the amount under the penalty notice has been paid, no person is liable to any further proceedings for the alleged offence.

Schedule 1 [7], [11]–[13], [15] and [16] make consequential amendments.

Schedule 1 [19] provides that the State Debt Recovery Office, when proposing to annul a penalty notice enforcement order, is to seek a review of the decision to issue each penalty

notice to which the penalty notice enforcement order applies if it has reason to suspect that the penalty notice should be withdrawn and no review of the decision to issue the penalty notice has been conducted. The review is to be conducted by the issuing agency.

Schedule 1 [18] makes a consequential amendment.

Schedule 1 [20] permits the regulations to prescribe an amount to be taken to be part of a fine for the purposes of Part 4 (Fine enforcement action) of the Act.

Schedule 1 [22] provides for the making of **work and development orders**. A work and development order is an order requiring a person to do any one or more of the following in order to satisfy a fine or part of a fine:

- (a) undertake unpaid work for, or on behalf of, an approved organisation (but only with the agreement of that organisation),
- (b) undergo medical or mental health treatment in accordance with a health practitioner's treatment plan,
- (c) undertake an educational, vocational or life skills course,
- (d) undergo financial or other counselling,
- (e) undergo drug or alcohol treatment,
- (f) if the person is under 25 years of age, undertake a mentoring program.

An application for an order may be made to the State Debt Recovery Office by or on behalf of a person who owes an amount under a fine and who has an intellectual disability, a mental illness or a cognitive impairment, is homeless or is experiencing acute economic hardship. The application must be supported by at least one approved person who will supervise the carrying out of the activities under the order. An approved person is a person or body approved by the Director-General of the Attorney General's Department or a medical practitioner, psychologist or nurse. If the State Debt Recovery Office determines to make an order, it is to make it in such terms as are agreed between it, the applicant and each approved person. No fine enforcement action is to be taken against a person while a work and development order is in force.

The regulations may set a cap on the number of orders that may be made in a particular period. The State Debt Recovery Office may vary or revoke an order on the application of the person subject to the order, or on its own initiative if it is satisfied that the person has failed to comply with the order. The fine, or part of a fine, to which a work and development order relates is considered to be satisfied if the person complies with the order.

If a work and development order requires unpaid work to be carried out, the person performing the work, any person for whose benefit that work is performed, any person who directs or supervises the work and any person who owns or occupies the premises or land on which that work is performed are protected from civil liability in relation to that work. A person undertaking unpaid work under a work and development order is not considered to be employed by, or in a contract of services with the Crown or any other person. The State Debt Recovery Office, when exercising its functions with respect to work and development orders, is to have regard to guidelines issued by the Attorney General in consultation with the Treasurer.

Schedule 1 [21], [29], [32] and [33] make consequential amendments.

Schedule 1 [25], [27] and [28] extend the State Debt Recovery Office's power to write off an unpaid fine so that it may now write off only part of an unpaid fine.

Schedule 1 [30] and [31] permit the Hardship Review Board to review decisions of the State Debt Recovery Office with respect to work and development orders, orders under section 100 (Time to pay) of the Principal Act and the writing off of unpaid fines. On review, the Hardship Review Board may direct the State Debt Recovery Office to make, revoke or vary a work and development order or order under section 100 or to write off, in whole or in part, an unpaid fine.

Schedule 1 [34] and [35] permit the regulations to provide for the waiver, postponement or refund of any costs or fees payable under the Principal Act and to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [36] inserts a number of savings and transitional provisions into the Principal Act. These provide that internal reviews, work and development orders and the partial write-off of fines extend to penalty notices issued and amounts owing before the commencement of the amendments made by the proposed Act.

Schedule 1 [2] and [26] make amendments in the nature of statute law revision.

Schedule 2 Amendment of other Acts and Regulations Crimes (Administration of Sentences) Act 1999 No 93

Schedule 2.1 amends the *Crimes (Administration of Sentences) Act 1999* to permit information obtained in the administration of that Act to be disclosed to the State Debt Recovery Office in connection with the administration or execution of the *Fines Act 1996*.

Fines Regulation 2005

Schedule 2.2 [4] provides that no fee is payable for the making of a court fine enforcement order or penalty notice enforcement order under section 14 (1A) or 42 (1AA) of the *Fines Act 1996*.

Schedule 2.2 [6] provides the State Debt Recovery Office with the power to waive, postpone or refund enforcement fees or application fees for the annulment of penalty notice enforcement orders.

Schedule 2.2 [5] makes a consequential amendment.

Schedule 2.2 [8] provides that an application fee that is postponed in relation to a penalty notice enforcement order is prescribed as a fine unless the order is annulled and the fee is payable as part of the fine to which the order relates.

Schedule 2.2 [9] provides for a 2 year trial period for work and development orders and provides that the maximum number of orders that may be made during that period is 2,000.

Schedule 2.2 [1]–[3] and [7] make amendments in the nature of statute law revision.

Road Transport (Driver Licensing) Act 1998 No 99

Section 25A of the *Road Transport (Driver Licensing) Act 1998* contains a number of offences in relation to a person driving a motor vehicle or applying for a driver licence while the person's driver licence is cancelled or suspended. The provisions do not make any distinction as to whether the person's driver licence was cancelled or suspended under the *Fines Act 1996* or otherwise, such as in relation to a traffic offence. Under the *Road Transport (General) Act 2005*, an offence under section 25A of the *Road Transport (Driver Licensing) Act 1998* is a relevant offence for the purpose of declaring a person to be a habitual traffic offender. A person is declared to be a habitual traffic offender if a court in this State convicts the person of a relevant offence and the person has, in the period of 5 years before the conviction, also been convicted of at least 2 other relevant offences committed on different occasions. Such a declaration leads to a person being disqualified from holding a driver licence for a period of 5 years or such longer period as the court may impose.

Schedule 2.3 [3] amends section 25A of the *Road Transport (Driver Licensing) Act 1998* to create new offences that mirror the existing offences. The new offences apply in

circumstances where a person's driver licence is cancelled or suspended under section 66 of the *Fines Act 1996* and the existing offences continue to apply in all other cases. The new offences are not relevant offences for the purposes of declaring a person to be a habitual traffic offender. The penalties are the same for the new offences.

However, **Schedule 2.3 [7]** provides for a relevant disqualification period of 3 months for a first offence under the new offences, rather than 12 months as is currently the case. The relevant disqualification period for a second or subsequent offence remains the same (2 years).

Schedule 2.3 [1], [2] and [4]–[6] make consequential amendments.

Schedule 2.3 [8] permits the regulations to contain provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 2.3 [9] inserts a savings and transitional provision into the *Road Transport (Driver Licensing) Act 1998* that provides that the amendments made to section 25A by the proposed Act do not apply to or in respect of an offence alleged to have been committed before the commencement of those amendments.

Road Transport (Driver Licensing) Regulation 2008

Schedule 2.4 amends the *Road Transport (Driver Licensing) Regulation 2008* consequential on the amendments made by Schedule 2.3 to the proposed Act.

Issues Considered by the Committee

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

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

27. 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 Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

28. **Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.**

The Committee makes no further comment on this Bill.

7. HOMEBUSH MOTOR RACING (SYDNEY 400) BILL 2008

Date Introduced:	27 November 2008
House Introduced:	Legislative Council
Minister Responsible:	Hon Ian Macdonald MLC
Portfolio:	Minister for State Development

Purpose and Description

1. The purpose of this Bill is to facilitate the conduct of an annual V8 motor race (and associated races and events) at Homebush to be known as Sydney 400. Clause 4 of the Bill provides for the constitution of the Homebush Motor Racing Authority. The Authority is subject to the control and direction of the Minister in the exercise of its functions. The Chief Executive Officer is responsible for the day- to- day management of the affairs in the Authority. Under clause 4 there is to be an Advisory Board of the Authority, which provides advice to the Chief Executive Officer. The Advisory Board consists of the Chief Executive Officer, and such other members, not exceeding four, as the Minister may appoint. The Authority has such functions relating to the preparation and management and conduct of works associated with the Homebush motor race as are conferred upon it by the Act.
2. Clause 12 of the Bill enables the Minister to declare, by order, any area within Sydney Olympic Park as the area within which the race may be conducted. The Minister has the right under clause 13 to approve, by order, a person (the race promoter) to apply to the Authority for authorisation to conduct the Homebush motor race. The Authority cannot grant an authorisation to conduct the race until it is satisfied that the race promoter has consulted relevant parties and taken into consideration any representations made by them. The race promoter must also demonstrate that it will take adequate steps to prevent or minimize any harm to the environment and disruption of other lawful activities at Sydney Olympic Park.
3. Under clause 20 of the Bill and race promoters are responsible for the land within the declared racing area during the Homebush motor racing period and that the rights or obligations of any other person in relation to the land are suspended for that period except to the extent that an agreement between the parties provides otherwise. The race promoter has an obligation to carry out reinstatement work following the Homebush motor race to any land affected by the race.
4. Part 4 the Bill deals with the application of other laws. Clause 32 states that compensation is not payable by the State, the Authority or a local council or an employee for an act or omission that is a Homebush race- related matter. This provision applies only in respect of acts done or omitted to be done in good faith, and does not apply to acts or omissions that cause personal injury or the death of a person.

5. Clause 33(1) states that compensation is not payable by the race promoter or an employee of the race promoter for an act or omission that is a Homebush race-related matter. This provision applies only to the extent that the claim for compensation is a claim for economic loss and applies only in respect of acts done or omitted to be done in good faith. Further, it applies only in respect of anything done or omitted to be done in accordance with the authorisation. The subsection does not apply to acts or omissions that cause personal injury to a person or the death of the person and it does not apply to acts or omissions that cause property damage.
6. Part 5 the Bill deals with miscellaneous matters, including prohibitions on certain advertising on buildings and structures; prohibition of certain aerial advertising, and the effect of the act on contracts and instruments. This Part also contains the power to make regulations in respect to a wide range of matters. These include the fees and charges that may be imposed for the race, regulating access to the racing area and regulating or prohibiting the bringing of liquor onto the declared racing area. The regulations may also create an offence punishable by a maximum penalty of 50 penalty units. Paragraph 45 of this Part also amends the *Subordinate Legislation Act 1989* so that a regulatory impact statement is not required in respective regulations made under the proposed Act.

Background

7. In his Second Reading speech the Minister said that it was possible to estimate the economic return on the investment the government will be making from this racing event. The Minister said the proposed the V8 Supercar Sydney 400 race series has been estimated to contribute between \$100 and a \$110 million to the State's economy.
8. The Minister said that the event will create 110 full-time equivalent jobs. He said that it is anticipated the event will attract up to \$20 million worth of international and national media coverage each year by using the best city in the world as a backdrop. He said that Sydney can expect an extra 15,000 people to visit NSW from overseas and interstate and an estimated 30,000 hotel visitor nights during the event. Less tangible benefits, he said, would include the international exposure for Sydney. The Minister said that Sydney Olympic Park has the infrastructure and the layout to support what will be an exciting, dynamic road race, readily and cost effectively.
9. The Minister said that many of the provisions in the Bill draw upon similar racing event legislation in other States, such as South Australia and Queensland.

The Bill

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 and contains certain other interpretive provisions.

Part 2 Homebush Motor Racing Authority

Clause 4 provides for the constitution of the Homebush Motor Racing Authority (the Authority) as a corporation.

Clause 5 provides that the Authority is a NSW Government agency.

Clause 6 provides that the Authority is subject to the direction and control of the Minister.

Clause 7 provides that the Chief Executive Officer of the Authority is responsible for the day-to-day management of the affairs of the Authority.

Clause 8 provides for the establishment of an Advisory Board to provide advice to the Chief Executive Officer on the functions of the Authority under the proposed Act and any other matter referred to the Advisory Board by the Chief Executive Officer.

Schedule 1 contains provisions relating to membership and procedure of the Advisory Board.

Clause 9 provides for the establishment of an Event Implementation Committee to provide advice to the Advisory Board on matters referred to the committee by the Advisory Board.

Clause 10 sets out the functions of the Authority. The functions of the Authority relate to the preparation for, and the management and conduct of, the race.

Clause 11 enables the Authority to delegate the exercise of its functions.

Part 3 Conduct of Homebush motor racing

Division 1 Authorisations

Clause 12 enables the Minister to declare, by order, any area within Sydney Olympic Park (except those areas subject to a lease) as the area within which the race may be conducted (the **declared racing area**) and to designate the period during which the race may be conducted (the **Homebush motor racing period**).

Clause 13 enables the Minister to approve, by order, a person (the **race promoter**) to apply to the Authority for authorisation to conduct a V8 motor race and associated races and events (the **Homebush motor race**).

Clause 14 provides that an order under proposed section 12 or 13 may only be made to enable the conduct of the Homebush motor race during a single period each year. Clause 14 also makes provision for the expiry and publication of, and consultation requirements relating to, such orders.

Clause 15 provides that a V8 motor race is not authorised to be conducted under the proposed Act unless the Authority authorises the conduct of the race. Clause 15 gives the Authority power to authorise the race promoter to conduct the race. Any such authorisation may be given subject to conditions. The contravention of any authorisation relating to public safety, environmental protection or insurance is an offence.

Division 2 Carrying out works

Clause 16 requires the race promoter to make a description of the proposed works to be carried out in relation to the race (and the land on which, and period during which, such works are to be carried out) publicly available.

Clause 17 makes provision for the race promoter to apply to the Authority for authorisation to carry out works associated with the race. The Authority may grant authorisation to the race promoter to carry out works on land within a specified area (the works area) during a specified period (the works period). An authorisation may be granted subject to specified conditions.

Clause 18 requires the Authority to be satisfied that the race promoter has done the following before granting authorisation to carry out works:

- (a) consulted relevant parties, and taken into account any representations made by such parties,

- (b) demonstrated that it will take adequate steps to prevent or minimise any harm to the environment and disruption of other lawful activities at Sydney Olympic Park.

Clause 19 makes it clear that an authorisation must be obtained from the Authority (rather than the Sydney Olympic Park Authority or a council) to carry out works associated with the race.

Division 3 General provisions

Clause 20 makes it clear that the race promoter is responsible for the land within the declared racing area during the Homebush motor racing period and that the rights or obligations of any other person in or in relation to the land are suspended for that period (except to the extent that an agreement between the parties provides otherwise).

Clause 21 enables the race promoter, with the authorisation of the Authority, to fence or cordon off the whole or any part of the declared racing area for the purposes of the race during a period not falling within the Homebush motor racing period. The race promoter is responsible for land within such areas and the rights or obligations of any other person in or in relation to the land are suspended for the period that the land is fenced or cordoned off.

Clause 22 makes provision for the removal of unattended motor vehicles, by a police officer or authorised officer, from the declared racing area during the Homebush motor racing period.

Clause 23 requires the race promoter to carry out reinstatement work following the Homebush motor racing period to any land affected by the race or the activities of the race promoter in connection with the race.

Clause 24 requires a government agency to co-operate with the Authority in the exercise of the Authority's functions, to provide resources and assistance to the Authority if requested and notify the Authority of actions of the government agency that may impact adversely on the exercise of the Authority's functions. Clause 24 also empowers a government agency to comply with directions and requests of the Authority and empowers the Minister to direct certain government agencies to comply with a request, direction or decision of the Authority (after consultation with the Minister responsible for that other agency).

Clause 25 requires the race promoter to comply with a direction given by the Authority in relation to public safety and environmental protection matters associated with the race. Any authorisation given to the race promoter to conduct the race is subject to compliance with any such direction as a condition of the authorisation.

Part 4 Application of other laws

Clause 26 modifies the application of the Environmental Planning and Assessment Act 1979 in respect of the conduct of the race and the carrying out of works as authorised by the proposed Act.

Clause 27 provides that any act that is authorised or permitted by or under the proposed Act is taken to be a defence to a prosecution for various offences contained in Part 8A of the *National Parks and Wildlife Act 1974*.

Clause 28 provides that a person who is authorised or permitted to do anything by or under the proposed Act may do that thing despite the fact that the doing of it is not authorised (when it is required to be) by, or is contrary to or inconsistent with the terms and conditions of an approval granted under, the *Local Government Act 1993*.

Clause 29 provides that a person who is authorised or permitted to do anything by or under the proposed Act may do that thing despite the fact that the doing of it is not authorised (when it is required to be) by, or is contrary to, or inconsistent with, the provisions of the *Sydney Olympic Park Authority Act 2001* or any regulations made under that Act.

Clause 30 provides that the provisions of the *Motor Vehicle Sports (Public Safety) Act 1985* and section 40 of the *Road Transport (Safety and Traffic Management) Act 1999* do not apply in respect of a Homebush motor race during a Homebush motor racing period. The provisions of the *Roads Act 1993* do not apply within the declared racing area during the Homebush motor racing period. The clause also provides that the provisions of the *Protection of the Environment Operations Act 1997* that relate to noise do not apply in respect of any activity that is carried out in accordance with any authorisation given under the proposed Act during the Homebush motor racing period.

Clause 31 provides that anything done or omitted to be done by a person pursuant to the proposed Act does not constitute a nuisance.

Clause 32 makes provision for the circumstances in which compensation is not payable by the State, the Authority or a local council in relation to the race and related matters.

Clause 33 makes provision for the circumstances in which compensation is not payable by the race promoter in relation to the race and related matters. Clause 34 protects the exercise of certain functions of the Minister and the Authority from challenge or review before a court or administrative review body or from being restrained, removed or otherwise affected by any proceedings.

Part 5 Miscellaneous

Clause 35 prohibits a person (other than the race promoter or a person who has written consent from the race promoter) from using any official title or insignia in relation to the race for a commercial purpose. The race promoter may grant consent to the use of an official title or insignia subject to conditions including a condition requiring payment to the race promoter.

Clause 36 prohibits a person from filming the race for the purpose of profit or gain except with the consent of the race promoter. The race promoter is entitled to charge a fee for giving such consent.

Clause 37 enables the Minister to designate an area within which the Authority may control advertising on buildings and structures.

Clause 38 prohibits advertising in the airspace that is within the unaided sight of the declared racing area (and such other areas as may be prescribed by the regulations) within the period specified in the regulations, except with the authorisation of the Authority.

Clause 39 provides that the Authority is, for the purposes of the *Public Finance and Audit Act 1983*, the *Annual Reports (Departments) Act 1985*, or any other Act prescribed by the regulations, taken to be part of the Department of State and Regional Development.

Clause 40 makes provision for the effect of the proposed Act on contracts, instruments and other related matters.

Clause 41 provides that directors, and other persons concerned in the management of a corporation, who knowingly authorise or permit the contravention of a provision of the proposed Act are to be taken to have contravened that same provision.

Clause 42 provides that proceedings for an offence under the proposed Act or the regulations may be dealt with summarily before a Local Court.

Clause 43 enables the Governor to make regulations for the purposes of the proposed Act, including in relation to fees and charges, the regulation of the provision of services by the race promoter and the regulation of access to the declared racing area and the conduct of persons in that area.

Clause 44 is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 2.

Clause 45 effects an amendment to the *Subordinate Legislation Act 1989*.

Clause 46 provides for the review of the proposed Act.

Schedule 1 Membership and procedure of Advisory Board

Schedule 1 contains provisions relating to the membership and procedure of the Advisory Board.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Issues Considered by the Committee

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

Issue:– Right to Compensation - Clauses 32 and 33

10. Under clause 32(1) compensation is not payable by the State, the Authority or local council for any act or omission that is a Homebush race-related matter. This subsection applies only in respect of acts done or omitted to be done in good faith, and it does not apply to acts or omissions that cause personal injury or the death of the person. Under clause 33(1) compensation is not payable by the race promoter or employee of the race promoter for an act or omission that is a Homebush race-related matter. This subsection applies only to the extent that the claim for compensation is a claim for economic loss, and it applies only in respect of acts done or omitted to be done in good faith. It applies, further, only in respect of anything done or omitted to be done in accordance with the authorisation, and it does not apply to acts or omissions that cause personal injury or death of a person, and it does not apply to acts or omissions that cause property damage. As such, denial of compensation in these circumstances does not seem unreasonable.

11. The provisions of clause 32 and 33 limiting the payment of compensation represent, in the Committee's opinion, a reasonable balance between protecting personal rights and making the fullest possible commercial use of the Sydney park precinct. Therefore, the Committee considers that these not trespass unduly on personal rights and liberties.

Insufficiently subjects the exercise of legislative power to Parliamentary scrutiny [Section 8A(1)(b)(v) LRA]

Issue - Exercise of legislative power to Parliamentary scrutiny - Clause 45 - exemption of regulations from assessment under the Subordinate Legislation Act 1989

12. Clause 45 of the Bill exempts regulations made under the proposed Act from the requirement for a regulatory impact statement under the *Subordinate Legislation Act 1989*. That Act is intended to provide a mechanism to weigh up the impact, including the impact on private rights, of significant regulatory proposals. However the Committee notes that under clause 18 an authorisation cannot be granted to a race promoter, unless the Authority is satisfied that the race promoter has consulted relevant parties, taken into account their representations and demonstrated that it will take adequate steps to prevent or minimise any harm to the environment and disruption of lawful activities at Sydney Olympic Park. These provisions in the Committee's view, justify the proposed exemption.

13. Due to the obligation placed on the promoter to consult and assess the impact of the event, the Committee considers that the exemption of regulations from a regulatory impact statement is appropriate in this instance.

Issue - Retrospectivity - Schedule 2 – retrospective operation of regulations

14. Under the transitional provisions of Schedule 2 the Governor may make regulations of a savings or transitional nature that commence on the date of assent to the Act or on a later date. The Committee notes that these provisions are expressed not to operate so as to affect in a manner prejudicial to any person, other than the State, the rights of a person existing before the date of publication. They also do not operate so as to impose liabilities on any person, other than the State, in respect of anything done or omitted to be done before the date of publication.

15. While the Committee is always concerned about retrospective operation of legislation, it is satisfied that these regulation making powers do not trespass unduly on personal rights and liberties

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

Issue: Commencement of the Act on a day or day to be appointed proclamation by proclamation - Clause 2

16. 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 Act on whatever day chooses or not at all.

17. Although there may be good reasons why such discretion is required the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.

The Committee makes no further comment on this Bill.

8. INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT BILL 2008

Date Introduced: 28 November 2008
House Introduced: Legislative Assembly
Minister Responsible: The Hon Nathan Rees MP
Portfolio: Premier

Purpose and Description

1. The objects of the Bill are:
 - (a) to amend the *Independent Commission Against Corruption Act 1988*:
 - (i) to clarify the reference to “serious and systemic corrupt conduct” in relation to the functions of the Independent Commission Against Corruption (the **Commission**), and
 - (ii) to increase the maximum penalty for an offence under section 82 of failing to provide information (or providing false information) to the Commission, and
 - (iii) to ensure that the Commission may make a non-publication order in respect of any written submissions received by the Commission by counsel assisting the Commission or by any other person, and
 - (iv) to extend the time period within which proceedings for offences against sections 82 (relating to providing information) and 95 (impersonation of Commission officer) may be commenced to 3 years (instead of 6 months) from the commission of the alleged offence,
 - (b) to amend the definition of **public official** in the *Protected Disclosures Act 1994* to remove any doubt that the Act extends to any individual in the service of the Crown or of a public authority.

Background

2. Schedule 1 to the bill contains a number of amendments to the Independent Commission Against Corruption Act 1988. The bill will extend the period within which proceedings must be commenced for the offences of knowingly providing false or misleading information to the commission in response to a notice, and impersonating an officer of the commission, from six months to three years of the alleged commission of the offence. According to the Agreement in Principle Speech there are a number of reasons for this extension. Firstly, it is not always possible to identify that such offences have occurred within the current six-month period. Secondly, it is sometimes not possible to commence proceedings within the current period without compromising the commission's investigations. This amendment was requested by the commission and recommended by the Committee on the Independent Commission Against Corruption.
3. The bill will also increase the maximum penalty for the offence of knowingly providing false or misleading information to the commission in response to a notice to imprisonment for 12 months and \$5,500. This will ensure consistency with penalties

for other similar offences in the Act. The bill will also clarify that the commission has the power to make a non-publication order in respect of any written submissions received by the commission, whether from counsel assisting the commission or by any other person. Again, this amendment was requested by the commission and recommended by the parliamentary committee. Currently, the Act directs the commission's attention to "serious and systemic corrupt conduct". The bill will amend the Act to clarify that the commission is to direct its attention to two types of corrupt conduct: serious corrupt conduct and systemic corrupt conduct. This amendment was recommended by the Committee on the Independent Commission Against Corruption to avoid any doubt in relation to the issue.

4. The commission also requested that consideration be given to requiring all proceedings under section 87 of the Act, which makes it an indictable offence to give false or misleading information to the commission, to be heard by the District Court rather than the Local Court. The commission's concern is that the Local Court has been imposing comparatively light sentences for such offences in comparison with the maximum available penalty of five years imprisonment and \$22,000. The commission is concerned that a perception exists among witnesses at the commission that people who lie to the commission will not receive a substantial punishment. This is of significant concern to the Government. In order for the commission to effectively fulfil its functions it is important that the substantial penalties available for misleading the commission are applied in such a way as to act as an effective deterrent. Therefore the Government is currently working with the commission to examine whether it is appropriate to seek a guideline judgement from the Court of Criminal Appeal in relation to offences under section 87. The parliamentary committee has indicated it will examine this issue as well.
5. Schedule 2 of the bill will make an amendment to the Protected Disclosures Act to clarify the coverage of that Act to all public officials. This amendment follows a 2006 recommendation of the Committee on the Independent Commission Against Corruption, which raised doubts as to whether the Protected Disclosures Act automatically applied to all employees of an area health service. Although the New South Wales Department of Health has been operating on the basis that the Act does apply, the amendment will remove any doubt. Therefore, the bill will amend the definition of "public official" to clarify, for the avoidance of doubt, that any individual in the service of the Crown or of a public authority is a public official.

The Bill

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.

Clause 3 is a formal provision that gives effect to the amendments to the Acts specified in Schedules 1 and 2 as set out in those Schedules.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 [1] clarifies in section 12A the reference to "serious and systemic corrupt conduct" in relation to the functions of the Commission. It is made clear that the reference extends to both serious corrupt conduct and systemic corrupt conduct.

Schedule 1 [2] increases the maximum penalty for an offence under section 82 (Offences relating to obtaining information) from 20 penalty units or imprisonment for 6 months, or both, to 50 penalty units or imprisonment for 12 months, or both.

Schedule 1 [3] makes it clear that the Commission has the power to make a non-publication order in respect of any written submissions received by the Commission (including any submissions made by Counsel assisting the Commission).

Schedule 1 [4] extends the period within which proceedings may be commenced under sections 82 (Offences relating to obtaining information) and 95 (Impersonation of officer of Commission) to 3 years from the commission of the alleged offence.

Schedule 1 [5] enables regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [6] contains provisions of a savings and transitional nature to ensure the amendments made by **Schedule 1 [3] and [4]** extend to current matters.

Issues Considered by the Committee

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| 6. The Committee has not identified any issues under section 8A(1)(b) of the Legislation Review Act 1987 |
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The Committee makes no further comment on this Bill.

9. INSTITUTE OF TEACHERS AMENDMENT BILL 2008

Date Introduced:	25 November 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Verity Firth MP
Portfolio:	Education and Training

Purpose and Description

1. The proposed Bill amends the Institute of Teachers Act 2004 ('the Act') to make further provisions with respect to the accreditation of teachers and for other purposes¹³.
2. The object of the proposed Bill is to amend the Act:
 - (a) to enable the accreditation requirements for teachers under the Act to be extended by regulation to teachers delivering courses or programs conducted by schools for preschool children and to teachers delivering other courses that are not designed to implement the Board of Studies curriculum if those courses and programs are provided in schools;
 - (b) to extend the accreditation requirements under the Act to teachers who have been absent from classroom teaching for more than 5 years (with certain exceptions);
 - (c) to make the general grounds for revocation of accreditation under the Act consistent for both government and non-government school teachers;
 - (d) to enable suspension of accreditation under the Act on specified grounds; and
 - (e) to make changes in relation to the provisions concerning members of the Quality Teaching Council established by the Act.

Background

3. In the Agreement in Principle Speech, the Hon Verity Firth MP made the following comments about the proposed Bill:

The relationship between high-quality teaching and improved student learning is undeniable. Every parent knows it and research confirms it. Teacher quality is the single most significant variable that affects the progress of student learning. The New South Wales Government was one of the first to recognise this fact when it passed legislation to establish the New South Wales Institute of Teachers in 2004. The institute has fulfilled its promise by implementing the most comprehensive framework

¹³ The *Institute of Teachers Bill 2004* was considered by the Legislative Review Committee in Digest 8 of 2004 at page 16.

for accrediting teachers in Australia. No other State in Australia has designed and implemented such a complete approach to supporting the quality of teachers. The key to this approach is professional teaching standards...This bill responds to the requirement in the Act to undertake a review to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. In the main, the proposed changes clarify the intention of the Act in fulfilling the Government's policy objectives for the institute.

4. The Bill proposes to amend the definition of a 'teacher' and 'teach' to allow for the accreditation of certain early childhood teachers, which will allow the NSW Institute of Teachers ('the Institute') to address a situation where teachers in preschools attached to schools may be required to teach in either setting.¹⁴
5. It also amends section 24 of the Act, which deals with 'general grounds for revocation of accreditation'. Under the proposed section, the power to revoke the accreditation of a person will remain the responsibility of teacher accreditation authorities. The amendments will provide for consistency in the treatment of teachers in both government and non-government sectors.¹⁵
6. The proposed Bill allows for the revocation of accreditation under section 24 of the Act on any of the following grounds:
 - (a) that a person becomes a prohibited person within the meaning of the Commission for Children and Young People Act 1998;
 - (b) the person is found guilty of a serious offence as prescribed by the regulations;
 - (c) the person is found guilty more than once of a non-serious offence, as prescribed by the regulations;
 - (d) the person is dismissed from employment as a consequence of a finding of serious misconduct as defined by the regulations or has been included in the list of persons maintained by the Director General under section 7(1)(e) of the Teaching Service Act 1980 as a person not to be employed in the Teaching Service.¹⁶

¹⁴ See <http://www.nswteachers.nsw.edu.au/home.aspx>. The Institute is an independent statutory authority comprising a Chair, Board of Governance, Quality Teaching Council and staff. Section 7 of the Act provides the functions of the Institute.

¹⁵ "Teacher accreditation authorities" are defined in section 4 of the Act as

- (a) in relation to a government school:
 - (i) the Director General, or
 - (ii) such other person or body as may be approved for the time being by the Director General, or
- (b) in relation to a non-government school:
 - (i) the Minister, or
 - (ii) such person or body as may be approved for the time being by the Minister.

¹⁶ Proposed Schedule 1 [1] inserts a definition of 'serious misconduct' in section 3(1) to mean conduct of a type prescribed by the regulations as serious misconduct for the purposes of this definition.

In the Agreement in Principle Speech, the Minister stated that the intention of the Bill is that 'teachers will not be allowed to continue to teach if they have been found guilty of a criminal offence where a conviction results in a custodial sentence of 12 months or more, whether suspended or not'. The Minister continued to state that the Bill is intended to cover circumstances 'where there is strong evidence that the person is guilty of a serious offence and the allegation is not proven beyond

- (e) the person has failed to comply with any condition to which their accreditation is subject.
- 7. Proposed section 24A of the Bill allows a teacher accreditation authority to suspend the accreditation of a teacher on a number of grounds, for example pending the outcome of an investigation of alleged criminal or serious misconduct.
- 8. The proposed Bill also allows an employer, following reasonable notice to comply, to suspend a teacher without pay or dismiss a teacher for non-compliance with a condition of their accreditation. The Agreement in Principle Speech highlights that the decision to suspend or dismiss a teacher is an issue for the employer. The Minister states that 'it is likely that a teacher will be initially suspended, given an opportunity to comply and, if they fail to do so their accreditation will be revoked and they will be dismissed'.
- 9. Proposed 24B provides the criteria that a teacher accreditation authority should take into account when deciding whether to revoke or suspend a teacher's accreditation under the proposed sections 24 or 24A. Proposed section 24B(d) also refers to the matters to be taken into account by the procedures and guidelines in the professional teaching standards as provided by section 20(c) of the Act. The Agreement in Principle Speech states that the 'guidelines will provide advice to teacher accreditation authorities on the matters to be taken into account and natural justice considerations in relation to teachers suspected of serious misconduct'.
- 10. The Agreement in Principle Speech also highlights that the proposed Bill includes protection against the frivolous use of the suspension powers. For example, under the proposed section 24A(2), suspension of accreditation will only be allowed for periods of three months, after which time the decision to suspend must be reviewed and removed in certain circumstances.
- 11. According to the proposed Bill, teachers will be able to appeal a decision to suspend accreditation through the Administrative Decisions Tribunal, which already exists under section 27 of the Act for a person whose accreditation has been refused or revoked.
- 12. The proposed amendment to Section 28 of the Act also requires teachers returning to employment after a break from teaching of five or more years to be accredited.

The Bill

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.

Clause 3 is a formal provision that gives effect to the amendments to the Act set out in Schedule 1.

reasonable doubt but could be on the basis of probability—in particular, cases involving an offence against a minor where the victim is unwilling to give evidence in court'. The provisions are also intended to cover teachers in temporary and casual positions.

Clause 4 provides for the repeal of the proposed Bill after all the amendments made by the proposed Bill have commenced. Once the amendments have commenced the proposed Bill will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Amendments relating to extension of accreditation requirements to other teachers

Schedule 1 [1] contains a consequential amendment.

Schedule 1 [2] and [3] replace the definitions of teach and teacher in section 3 of the Act with proposed section 3A. Currently, the definition of teach is limited to undertaking duties in a school that include the delivery of, and the assessment of a student's participation, performance and progress in, courses of study that are designed to implement the Board of Studies curriculum. Proposed section 3A also includes in that definition the courses of study and programs for primary, secondary and preschool children that are prescribed by the regulations.

Schedule 1 [11] amends the definition of new scheme teacher in section 28 of the Act to include a person who was the holder of a prescribed tertiary or teaching qualification and was employed as a teacher before the relevant date (as defined in that section) but who commences to teach after that date following an absence from actual classroom teaching of 5 years. Proposed clause 4 of Schedule 3 to the Act (to be inserted by **Schedule 1 [26]**) provides that the proposed amendment will not apply to any absence from actual classroom teaching occurring before the relevant date.

Schedule 1 [12] amends the definition of relevant date in section 28 of the Act to enable different dates to be prescribed by the regulations as relevant dates in relation to different classes of new scheme teachers. This will enable appropriate relevant dates to be prescribed in relation to the accreditation requirements for the Act because of regulations under proposed section 3A and the amendment to the definition of new scheme teacher in section 28.

Schedule 1 [13] amends section 28 of the principal Act to provide that a person's absence from actual classroom teaching during any period is not to be taken into account for the purposes of the amendment to section 28 referred to above if a teacher accreditation authority certifies that the person was undertaking duties in an area of relevance to the professional teaching standards. A regulation-making power is included to enable regulations to be made that prescribe duties that are to be taken to be, or are to be taken not to be, in an area of relevance to the professional teaching standards.

Schedule 1 [15] amends the definition of relevant date in section 34 to enable different dates to be prescribed by the regulations as relevant dates in relation to different classes of transition scheme teachers. This will enable appropriate relevant dates to be prescribed in relation to the accreditation requirements for the additional classes of transition scheme teachers to be included within the operation of the principal Act because of regulations under proposed section 3A.

Amendments relating to revocation and suspension of accreditation

Schedule 1 [6] amends section 18 of the Act to require the NSW Institute of Teachers to keep a record of the details of a decision by a teacher accreditation authority to suspend a person's accreditation.

Schedule 1 [7] amends section 20 of the Act to enable the professional teaching standards approved by the Minister to contain procedures and guidelines to be followed by teacher accreditation authorities in relation to the suspension of a person's accreditation.

Schedule 1 [8] substitutes section 24 of the Act to ensure that the general grounds for revocation of accreditation are the same for teachers in government and non-government schools. The general grounds for revocation of accreditation will now be that the person is a prohibited person within the meaning of the *Commission for Children and Young People Act 1998*, the person has been found guilty of an offence prescribed by the regulations as a serious offence, the person has been found guilty more than once of an offence that is prescribed by the regulations as a non-serious offence, the person has been dismissed from employment as a teacher for conduct prescribed by the regulations as serious misconduct or the person has failed to comply with a condition of the accreditation.

Schedule 1 [9] inserts proposed sections 24A, 24B and 24C into the Act. Proposed section 24A enables a teacher accreditation authority to suspend the accreditation of a person on any ground on which the person's accreditation could be revoked or if there are disciplinary proceedings pending against the person for alleged serious misconduct or proceedings for an offence are pending against the person, being an offence that if proved to have been committed by the person would be grounds for revocation of accreditation.

Proposed section 24B requires a teacher accreditation authority to take account of certain matters when determining whether to revoke a person's accreditation under section 24 or suspend a person's accreditation under proposed section 24A.

Proposed section 24C requires written notice to be given to a person of a teacher accreditation authority's intention to suspend or revoke the person's accreditation to enable submissions to be made.

Schedule 1 [10] amends section 27 of the Act to include a right to apply to the Administrative Decisions Tribunal for a review of a decision to suspend a person's accreditation.

Currently, section 29 of the Act makes it an offence for the employer of a new scheme teacher (within the meaning of section 28 of the principal Act) to employ or continue to employ the person as a teacher unless the person is accredited and, in the case of conditional accreditation, is supervised by another teacher.

Schedule 1 [14] amends section 29 of the Act to make it clear that a person's employment as a new scheme teacher may be terminated if the person's accreditation is revoked or may be suspended if the person's accreditation is suspended.

Currently, section 35 of the Act makes it an offence for the employer of a transition scheme teacher (within the meaning of section 34 of the principal Act) to employ or continue to employ the person as a teacher unless the person is accredited and is supervised by another teacher.

Schedule 1 [16] amends section 35 of the Act to make it clear that a person's employment as a transition scheme teacher may be terminated if the person's accreditation is revoked or may be suspended if the person's accreditation is suspended.

Schedule 1 [17] inserts proposed section 42A into the Act to provide that a person may be suspended without pay in relation to the person's employment as a teacher for any period during which that employment is required to be suspended under the Act for failure to comply with a condition of the accreditation.

The proposed section also provides that any amount payable to a teacher in a government school may only be withheld under the proposed section if the Director-General of the Department of Education and Training so directs. That provision is similar to powers of the Director-General contained in the *Teaching Service Act 1980* in relation to the suspension of an officer of the teaching service from duty during disciplinary proceedings for alleged misconduct.

Schedule 1 [19] makes a consequential amendment.

Amendments relating to the Quality Teaching Council

Currently, section 13 (1) of the principal Act requires elected members of the Quality Teaching Council to be teachers and section 13 (3) requires that after the third anniversary of the first election of elected members each such member must be accredited.

Schedule 1 [4] amends section 13 of the principal Act to change the requirement in section 13 (3) from the third anniversary to the sixth anniversary.

Currently, section 13 (4) of the principal Act prevents a member of the Council from holding office for terms totaling more than 6 years.

Schedule 1 [5] amends section 13 of the principal Act to take into account that the term of office of an elected member may be extended in accordance with the regulations.

Other minor amendments

Schedule 1 [18] and [20] contain consequential amendments.

Schedule 1 [21] inserts proposed section 51A into the Act to provide for the manner in which documents are to be served (other than on the NSW Institute of Teachers) under the principal Act.

Schedule 1 [22] amends section 52 of the Act to enable regulations to be made in relation to fees and charges for services provided under the Act.

Schedule 1 [23] and [24] amend section 55 of the Act to provide for a further review of the Act as soon as possible after 5 years from the date of assent to the proposed Act.

Schedule 1 [25] and [26] deal with savings and transitional matters consequent on the enactment of the proposed Act.

Issues Considered by the Committee

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

Issue: Retrospectivity; Procedural Fairness - Schedule 1 [26], proposed section 5; Schedule 1 [8] – proposed section 24; Schedule 1 [9] – proposed section 24A

13. The proposed amendment under Schedule 1 [26], section 5 provides that a provision of sections 24 or 24A extends to offences committed before the commencement of the provision and conduct occurring before that commencement. These proposed provisions would therefore have a retrospective effect in circumstances where a teacher's accreditation is revoked or suspended.
14. There is also concern that the powers provided in proposed section 24A to suspend the accreditation of a teacher in circumstances where the outcome of alleged criminal or serious misconduct has not yet been determined may unduly trespass on their personal rights. However, in the Agreement in Principle Speech, the Minister highlights that the proposed amendment is intended to cover circumstances where a teacher under investigation continues to teach by changing employers. Accordingly, given the public interest of protecting children from harm and the provisions in proposed section 24A(2), which allow for the review of a suspension every three months, the Committee does not consider that the proposed amendment to unduly trespass on personal rights.
15. The Committee also notes that proposed section 24C of the Bill requires that notice be given to a person of any intention to suspend or revoke their accreditation. According to proposed section 24C(1) of the Bill, a teacher accreditation authority may suspend or revoke a person's accreditation only after having served on the

person written notice of its intention to suspend or revoke their accreditation, setting out its reasons.

16. Further, section 24C(2) of the Bill requires the notice to include a statement that the person may make submissions to the teacher accreditation authority in relation to the proposed suspension or revocation within 14 days after the date of the notice. The Committee considers that these provisions will ensure procedural fairness, providing teachers with an opportunity to respond to any allegations.

17. The Committee will always be concerned with any retrospective effect of legislation that may adversely impact on personal rights, however balancing the interests of children and young people, the Committee does not consider this proposed provision to unduly trespass on personal rights, including those of procedural fairness.

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

Issue: Definition of Words – Matters which should be regarded by Parliament – Schedule 1 [1], proposed section 3

18. The definition of “serious misconduct” is to be prescribed by regulation. This definition will form the basis by which accreditation will be revoked and should be provided in the bill to allow for proper scrutiny and certainty.

19. The Committee is concerned that proposed section 3 delegates the definition of “serious misconduct” to be prescribed by regulation. This definition forms the basis of all disciplinary proceedings and should be defined in the bill.

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

20. 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 Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

21. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

The Committee makes no further comment on this Bill.

10. PAEDIATRIC PATIENT OVERSIGHT (VANESSA'S LAW) BILL 2008*

Date Introduced:	28 November 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Jillian Skinner MP
Portfolio:	Non Government / Liberal Party

Purpose and Description

1. This Bill ensures that children who are admitted to adult wards in major hospitals are under the care and supervision of a paediatrician.

Background

2. This Bill pays tribute to the family of Vanessa Anderson (16 years old), who died after being hit in the head by a golf ball in 2005. This led to a Special Commission of Inquiry into the state of acute care services in New South Wales (known as the Garling Report). The Garling Report made 130 recommendations.
3. This Bill aims to ensure that children will be given specific treatment and medication different from adults, especially when they are admitted to adult hospital wards.

The Bill

4. The object of this Bill is to impose a duty on the governing body of a major public hospital to ensure that a paediatrician oversees the medical management of any person under the age of 18 who is admitted as a patient in an adult ward of the hospital within 24 hours of the person's admission.

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.

Clause 3 imposes the duty described in the Overview above.

Clause 4 contains definitions for the purposes of the proposed Act, including a list of the major public hospitals in respect of which the duty imposed by the proposed Act will apply.

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.

11. STATE REVENUE AND OTHER LEGISLATION AMENDMENT (BUDGET MEASURES) BILL 2008

Date Introduced: 27 November 2008
House Introduced: Legislative Assembly
Minister Responsible: The Hon Joe Tripodi MP
Portfolio: Finance

Purpose and Description

1. The Bill contains the following:
 - (a) amendments to the *Duties Act 1997* to defer the abolition of certain duties, to increase flat-rate duties, and to grant a duty exemption to a vesting of land that occurs as a consequence of the termination of a strata scheme or similar scheme,
 - (b) amendments to the *First Home Owner Grant Act 2000* to increase the amount of the first home owner grant, by giving effect to the first home owner boost scheme and the NSW new home buyers supplement scheme,
 - (c) amendments to land tax legislation to provide for a new premium rate of land tax on land holdings with a taxable value of more than \$2,250,000, and to provide for the annual adjustment of the premium rate threshold,
 - (d) amendments to the *Children and Young Persons (Care and Protection) Act 1998* and the *Children and Young Persons (Care and Protection—Child Employment) Regulation 2005*:
 - (i) to enable fees to be charged in connection with the administration of the children's service licensing scheme and the out of school hours care services registration scheme (including the waiver, reduction, deferral and refund of any such fees), and
 - (ii) to increase fees for an application for an authority to employ children or for an exemption from the requirement to hold such an authority, so that the fees apply on a cost recovery basis,
 - (e) amendments to the *Civil Procedure Regulation 2005* to increase the daily fees payable for hearings of civil proceedings in the Supreme Court and to provide that fees are payable from the second day of hearings (rather than the eleventh day),
 - (f) amendments to emergency services legislation to introduce a scheme for funding the State Emergency Service, from contributions by insurance companies, local government and the State Government, consistent with the scheme applicable to Fire Brigades and to make the schemes consistent,
 - (g) amendments to the *Human Tissue Act 1983* to enable the Director-General of the Department of Health to recover the costs incurred by the State in connection with the supply of blood to the private health sector by suppliers such as the Australian Red Cross Society,

- (h) amendments to the *Management of Waters and Waterside Lands Regulations—N.S.W.* to increase the annual fees for mooring licences in the Sydney Harbour (Eastern) locality,
- (i) amendments to the *Mining Regulation 2003* to increase the base rate of royalty payable for coal,
- (j) amendments to the *Parking Space Levy Act 1992* to increase the parking space levy, from the 2009-2010 financial year,
- (k) amendments to the *Growth Centres (Development Corporations) Act 1974* to abolish the Growth Centres Commission and consequential and other minor amendments to other planning legislation,
- (l) amendments to the *Private Hospitals Regulation 1996* and the *Day Procedure Centres Regulation 1996* to increase licence fees for private hospitals and day procedure centres, so that application fees for licences, annual licence fees and application fees for the transfer of licences are charged on a full cost recovery basis,
- (m) amendments to the *Real Property Regulation 2008* to introduce new fees in relation to certain dealings in land, and to increase certain existing fees, amendments to the *Victims Support and Rehabilitation Act 1996* to double the compensation levies payable by convicted offenders and to provide for the annual adjustments of those levies on the basis of increases in the consumer price index,
- (o) amendments to the *Protection of the Environment Operations (Waste) Regulation 2005* and related legislation:
 - (i) to increase the waste contributions currently payable by occupiers of licensed waste facilities in respect of certain waste received or generated in the Sydney metropolitan area and other regulated areas, and provide for contributions to be payable in respect of such waste received or generated in certain regional areas, and
 - (ii) to extend the scope of the Waste Performance Improvement Scheme so that it applies to local councils in certain regional areas and encompasses broader environmental sustainability objectives, and
 - (iii) to provide for payment of a special levy by occupiers of licensed waste facilities used to dispose of coal washery rejects only.

Background

2. On 11 November the Treasurer announced a range of measures as part of the mini-budget. A number of those initiatives will commence on 1 January 2009 and require legislation. This bill implements those measures. This bill also implements some other measures announced in the mini-budget that require legislation, but that will not commence until 1 July 2009.
3. Schedule 1 to the bill amends the Duties Act 1997 to implement from 1 January 2009 the stamp duty measures announced in the mini-budget. In particular, the schedule defers abolition of stamp duty on unquoted marketable securities from 1 January 2009 to 1 July 2012, defers abolition of mortgage duty on business loans from 1 July 2009 to 1 July 2012, defers abolition of transfer duty on business assets other than real property from 1 July 2011 to 1 July 2012, increases flat rate duties from \$2, \$10 and \$200 to \$10, \$50 and \$500 respectively, and eliminates an unintended consequence under which a liability to duty arose on the termination of strata schemes and community land schemes.

4. Schedule 2 to the bill amends the First Home Owner Grant Act 2000 to authorise retrospectively to 14 October the payment of the \$7,000 first home owner boost payment to first home buyers purchasing an existing home and the \$14,000 first home owner boost payment to first home buyers purchasing or building a new home. The authorisation to make these payments and the first homeowner boost scheme will cease on 30 June 2009.
5. The schedule also amends the Act to provide for the payment of the \$3,000 New South Wales new home buyer's supplement, which was announced in the 11 November mini-budget. This payment will be made to first homebuyers who contract between 11 November 2008 to 10 November 2009 inclusive to purchase or build a new home. This payment is in addition to the \$7,000 provided by the New South Wales Government under the first home owners scheme and the \$14,000 first home owner boost payment. This means payments of up to \$24,000 will be available to first homebuyers purchasing or building a new home. This payment is in addition to the existing stamp duty exemption available to purchasers of first homes up to \$500,000 in value.
6. Schedule 3 to the bill amends land tax legislation to introduce from the 2009 land tax year a premium land tax rate of 2 per cent that will apply to land tax payers with total taxable landholdings above \$2.25 million. The premium rate will apply only to the value of taxable land holdings in excess of \$2.25 million. The landholdings below \$2.25 million of affected land tax payers will remain subject to land tax at 1.6 per cent. This measure is expected to affect around 8,500 land tax payers, or about 5.6 per cent of all land tax payers. The measure does not involve any broadening of the land tax base. Existing exemptions, including for principal places of residence and for land used for primary production, will remain.
7. Schedule 4 to the bill is designed to recover the costs of ensuring compliance with quality and safety standards in childcare centres. It is noted that other States such as Queensland and Victoria have similar fees in place, and in the context of the mini-budget it is important to have such measures, provided they are reasonable and implemented sensitively. That is what the Government intends.
8. Schedule 5 increases the hearing fees payable in the Supreme Court under the Civil Procedure Regulation 2005. The revised fee is to be \$345 for individuals and \$690 for corporations to be levied for each half day of hearing time before a judge. In relation to hearings before an associate judge the hearing fee is to be \$311 per half day for individuals and \$622 for corporations. The fee is to be levied on each half day of hearing time required after the second day until the matter concludes. Taxpayers should not have to subsidise expensive and lengthy civil hearings before the Supreme Court. The massive cost to taxpayers arising from the C7 litigation in the Federal Court has brought into sharp focus the need for Government to ensure that well-resourced and corporate litigants should not be able to rely on taxpayers to fund protracted disputes in publicly funded courts. Litigants that elect to resolve disputes before a court instead of through private arbitration or other dispute resolution processes should contribute to the cost of court hearings.
9. Schedule 6 to the bill amends the State Emergency Service Act 1989 to provide for a contribution scheme to meet the costs of the State Emergency Service similar to the schemes contained in the Fire Brigades Act 1989 and the Rural Fires Act 1997 for the funding of the New South Wales Fire Brigades and Rural Fire Service, and any

other administrative costs incurred under the authority of the Acts. These changes recognise the outstanding work of the State Emergency Service, and the savings to the insurance industry that its work allows through reduced claims. The streamlining and simplifying of back office administrative processes to produce efficiencies and further savings among the three services will accompany the changed funding model. Again, this will not impact on front-line services or operational capabilities.

10. Schedule 7 to the bill amends the Human Tissue Act 1983 to provide that regulations may be made authorising the recovery of the costs associated with the supply of blood and blood products to approved health providers. Public hospitals in New South Wales already pay the costs associated with being supplied blood and blood products. The cost of providing blood and blood products to private hospitals is currently met by the State. This amendment will allow the Department of Health to recover the costs incurred by the State in supplying blood and blood products to the private health sector. This measure means that all hospitals in New South Wales will share the cost of collecting, processing and distributing blood and blood products and end the current subsidisation of private hospitals for this service. In accordance with the aims of the National Blood Agreement, the amendment is explicit that no patient will be charged for the cost of blood.
11. Schedule 8 to the bill amends the Management of Waters and Waterside Lands Regulations, New South Wales to increase the annual fees for mooring licences for moorings in eastern Sydney Harbour. Fees will increase from \$111, \$220, \$330 and \$774 to \$138, \$275, \$413 and \$965 respectively.
12. Schedule 9 to the bill amends the Mining Regulation 2003 to increase the rates of royalty for coal. The tiered structure of coal royalties will be maintained under this initiative in recognition of the importance of the mining industry as an employer in rural areas. The measure does not include a super royalty on coal, as has been introduced in other jurisdictions. Royalty rates will increase from 5 per cent, 6 per cent and 7 per cent to 6.2 per cent, 7.2 per cent and 8.2 per cent respectively.
13. Schedule 10 to the bill amends the Parking Space Levy Act 1992 to increase the parking space levy in category 1 areas from \$950 to \$2,000 a year and in category 2 areas from \$470 to \$710 a year. The parking space levy seeks to reduce congestion and promote the use of public transport. The funds collected will be used for the construction and maintenance of transport infrastructure that encourages public transport use, such as commuter car parks and extra buses. Schedule 11 to the bill amends planning legislation to merge the Growth Centres Commission with the Department of Planning to drive key land supply outcomes across New South Wales and to make other changes that better reflect roles and responsibilities. The Department of Planning will be restructured to have a stronger focus on the statewide accelerated release of land in greenfield areas and the redevelopment of existing urban areas.
14. Schedule 12 amends the Private Hospitals Regulation 1996 to increase application fees for licences from \$775 to \$5,320 and to insert a new scale of annual licence fees for private hospitals based on the number of persons licensed to be accommodated. The schedule also increases the fee for transfer of a licence from \$775 to \$2,940. This schedule also amends the Day Procedure Centres Regulation 1996 to increase application fees from \$775 to \$5,320, to increase annual licence fees from \$1,415 to \$4,690 and to increase licence transfer fees from \$775 to \$2,940. Schedule 13

amends the Real Property Regulation 2008 to increase the fee for lodging with the Land Titles Office a transfer of property. This fee will increase from 1 January 2009.

15. The Victims Support and Rehabilitation Act 1996 requires those persons convicted of an offence punishable by imprisonment to pay a compensation levy. The levy is currently \$70 when the person is convicted on indictment and \$30 otherwise. That money is paid into the Victims Compensation Fund, from which compensation under the Act is paid to the victims of acts of violence. The purpose of the compensation levy is to force those persons committing criminal offences to make a personal contribution to the compensation of victims of crime.
16. Schedule 14 to the bill amends the Victims Support and Rehabilitation Act 1996 to increase the victim compensation levy payable by people convicted of offences punishable by imprisonment from \$30 and \$70 to \$60 and \$140 respectively. It also introduces a provision which indexes these levies to movements in the Sydney consumer price index to ensure these levies maintain their real value. The levies have not increased for 11 years, and in these tough times we are making criminals pay their dues.
17. Schedule 15 amends waste legislation to increase the waste and environmental levy for the Sydney region and the Hunter, Central Coast and Illawarra by \$10 per tonne per year, indexed to the consumer price index from 1 July 2009 until 2015-16. The \$10 increase will replace the \$7 per tonne increase previously scheduled for 1 July 2009. The amendments set out in the schedule also extend the waste and environmental levy to cover Wollondilly and Blue Mountains local government areas and coastal local government areas from the Hunter to the Queensland border. The levy rate will be \$10 per tonne from 1 July 2009 with increases of \$10 per tonne each year. These increases will be indexed to movements in the Consumer Price Index from 1 July 2010 until 2015-16.

The Bill

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 is a formal provision that gives effect to the amendments to the Acts and instruments set out in Schedules 1–15.

Clause 4 provides that explanatory material does not form part of the proposed Act.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Issues Considered by the Committee

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| <p>18. The Committee has not identified any issues under Section 8A (1)(b) of the <i>Legislation Review Act 1987</i></p> |
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The Committee makes no further comment on this Bill.

12. SUPERANNUATION ADMINISTRATION AMENDMENT (CHIEF EXECUTIVE) BILL 2008

Date Introduced: 27 November 2008
House Introduced: Legislative Assembly
Minister Responsible: Hon Joe Tripodi MP
Portfolio: Finance

Purpose and Description

1. This Bill amends the *Superannuation Administration Act 1996* to provide for the employment of the chief executive officer of STC by the STC Board; and to make a consequential amendment to the *Public Sector Employment and Management Act 2002*.
2. It amends the *Superannuation Administration Act 1996* and the *Public Sector Employment and Management Act 2002* to remove the position of the chief executive officer of State Super from the Chief Executive Service.

Background

3. According to the Agreement in Principle speech:

Current arrangements for State Super under part 3.1 of the Public Sector Employment and Management Act 2002 are inflexible and operate to the financial disadvantage of the State. State Super has been attempting to recruit, unsuccessfully, a new chief executive officer for over 12 months. In the current investment environment the State requires the best investment advice available. Current legislation restricts the Government's ability to competitively recruit a suitably qualified chief executive officer for State Super, which is the largest superannuation fund in Australia. At 30 June 2008 the investment portfolio of State Super was \$34.2 billion, of which \$10.7 billion is member funds, and the remainder, \$23.5 billion, represents the State's employer contributions. The investment performance of State Super materially impacts the value of State sector net financial liabilities. In particular, unfunded superannuation liabilities and the State's ability to meet the fiscal target of fully funding superannuation liabilities by 2030 is the primary long-term focus of State Super's investment performance... Within the above context it is critical that State Super be in a position to recruit a suitable chief executive with the ability to manage the State's largest portfolio of financial assets.

The Bill

4. The object of this Bill is to provide for the employment of the chief executive officer of the SAS Trustee Corporation (known as State Super or STC) by the STC Board on terms and conditions determined by the Board with the concurrence of the Minister. At present, the chief executive officer holds a statutory office within the Chief Executive Service under the *Public Sector Employment and Management Act 2002* and is appointed by the Minister.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Superannuation Administration Act 1996* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the consequential amendment to the *Public Sector Employment and Management Act 2002* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act on the day following the day on which the proposed Act commences. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Superannuation Administration Act 1996

Schedule 1 [2] enables the STC Board to employ the chief executive officer.

Schedule 1 [3] requires the Minister's concurrence to the determination of the terms and conditions of employment of the chief executive officer. In addition, the amendment provides for the appointment by the STC Board of an acting chief executive officer if required.

Schedule 1 [1] makes a consequential amendment.

Schedule 2 Consequential amendment of Public Sector Employment and Management Act 2002

Schedule 2 removes the position of chief executive officer of STC from the Chief Executive Service, and from the application of provisions of the Act relating to the appointment and terms and conditions of public sector executives in that Service.

Issues Considered by the Committee

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| 5. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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The Committee makes no further comment on this Bill.

13. TRANSPORT ADMINISTRATION AMENDMENT (METRO RAIL) BILL 2008

Date Introduced:	26 November 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Minister for Transport

Purpose and Description

1. The purpose of this Bill is to amend the *Transport Administration Act 1998* to constitute Sydney Metro as a statutory authority to develop and operate metro railway systems. The Authority will be in charge of developing and managing the CBD Metro and any potential future stages of the Sydney Metro system.
2. Under the Bill a *metro railway* is a guided system designed to transport passengers on a railway track, together with its infrastructure and associated sidings that provides high-frequency commuter and other passenger services and is operated using automated systems.
3. The Authority's function of developing a metro railway system includes carrying out development for the purposes of a metro railway system, facilitating, managing, financing or maintaining such a system and ancillary functions. The Bill enables Sydney Metro to prepare station plans for development around metro railway stations and it gives it power to acquire land by agreement or by compulsory process in accordance with the *Land acquisition (Just Terms Compensation) Act 1991*.
4. Division 2 of Part 6A of the Bill constitutes Sydney Metro as a corporation that is a NSW government agency. Its staff will be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*. The Bill contains provisions relating to the management of Sydney Metro, similar to those applicable to the State corporations under the *Transport Act*. There is to be a Sydney Metro Board, comprising the Chief Executive Officer, three members appointed by the Minister for Transport and one member appointed on the nomination of the Treasurer. The Board will determine the policies of Sydney Metro. The Chief Executive Officer is to manage and control the affairs of Sydney Metro in accordance with the policies of the Sydney Metro Board. The Minister may give directions to the Sydney Metro Board in relation to the exercise of Sydney Metro functions.

Background

5. The Minister in his Agreement in Principle speech states that the New South Wales Government has allocated in its mini-budget \$1.8 billion in forward estimates to start developing a metro system for Sydney. He states that the Government wishes to proceed with the CBD Metro as quickly as possible to ensure that New South Wales has the transport capacity for growth and jobs in the central business district. He states that the latest estimate is that by 2036 there will be 6 million people living in

Sydney and that providing them with a new metro system will start with the CBD Metro. He said that the Government is actively pursuing the integration of the Metro system with the redevelopment of Central Station to cater for a London tube - style interchange bringing commuters from the west through the central business district.

6. The Minister said the CBD Metro is the first phase, with the creation of a dedicated focused Authority that would ensure the effective delivery of a world-class Metro product. He said that as well as providing the foundation for a network of Metros; the CBD Metro will provide a much-needed new high capacity transit corridor through the city relieving passenger congestion at Town hall and Wynyard stations. Sydney Metro must prepare a corporate plan for each financial year and provide it to the Minister, as well as make it available for public comment, before it is finalised.

The Bill

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Transport Administration Act 1988* (the Transport Act) set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the other Acts set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Transport Administration Act 1988

Schedule 1 [1] amends the long title to the Transport Act to include a reference to Sydney Metro.

Schedule 1 [2] amends section 3 of the Transport Act to insert definitions of **metro railway** and **metro railway system**.

Schedule 1 [3] amends section 3 of the Transport Act to exclude metro railway systems from being included in the NSW rail network for the purposes of that Act.

The effect of this is that provisions relating to access to the NSW rail network and network control will not apply to metro railway systems.

Schedule 1 [4] amends section 3 of the Transport Act to include Sydney Metro as a rail infrastructure owner in relation to rail infrastructure that it manages or controls for the purpose of exercising its functions under that Act. It will also be a rail infrastructure owner in relation to rail infrastructure that is vested in it.

Schedule 1 [5] amends section 3 of the Transport Act to insert a definition of Sydney Metro.

Schedule 1 [6] amends section 3A of the Transport Act to make a consequential amendment.

Schedule 1 [7] inserts proposed Part 6A (Sydney Metro) into the Transport Act.

Proposed Division 1 of Part 6A (proposed section 55A) defines words and expressions used in the proposed Part, including the expression **develop a metro railway system**. That term includes carrying out development for the purposes of a metro railway system, facilitating, managing, financing or maintaining such a system and ancillary functions.

Proposed Division 2 of Part 6A (proposed section 55B) constitutes Sydney Metro as a corporation that is a NSW Government agency. Its staff will be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*.

Proposed Division 3 of Part 6A (proposed sections 55C–55E) confers functions on Sydney Metro. The functions include developing metro railway systems, holding, managing and maintaining rail infrastructure facilities for metro railways and entering into arrangements with other persons for the provision of metro railway passenger services, the operation of metro railway systems or the development, management and control or maintenance of metro railway systems and charging fees or making arrangements for fares for metro railway passenger services. The proposed Division also enables Sydney Metro to prepare station plans for development around metro railway stations and gives it power to acquire land by agreement or compulsory process.

Proposed Division 4 of Part 6A (proposed sections 55F–55P) contains provisions relating to the management of Sydney Metro, similar to those applicable to other statutory corporations under the Transport Act. There is to be a Sydney Metro Board, comprising the Chief Executive Officer, 3 members appointed by the Minister for Transport and 1 member appointed on the nomination of the Treasurer, which is to determine the policies of Sydney Metro. The Chief Executive Officer is to manage and control the affairs of Sydney Metro in accordance with the policies of the Sydney Metro Board and the Minister may give written directions to the Sydney Metro Board in relation to the exercise of Sydney Metro's functions. Sydney Metro must prepare a corporate plan for each financial year and provide it to the Minister, as well as make it available for public comment, before it is finalised. Sydney Metro may also exercise functions through a subsidiary corporation or in a partnership, joint venture or other association with other persons or bodies. The proposed Division also provides for the creation of public subsidiary corporations of Sydney Metro and sets out conditions on which Sydney Metro may create private subsidiary corporations. Sydney Metro may also delegate its functions.

Proposed Division 5 of Part 6A (proposed sections 55Q–55S) contains various provisions. It makes it an offence for a person to use commercial information gained in the administration or execution of the proposed Part for the person's own advantage or the advantage of a spouse, de facto partner, relative or associate. The proposed Division also contains a provision that authorises agreements entered into by Sydney Metro, or approved by it, relating to metro railway systems and related conduct, as agreements or conduct that will not be a contravention of Part IV (Restrictive trade practices) of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*. The proposed Division also provides that the consent of a council that is the relevant roads authority will not be required for works done by Sydney Metro in relation to a classified road for the purpose of exercising its functions under the Transport Act, although consent by the Roads and Traffic Authority will be required.

Schedule 1 [9] amends section 56 of the Transport Act to apply the provisions of that Act relating to staff of transport authorities (including entitlements to long service leave) to the staff of Sydney Metro. Schedule 1 [8] makes a consequential amendment.

Schedule 1 [10] inserts proposed Division 2A of Part 8 (proposed sections 76A–76C). The proposed Division establishes the Sydney Metro Fund and makes provision for payments to and from that Fund in connection with the funding and functions of Sydney Metro.

Schedule 1 [11] amends section 89 of the Transport Act to apply miscellaneous provisions of that Act that apply to other rail authorities, such as RailCorp, to Sydney Metro. The

provisions include a provision limiting the compensation payable by rail authority, a provision enabling the Minister to transfer assets, rights and liabilities of a rail authority, a provision enabling a person to be a member of a board of more than one rail authority, provisions conferring rights and obligations relation to rail infrastructure and a provision enabling the Minister to delegate functions to the chief executive officer of a rail authority.

Schedule 1 [12] amends section 89 of the Transport Act to omit a redundant definition.

Schedule 1 [13] amends section 89 of the Transport Act to apply miscellaneous provisions of that Act that apply to State rail operators, such as RailCorp, to Sydney Metro. The provisions include a provision enabling regulations to be made about matters such as safety and security and parking offences on State rail operator land and a provision conferring enforcement and investigation powers on authorised officers of State rail operators.

Schedule 1 [14] amends section 94 of the Transport Act to include local councils the public authorities to which assets, rights and liabilities of rail authorities may transferred by Ministerial order.

Schedule 1 [15] amends section 99A of the Transport Act to exclude Sydney Metro from the prohibition on the closure of railway lines other than with the authorisation of an Act of Parliament.

Schedule 1 [16] amends section 107 of the Transport Act to apply miscellaneous provisions of that Act that apply to other transport authorities, such as the State Transit Authority, to Sydney Metro. The provisions include provisions relating to the seal of the authority, a provision conferring contractual powers, a provision relating to liability, a provision validating acts done by an authority that contravene Ministerial direction and a provision enabling charges and fees to be recovered civil debt proceedings.

Schedule 1 [17] amends section 112 of the Transport Act to make it clear that the exclusion from personal liability extends to omissions.

Schedule 1 [18] and [19] amend section 112 of the Transport Act to extend the protection from personal liability conferred by that section to the Chief Executive Officer of Sydney Metro and to members of the Sydney Metro Board.

Schedule 1 [20] amends section 116 of the Transport Act to extend the provisions that make the owner of a vehicle used in a parking offence guilty of a parking offence (whether or not the owner committed the actual offence) to parking offences committed on land vested in Sydney Metro.

Schedule 1 [21] inserts proposed Schedule 2B into the Transport Act. The proposed Schedule contains machinery provisions relating to the constitution and procedure, and the Chief Executive Officer, of Sydney Metro.

Schedule 1 [22] and [23] amend Schedule 4 to the Transport Act to make it clear that orders transferring the assets, rights and liabilities of transport authorities include assets, rights and liabilities that may or may not be personal or assignable.

Schedule 1 [24] amends Schedule 4 to the Transport Act to make it clear that entitlements and obligations in relation to transferred assets, rights and liabilities, that would have been those of the transferor and that arise after the transfer, are also transferred to the transferee when a transfer order to which that Schedule applies is made, whether or not they are actual or potential when the order takes effect.

Schedule 1 [25] amends Schedule 5 to the Transport Act as a consequence of the application of provisions relating to long service leave to the staff of Sydney Metro.

Schedule 1 [26] amends Schedule 6A to the Transport Act to include Sydney Metro as a rail infrastructure owner in relation to rail infrastructure that it manages or controls for the purpose of exercising its functions under that Act. It will also be a rail infrastructure owner in relation to rail infrastructure that is vested in it.

Schedule 1 [27] amends Schedule 6A to the Transport Act to apply the provisions of that Schedule (which confers powers relating to rail infrastructure facilities and land on rail authorities) to Sydney Metro.

Schedule 1 [28] amends Schedule 6A to the Transport Act to make Sydney Metro the owner of all rail infrastructure facilities installed by Sydney Metro or vested in or transferred to Sydney Metro (whether or not the place on which the facilities are situated is owned by Sydney Metro).

Schedule 1 [29] amends Schedule 6A to the Transport Act to make it clear that the powers to enter land for purposes connected with the functions of Sydney Metro include power to enter land for the purpose of carrying out geotechnical surveys.

Schedule 1 [30] amends Schedule 6B to the Transport Act to apply the provisions of that Schedule (which confers powers relating to underground rail facilities) to Sydney Metro.

Schedule 1 [31] amends Schedule 7 to the Transport Act to enable regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 1 [32] amends Schedule 7 to the Transport Act to insert a transitional provision.

Schedule 2 Amendment of other Acts

2.1 Electricity Supply Act 1995 No 94

Schedule 2.1 [1] amends section 106 of the *Electricity Supply Act 1995* to enable regulations to be made exempting Sydney Metro from provisions of that Act requiring distribution network service providers to connect premises using customer connection contracts and from other provisions relating to contract requirements and consultative committees. Sydney Metro is made a distribution network service provider under that Act by being included as a provider of a rail network electricity system by the amendment made by **Schedule 2.1 [2]**.

2.2 Local Government Act 1993 No 30

Schedule 2.2 [1] amends section 555 of the *Local Government Act 1993* to make land vested in or owned by Sydney Metro, in, on or over which rail infrastructure facilities are installed, exempt from rates.

Schedule 2.2 [2] amends section 600 of that Act to make Sydney Metro eligible for a rebate of rates on land that is vested in it.

Schedule 2.2 [3] amends section 742 of that Act to extend dispute resolution procedures for disputes between councils and government bodies to Sydney Metro.

2.3 Pipelines Act 1967 No 90

Schedule 2.3 amends section 3 of the *Pipelines Act 1967* to make Sydney Metro a public authority for the purposes of that Act. The effect of this is that Sydney Metro will not be required to hold a licence in respect of any pipeline it constructs and must be notified of applications for pipeline licences and other matters.

2.4 Public Sector Employment and Management Act 2002 No 43

Schedule 2.4 [1] amends Schedule 1 to the Public Sector Employment and Management Act 2002 to establish a new Division within the Government Service for staff of Sydney Metro. **Schedule 2.4 [2]** makes a consequential amendment.

2.5 Roads Act 1993 No 33

Schedule 2.5 amends the *Roads Act 1993* to prevent a roads authority from carrying out drainage work in or on which rail infrastructure facilities of Sydney Metro are situated.

Issues Considered by the Committee

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

Issue: Clause 2 – Commencement by proclamation

7. 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 Act on any day it chooses or not at all.

8. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asked Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

The Committee makes no further comment on this Bill.

14. WORKERS COMPENSATION LEGISLATION AMENDMENT (BENEFITS) BILL 2008

Date Introduced:	26 November 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Joseph Tripodi MP
Portfolio:	Finance, Infrastructure, Regulatory Reform, Ports & Waterways

Purpose and Description

1. The *Workers Compensation Legislation Amendment (Benefits) Bill 2008* (the Bill) amends the *Workers Compensation Act 1987* (the 1987 Act) to make further provision for benefits payable under the Act and workers compensation insurance.
2. The object of the Bill is as follows:
 - (a) to increase the lump sum death benefit to \$425,000 (with the increase benefit to apply to deaths with a date of injury after the commencement of the 1987 Act where the date of death is on or after 24 October 2007);
 - (b) to provide that the lump sum death benefit must be paid to a deceased worker's estate if the worker dies leaving no financial dependants;
 - (c) to remove discretion to reduce the amount payable as lump sum death benefits to a deceased worker's dependants on the basis of partial financial dependency (without preventing apportionment of the death benefit amount among multiple dependants);
 - (d) to enable the introduction of an alternative method of calculating workers compensation insurance premiums as an optional alternative method to be available to certain large employers with the approval of the Workers Compensation Nominal Insurer;
 - (e) to enable the Nominal Insurer to require employers whose workers compensation premiums are calculated by means of an optional alternative method to lodge a security deposit or guarantee to provide security for the payment of those premiums.
3. The Bill also amends the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* to extend the amendments mentioned in paragraphs (a)–(c) above (relating to lump sum death benefits) to fire fighters and emergency and rescue workers covered by that Act.

Background

Lump Sum Death Benefits

4. The Bill reforms the death benefit provisions in the 1987 Act. The proposed changes will apply to work-related deaths occurring on or after 24 October 2007, provided that

the injury that caused the death occurred after the relevant provisions of the current workers compensation system commenced (30 June 1987).

5. In the Agreement in Principle Speech dated 26 November 2008, the Minister made the following statement:

The Workers Compensation Legislation Amendment (Benefits) Bill 2008 reflects the Government's continued commitment to ensuring the New South Wales workers compensation scheme provides comprehensive and generous compensation packages to the families of workers who die as a result of workplace injury. The significant reforms in this bill will provide additional security and peace of mind for these families. The bill also contains provisions that enable an alternative premium calculation model, creating an incentive for large employers to improve their workplace safety and injury management processes. These changes are responsible, sustainable reforms for the benefit of both employers and their workers.

6. The proposed amendments in Schedule 1 [2] increase the amount of the lump sum death benefit from the current rate of \$343,550 to \$425,000 (an increase of more than 20 per cent). This amount would be paid in addition to funeral expenses and the weekly payments that are available for dependant children under section 25 of the 1987 Act. The insertion of the provision also removes the discretion to reduce the lump sum payable to partial dependents of a deceased worker.
7. Schedule 1 [4] provides that where there is only one dependant (wholly or partially dependent), they will be entitled to the entire lump sum payment. Where there are two or more dependants, the lump sum death benefit will be apportioned among the dependents so that the sum of the amount apportioned equals the full lump sum.
8. Under the current arrangements, when a worker dies from work-related injuries and leaves no financial dependants, the only compensation payable is funeral expenses. Accordingly, the Bill allows the lump sum death benefit to be paid to a deceased worker's estate where the worker leaves no financial dependants.
9. The lump sum death benefit is also extended to fire fighters and other emergency and rescue workers covered by the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987.

Optional Alternative Method of Calculating Premium For Large Employers

10. Schedule 1 [8], proposed section 168A of the Bill provides for an optional alternative premium calculation method for large employers. Under 1987 Act, the premium for an employer's workers compensation policy is calculated by reference to an insurance premiums order and is determined on an industry basis. In 2004, WorkCover reviewed the scheme's premium system and made a number of changes to premium calculations principally for small to medium employers. During the review, WorkCover received support from large employers for a premium calculation method that would be more flexible and responsive to their needs. Under the proposed changes, instead of having a premium determined on an industry basis, an employer's final premium could be based on their own claims experience.
11. Through linking the premium closely with the actual cost of the claims experienced, employers are provided with a financial incentive to prevent injuries and assist workers in their recovery from an injury. Employers who reduce the number and

severity of claims can achieve significant savings under the proposals. However, if an employer's injury prevention and management system is not effective, the proposed model can result in higher than conventional premium costs.

12. Under proposed section 168A(2), the alternative method will only be open to large employers who satisfy the eligibility criteria established by the insurance premiums order and who are approved by the Nominal Insurer for the alternative method. This will ensure that participating employers have the resources and systems to effectively implement the injury prevention and management strategies needed to utilise the premium arrangement effectively. The Minister highlighted that the proposed arrangements are most appropriate for large employers with a relatively stable claims history and resources to proactively manage injury prevention and return to work.
13. According to the Agreement in Principle Speech, the deferred premium payment feature of the alternative premium calculation method results in a cash flow benefit for the employer, which presents a risk to the scheme and other participating employers from employer insolvency. To mitigate this risk, Schedule 1 [9] requires approved participating employers to provide the Nominal Insurer with security for their premium liability in the form of a security deposit or guarantee to the Nominal Insurer. As stated in the Agreement in Principle Speech:

By holding the required security, the Nominal Insurer can protect the WorkCover Scheme and ensure that other employers are not required to make additional contributions if an individual employer's business fails. As utilisation of the alternative premium calculation method will be voluntary, employers will be able to take the cost of providing a bank guarantee or other security into account when making the decision whether or not to apply for access to the alternative premium calculation method. The changes contained in this bill are largely to enable WorkCover to obtain a bank guarantee or other surety from participating employers.
14. The Bill also proposes to initially limit the number of employers who are granted access to the arrangements, to allow for refinement of the model before it is offered more widely.

The Bill

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.

Clause 3 is a formal provision that gives effect to the amendments to the 1987 Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Lump sum death benefits

The 1987 Act provides for the payment of lump sum compensation if an injury results in the death of a worker and the worker has dependants, and provides for the apportionment of that compensation among the deceased worker's dependants.

Schedule 1 [2] increases the lump sum death benefit to \$425,000 and provides for the payment of the lump sum to the dependants of the deceased worker or to the estate of the deceased worker if the worker leaves no dependants. **Schedule 1 [1], [3] and [7]** make consequential amendments.

Schedule 1 [4] makes it clear that the apportionment of the lump sum death benefit among dependants is not to result in any reduction in the total amount payable, so that if there is only one dependant that dependant receives the full amount of compensation and if there are 2 or more dependants the full amount of compensation is apportioned between them.

Schedule 1 [5] and [6] make consequential amendments to provisions for the indexation of the lump sum death benefit.

Schedule 2 [1]–[4] extend the lump sum death benefit amendments to fire fighters and other emergency and rescue workers covered by the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

Optional alternative premium calculation method

The 1987 Act provides for the premium to be paid for a workers compensation insurance policy to be calculated in the manner fixed by an insurance premiums order.

Schedule 1 [8] (proposed section 168A) provides that an insurance premiums order may fix (as an **optional alternative method**) an alternative method of calculating premiums for workers compensation insurance policies. An optional alternative method will only apply to large employers who satisfy eligibility criteria established by the insurance premiums order and who are approved by the Nominal Insurer for the alternative method.

Schedule 1 [9] (proposed section 172A) provides for the Nominal Insurer to require an employer to whom an optional alternative method of premium calculation applies to provide a security deposit or guarantee to be available for discharging the employer's liability to pay premiums calculated under the optional alternative method.

Savings and transitional

Schedules 1 [11] and 2 [5] provide savings and transitional regulation making powers.

Schedules 1 [10] and 2 [6] enact consequential savings and transitional arrangements. Under those arrangements, the death benefit amendments apply to deaths occurring on or after 24 October 2007 but not to a death resulting from an injury received before the commencement of the 1987 Act.

Issues Considered by the Committee

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

Retrospectivity – Schedule 1 [10] and Schedule 2 [6]

15. The Committee notes that the lump sum death benefit applies retrospectively. The proposed changes will apply to work-related deaths occurring on or after 24 October 2007, provided that the injury that caused the death occurred after the relevant provisions of the current workers compensation system commenced (30 June 1987). Given the beneficiary nature of the legislation to increase the amount of lump sum death benefits payable to family members of deceased workers who are both partially

and wholly dependent, the Committee does not consider the amendments to adversely impact the rights and liberties of a person.

Strict Liability - Schedule 1 [9] – proposed sections 172A(1), 172A(5) and 172A(6) – Method of giving security

16. Proposed section 172A(1) provides that the Nominal Insurer may require an employer to provide them with a deposit if they are or were insured under the proposed optional scheme in section 168A. It continues to state that the employer must:
- (a) deposit with the Nominal Insurer such amount as the Nominal Insurer determines and notifies the employer to be the employer's required deposit in respect of the policy of insurance concerned; and
 - (b) deposit with the Nominal Insurer, at such time or times as the Nominal Insurer may direct by notice to the employer, such additional amount or amounts as the Nominal Insurer determines to be necessary to ensure that the amount the employer has on deposit under this section is the employer's required deposit for the time being.
17. The maximum proposed penalty under section 172A(1) is 100 penalty units. The Committee notes that the proposed arrangements provide an optional alternative method of calculating insurance premium. An employer may elect to have their insurance premium calculated according to the method in proposed section 168A. If an employer decides to participate in the scheme and is deemed eligible under section 168A(2), proposed section 172A provides that the Nominal Insurer may require the employer to provide a security deposit. However, although proposed section 172A(1) includes the term may, the Agreement in Principle Speech indicates the intended application of the provision. As stated by the Minister: 'the bill requires approved participating employers to provide the Nominal Insurer with security for their premium liability. This security can be in the form of a security deposit or guarantee to the Nominal Insurer. This security will protect the Workers Compensation Scheme in a situation where a participating employer goes into liquidation'.
18. Further, proposed section 172A(5) provides that an 'employer must comply with any written direction of the Nominal Insurer to provide the Nominal Insurer with specified information (including actuarial information) for the purpose of enabling the Nominal Insurer to determine the employer's required deposit in respect of a policy of insurance from time to time'. The proposed maximum penalty under this provision is 50 penalty units.
19. The Committee also notes its comments in Digest Number 5 of 2008¹⁷, with respect to section 215(4) of the 1987 Act and notes that proposed section 172A(6) provide that sections 214 – 215A of the 1987 Act apply to and in respect of the amount deposited with the Nominal Insurer. According to section 215(4) of the 1987 Act: A person must comply with a requirement under subsection (3) and the provision holds a maximum penalty of 100 penalty units. Subsection (3) provides that: 'If the market value of any such securities is at any time below par, the Authority may require the person to deposit further securities to such an amount that the total market value of

¹⁷ See page 59.

all the securities deposited by the person equals the amount of the deposit required to be made by the person'.

20. The Committee notes that imposing strict or absolute liability is often considered to be contrary to the fundamental right to be presumed innocent until proven guilty as a person is presumed to have committed an offence irrespective of their intention.¹⁸ However, given the public interest of the proposed provisions, namely to protect the Workers Compensation scheme as well as the optional nature of the premium calculation method for employers under proposed section 168A, the Committee concludes that personal rights and liberties are not unduly trespassed by proposed section 172A(1) and 172A(5).

The Committee makes no further comment on this Bill.

¹⁸ Legislation Review Committee, *Strict and Absolute Liability*, Discussion Paper, No 2, 8 June 2006.

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Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07		1	
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			12

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2008

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Administrative Decisions Tribunal Amendment Bill 2008				N, R	
Adoption Amendment Bill 2008	N, R	N, R		N	
Bible Society NSW (Corporate Conversion) Bill 2008	N				
Board of Adult and Community Education Repeal Bill 2008	N, R				
Building Professionals Amendment Bill 2008	N, R			N, R	
Callan Park Trust Bill 2008	N				
Child Protection (Offenders Registration) Amendment Bill 2008	N				
Children (Criminal Proceedings) Amendment Bill 2008	N			N, R	
Children (Criminal Proceedings) Amendment (Youth Conduct Orders) Bill 2008	N, R			N, R	
Civil Liability Legislation Amendment Bill 2008	N, R, C			N, R	
Classification (Publications, Films and Computer Games) Enforcement Amendment (Advertising) Bill 2008				N	
Coal and Oil Shale Workers (Superannuation) Amendment Bill 2008	N				
Combat Sports Bill 2008				N, R	
Consumer, Trader and Tenancy Tribunal Amendment Bill 2008	N, R			N	
Contaminated Land Management Amendment Bill 2008	N, R			N, R	
Courts and Crimes Legislation Amendment Bill 2008	N				
Courts and Crimes Legislation Further Amendment Bill 2008	N, R			N, R	
Crimes Amendment (Cognitive Impairment – Sexual Offences) Bill 2008				R	
Crimes Amendment (Drink and Food Spiking) Bill 2008				R	
Crimes Amendment (Rock Throwing) Bill 2008	N, R			N, R	
Crimes Amendment (Sexual Offences) Bill 2008				N, R	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Crimes (Administration of Sentences) Amendment Bill 2008	N, C			N, R	
Crimes (Administration of Sentences) Legislation Amendment Bill 2008			N		
Crimes (Domestic and Personal Violence) Amendment Bill 2008	N				
Crimes (Forensic Procedures) Amendment Bill 2008	N, C				
Crimes (Sentencing Procedure) Amendment (Life Sentences) Bill 2008	N, R		N, R		
Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Bill 2008				R	
Criminal Case Conferencing Trial Bill 2008	N, R				
Dangerous Goods (Road and Rail Transport) Bill 2008	N			R	
Dividing Fences and Other Legislation Amendment Bill 2008				N, R	
Education Amendment Bill 2008	N, R				
Election Funding Amendment (Political Donations and Expenditure) Bill 2008				N, R	
Electricity Industry Restructuring Bill 2008	N, R	N, R		N, R	
Electricity Industry Restructuring Bill 2008 (No 2)	N, R	N, R		R	
Environmental Planning and Assessment Amendment Bill 2008	N, R	N, R	N, R	N, R	N, R
Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008	N, R	N, R			
Filming Related Legislation Amendment Bill 2008				N, R	
Fines Further Amendment Bill 2008				N, R	
Fisheries Management and Planning Legislation Amendment (Shark Meshing) Bill 2008				N, R	
Food Amendment (Public Information on Offences) Bill 2008				R	
Food Amendment (Trans Fatty Acids Eradication) Bill 2008*	N				
Gaming Machines Amendment Bill 2008	N			N, R	N, R
Gaming Machines Amendment (Temporary Freeze) Bill 2008	N				
Graffiti Control Bill 2008	N			N, R	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Hemp Industry Bill 2008	N, R		N, R	N, R	
Home Building Amendment Bill 2008	N		N, R		
Homebush Motor Racing (Sydney 400) Bill 2008	N			N, R	N
Housing Amendment (Tenant Fraud) Bill 2008	N, R	R			
Independent Commission Against Corruption Amendment (Reporting Corrupt Conduct) Bill 2008	N				
Institute of Teachers Amendment Bill 2008	N			N, R	
Jury Amendment Bill 2008	N				
Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Bill 2008				R	
Liquor Legislation Amendment Bill 2008	N, R, C				
Local Government Amendment (Legal Status) Bill 2008				N	
Local Government and Planning Legislation Amendment (Political Donations) Bill 2008				N, R	
Marine Safety Amendment Bill 2008				N, R	
Mental Health Legislation Amendment (Forensic Provisions) Bill 2008	N			R	
Medical Practice Amendment Bill 2008	N, R			N, R	
Mining Amendment Bill 2008	N				
Mining Amendment (Improvements on Land) Bill 2008	N, R				
Miscellaneous Act Amendment (Same Sex Relationships) Bill 2008	N			N, R	
National Gas (New South Wales) Bill 2008					N
Police Integrity Commission Amendment (Crime Commission) Bill 2008	N		N		
Ports and Maritime Administration Amendment (Port Competition and Co-ordination) Bill 2008				N, R	
Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008		N, R		N, R	
Public Health (Tobacco) Bill 2008	N			N, R	

Legislation Review Committee

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Public Sector Employment and Management Amendment Bill 2008	R				
Racing Administration Amendment Bill 2008	R			R	
Rail Safety Bill 2008	N			N, R	
Retirement Villages Amendment Bill 2008	N			R	
Road Transport Legislation Amendment Bill 2008	N			N, R	
Road Transport (Driver Licensing) Amendment (Demerit Points System) Bill 2008				N, R	
Road Transport Legislation Amendment (Car Hoons) Bill 2008	R		R	R	
Rural Lands Protection Amendment Bill 2008	N, R	N, R			
Security Industry Amendment Bill 2008	N			N	
Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2008*	N, R				
Sporting Venues Authorities Bill 2008	N				
State Emergency and Rescue Management Amendment (Botany Emergency Works Bill 2008	N				
State Revenue Legislation Amendment Bill 2008	N, R				
Statute Law (Miscellaneous Provisions) Bill 2008	N			N, R	
Statute Law (Miscellaneous Provisions) Bill (No 2) 2008	N				
Strata Management Legislation Amendment Bill 2008				N, R	
Succession Amendment (Family Provision) Bill 2008				R	
Summary Offences and Law Enforcement Legislation Amendment (Laser Pointers) Bill 2008	N, R			N, R	
Thoroughbred Racing Amendment Bill 2008			N, R	N, R	
Thoroughbred Racing Further Amendment Bill 2008				N, R	
Threatened Species Conservation Amendment (Special Provisions) Bill 2008	N				
Tow Truck Industry Amendment Bill 2008	N			R	
Transport Administration Amendment (Metro Rail) Bill 2008				N, R	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Transport Administration Amendment (Rail and Ferry Transport Authorities) Bill 2008			N, R	N, R	
Vexatious Proceedings Bill 2008	N			R	
Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008*	N, R				
Water (Commonwealth Powers) Bill 2008	N				
Water Management Amendment Bill 2008	N, R, C			N, R	
Western Crown Lands Amendment (Special Purpose Leases) Bill 2008		N, R			
Workers Compensation Amendment Bill 2008	N, R				
Workers Compensation Legislation Amendment (Benefits) Bill 2008	N				

Key

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

Appendix 4: Index of correspondence on regulations reported on in 2008

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08		10
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10