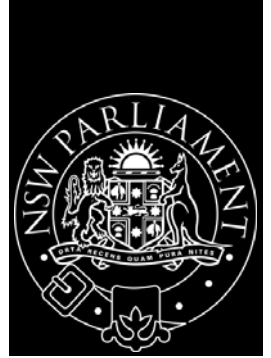


PARLIAMENT OF NEW SOUTH WALES



# Legislation Review Committee

## LEGISLATION REVIEW DIGEST

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No 6 of 2010

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\* Denotes Private Member's Bill

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## FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

### 8A Functions with respect to Bills

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

### 9 Functions with respect to Regulations:

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

## GUIDE TO THE *LEGISLATION REVIEW DIGEST*

### Part One – Bills

#### Section A: Comment on Bills

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

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

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

### Part Two – Regulations

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

#### Regulations for the special attention of Parliament

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

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

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

#### Copies of Correspondence on Regulations

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

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

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

## Appendix 2: Index of Ministerial Correspondence on Bills

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

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

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

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

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

## SUMMARY OF CONCLUSIONS

### SECTION A: Comment on Bills

#### 1. Appropriation (Budget Variations) Bill 2010

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

#### 2. Charter of Budget Honesty (Election Promises Costing) Amendment Bill 2010

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

#### 3. Commercial Arbitration Bill 2010

**Issue: Disclosure Of Confidential Information And Self Incrimination - Clause 27D (7) of Part 5 – Power of arbitrator to act as mediator, conciliator or other non-arbitral intermediary:**

32. The Committee raises the concern as to whether clause 27D (7) may contradict or undermine subclause (2)(b) with regard to treating the confidentiality of information obtained by the arbitrator acting as mediator from a party with whom he or she communicated separately if that party did not agree to the information being treated as non-confidential or if the arbitration agreement relating to mediation did not provide for the treatment of such information or communication.
33. The Committee will be concerned if a Bill removes or restricts a person's potential right against self incrimination. The right against self incrimination is well recognised both at common law and in international law. Article 14(3)(g) of the *International Covenant on Civil and Political Rights* provides that a person has a right not to be compelled to testify against himself or herself.
34. However, the right against self-incrimination needs to be balanced with the public benefit that may flow from obtaining or disclosing information. Nonetheless, any abrogation of the right against self-incrimination should not be more than is justified in the circumstances. Accordingly, the Committee is concerned that confidential information that is obtained separately from a party during mediation when the same arbitrator acted as a mediator, and when such information may not have been ordinarily obtained under arbitration, may be circumstances that do not justify any disclosure of confidential information and abrogation of the potential right against self incrimination. The Committee believes that this should be in keeping with safeguard provisions proposed for other persons such that they will not be compelled under any subpoena or a court order to answer any question or produce any document that the person could not be compelled to answer or produce in a proceeding before the Court as available under clause 27A (3) and clause 27B (5).



35. Therefore, the Committee refers this to Parliament to consider whether clause 27D (7) of Part 5 in providing for the disclosure of otherwise confidential information, may lead to the circumstances of restricting the potential right against self-incrimination and an undue trespass on the rights and liberties of individuals.

**Issue: Excludes Appeal And Review – Clause 27I (4) of Part 5 – The Court may allow disclosure of confidential information in certain circumstances:**

40. Therefore, the Court may order the disclosure of confidential information in certain circumstances where such an order may not be subject to an appeal.
41. The Committee will be concerned when a Bill seeks to exclude a review or an appeal and refers this to Parliament to consider whether clause 27I (4) of Part 5 may subject individual rights such as those concerning the disclosure of confidential information, to be unduly dependent on decisions that cannot be appealed or reviewed.

**Issue: Clause 1B of Part 1A - Commencement By Proclamation - Provide the executive with unfettered control over the commencement of an Act.**

43. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

#### **4. Coroners Amendment (Domestic Violence Death Review Team) Bill 2010**

**Issue: Clause 2 - Commencement By Proclamation - Provide the executive with unfettered control over the commencement of an Act.**

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

#### **5. Liquor Legislation Amendment Bill 2010**

**Issue: Oppressive Official Powers - Schedule 2 Amendment of the *Local Government Act 1993* – Confiscation of alcohol in alcohol-free zones**

7. Schedule 2 now extends alcohol-free zone powers and penalties under Section 632 of the *Local Government Act 2010* to precincts under liquor accords. The Committee has previously expressed concerns about the fact that the operation of alcohol free zones and associated penalties regarding the issuing of notices and confiscation or disposing of alcohol may sometimes affect differentially, or impact disproportionately, on marginalised groups.

#### **6. Local Government Amendment (General Rate Exemptions) Bill 2010**

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

## **7. Transport Administration Amendment Bill 2010**

**Issue: Clause 2 - Commencement By Proclamation - Provide the executive with unfettered control over the commencement of an Act.**

**12. The Committee recognises the significant administrative arrangements that need to take place before this Bill can commence operation and therefore has not identified any issues under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.**

## Part One – Bills

### SECTION A: COMMENT ON BILLS

# 1. APPROPRIATION (BUDGET VARIATIONS) BILL 2010

Date Introduced:	12 May 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Eric Roozendaal MLC
Portfolio:	Treasurer

### Purpose and Description

1. This Bill seeks to appropriate amounts out of the Consolidated Fund for the years 2009–2010 and 2008–2009 for the purpose of giving effect to certain Budget variations required by the exigencies of Government.
2. The Bill has three key features. First: it provides an account to Parliament on how the 2009–10 Treasurer's Advance has been applied towards recurrent and capital expenditure, and details of the allocation of the 2008–09 Advance not previously reported to Parliament. Second: it seeks appropriations to cover expenditure approved by the Governor under section 22 of the *Public Finance and Audit Act 1983*. Third: it seeks appropriation for payments that are intended to be made in the current financial year where no provision was made in the annual Appropriation Bill.
3. Schedule 1 covers appropriations for 2009–10, and Schedule 2 covers payments made in 2008–09. The payments for 2008–09 have already been brought to account in agency audited financial statements.
4. The Bill also seeks appropriations for payments made during the 2008–09 financial year approved by the Governor under section 22 of the *Public Finance and Audit Act 1983*, and reporting the payments made under the Treasurer's Advance.
5. Schedule 2 details the funding made in 2008–09. This includes additional funding for the First Home Owner Grant scheme, Government obligations under private bus contracts, additional insurance and claims costs for the Police Death and Disability scheme, and higher school-based employee costs. Each of the payments made in 2008–09 has been included in the audited financial statements of the relevant agencies for that year.

### Background

6. This Bill is part of the annual budget process. According to the Agreement in Principle Speech:

It is not always possible to seek Parliament's authority in advance for unforeseen and urgent expenditure, and provisions have been established for such situations. These

include the Treasurer's Advance and section 22 of the *Public Finance and Audit Act 1983*. In the annual Appropriation Act an advance is appropriated to the Treasurer to cater for unforeseen and urgent expenditures that could not be forecast at budget time...This Bill includes details of expenditure from the Treasurer's Advance, ensuring that there is a transparent and accountable process to Parliament. Under section 22 of the *Public Finance and Audit Act 1983*, the Treasurer, with the approval of the Governor, has determined that amounts will be paid from the Consolidated Fund for exigencies of government, in anticipation of appropriation by Parliament. This Bill provides details of those payments.

7. The Bill seeks approval for the payment of additional appropriations in 2009-10 for which no provision was made in the annual Appropriation Act. This includes an additional contribution to the Pooled Fund Superannuation Scheme, funding for the Metropolitan Transport Plan and a Principal Priority Building Program loan to the Department of Education and Training.

## The Bill

8. The objects of this Bill are as follows:

(a) to set out the recurrent services and capital works and services for which the "Advance to the Treasurer" appropriation was expended in the 2009–2010 and 2008–2009 years, and to make the necessary adjustments to the appropriation for each of those years,

(b) to appropriate the following amounts from the Consolidated Fund for recurrent services that were required by the exigencies of Government in accordance with section 22 (1) of the *Public Finance and Audit Act 1983*:

(i) in relation to the 2009–2010 year—\$79,720,000,

(ii) in relation to the 2008–2009 year—\$136,400,000,

(c) to appropriate an additional amount of \$695,000,000 from the Consolidated Fund for certain recurrent services and capital works and services for the 2009–2010 year.

## 9. Outline of provisions

### Part 1 Preliminary:

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

**Clause 2** provides that the proposed Act commences on the date of assent.

### Part 2 Budget variations 2009–2010:

**Clause 3** adjusts the amount appropriated out of the Consolidated Fund for "Advance to the Treasurer" for the 2009–2010 year. The recurrent services and capital works and services for which the Advance was expended are set out in Column 1 of Schedule 1 and total \$347,162,000 of the \$440,000,000 originally advanced.

**Clause 4** appropriates the additional amounts for recurrent services under section 22 (1) of the *Public Finance and Audit Act 1983*, the details of which are set out in Column 2 of Schedule 1. Because these amounts are appropriated by the proposed Act, subclause (2) removes the requirement of the *Public Finance and Audit Act 1983* that details of them be included in the Appropriation Act for the 2010–2011 financial year.

**Clause 5** appropriates the additional amounts for recurrent services, and capital works and services, the details of which are set out in Column 3 of Schedule 1.

**Part 3 Budget variations 2008–2009:**

**Clause 6** adjusts the amount appropriated out of the Consolidated Fund for “Advance to the Treasurer” for the 2008–2009 year. The recurrent services and capital works and services for which the Advance was expended are set out in Column 1 of Schedule 2 and total \$222,488,000 of the \$400,000,000 originally advanced.

**Clause 7** appropriates the additional amounts for recurrent services under section 22 (1) of the *Public Finance and Audit Act 1983*, the details of which are set out in Column 2 of Schedule 2. Because these amounts are appropriated by the proposed Act, subclause (2) removes the requirement of the *Public Finance and Audit Act 1983* that details of them be included in the Appropriation Act for the 2010–2011 financial year.

**Part 4 General:**

**Clause 8** makes it clear that the sums appropriated by the proposed Act are in addition to any other sums appropriated in respect of the year 2008–2009 or 2009–2010.

**Clause 9** contains miscellaneous provisions concerning the operation of the proposed Act. Subclause (1) provides that the proposed Act is to be construed as part of the annual Appropriation Act or Acts. (This emphasises that the appropriations are part of the budgetary process for the year 2008–2009 or 2009–2010, and ensures that terms are construed consistently.) Subclause (2) is consequential on subclause (1) and makes it clear that the appropriations are not limited to meeting shortfalls from other appropriations. Subclause (3) validates any payment of the appropriated sums before the date of assent to the proposed Act. Subclause (3) also provides that the proposed subsection applies whether or not the proposed Act is assented to during or after the year 2008–2009 or 2009–2010. (This removes an argument, based on section 23 of the *Public Finance and Audit Act 1983*, that the appropriation lapses at the close of the financial year.)

**Clause 10** validates, to the extent (if any) to which it may be necessary to do so, the expenditure, before the date of assent to the proposed Act, of any sum to which the proposed Act applies and the approval of that expenditure.

**Clause 11** makes it clear that a reference to an agency specified in Schedule 1 or 2 includes any predecessor of the agency that was responsible for the recurrent services, or capital works and services, specified in relation to the agency in Schedule 1 or 2 in the financial year concerned. This provision is included because names of Departments and other agencies may have changed during the financial year concerned because of administrative changes.

**Issues Considered by the Committee**

<p><b>10. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</b></p>
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***The Committee makes no further comment on this Bill.***

## 2. CHARTER OF BUDGET HONESTY (ELECTION PROMISES COSTING) AMENDMENT BILL 2010

Date Introduced:	12 May 2010
House Introduced:	Legislative Council
Minister Responsible:	The Hon Eric Roozendaal MLC
Portfolio:	Treasury

### Purpose and Description

1. The objects of this Bill are to require the Auditor-General to review Treasury costings of election promises and to require an independent financial consultant, nominated by the Auditor-General, to be engaged by the Secretary of the Treasury for the purposes of assisting the Secretary in preparing costings and budget impact statements.

### Background

2. The Bill is an amendment Bill to the *Charter of Budget Honesty (Election Promises Costing) Act 2006*. The Act was passed to provide an impartial framework for costing election promises in the lead-up to New South Wales' elections. The Act provides for the New South Wales Treasury to be made available to cost the election promises made by both the Government and the Opposition. These costings include a four-year forward projection encompassing both capital and recurrent commitments. The costings are publicised to enable the electorate and the media to judge each of the major party's financial credibility and better understand the cost of election promises.
3. This amendment Bill now provides for independent oversight by the Auditor General of the costing of election promises made by the Government and Opposition during a State election campaign.
4. Under the Bill, the Secretary of the Treasury will be authorised to seek a review by the Auditor General of the cost of a publicly announced or proposed election promise and the aggregate budget impact statement for all publicly announced election promises. The Auditor General will be authorised to conduct such a review.
5. The Bill further requires that a Treasury costing of an election promise be undertaken in conjunction with a recognised independent financial consultant to be nominated by the Auditor General.
6. Both the Premier and the Leader of the Opposition will be able to request the Secretary of the Treasury to prepare costings of publicly announced or proposed policies up to 60 days before an election.
7. The Secretary of the Treasury will provide the Premier and Leader of the Opposition with a draft budget impact statement, which will include a summary of the financial impact of each costed policy and the net financial impact of all costed policies, 15

days before the election. Both the Premier and the Leader of the Opposition are to confirm their policies within 48 hours before the Secretary of the Treasury publicly releases the budget impact statement five working days before the election.

## The Bill

### 8. Outline of provisions

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

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

Schedule 1 Amendment of *Charter of Budget Honesty (Election Promises Costing) Act 2006* No 89

#### Review of Treasury costings by Auditor-General

**Schedule 1 [9]** requires the Auditor-General to review Treasury costings and budget impact statements and to prepare reports of the reviews for public release.

**Schedule 1 [4]** provides that the Secretary of the Treasury is to provide the report of the review of a Treasury costing to the Premier or the Leader of the Opposition (as the case requires).

**Schedule 1 [5]** provides that when a Treasury costing is publicly released by the Secretary of the Treasury, it is to be accompanied by the Auditor-General's report of the review of the costing.

**Schedule 1 [7]** provides that the report of the review of the budget impact statements is to be included in the budget impact statements that are publicly released by the Secretary of the Treasury on the fifth last day before a State election.

Under the amendments, the Secretary of the Treasury is to provide costing requests and proposed Treasury costings to the Auditor-General and is to ensure that the Auditor-General has access to other necessary information for the purpose of conducting a review. If the Auditor-General needs more information about a policy for the purpose of a review, the Secretary of the Treasury is to ask the Premier or the Leader of the Opposition (as the case requires) to provide that information.

**Schedule 1 [2]** inserts a note to the definition of *Treasury costing* to the effect that Treasury costings and budget impact statements are required to be reviewed by the Auditor-General.

**Schedule 1 [8]** inserts a note stating that the Auditor-General must provide a report of the review of the Treasury costings and budget impact statements for inclusion in the budget impact statements.

#### Independent financial consultant

**Schedule 1 [10]** provides that the Secretary of the Treasury is to engage a person or body with financial expertise (referred to as an *independent financial consultant*) to assist the Secretary in the preparation of Treasury costings and budget impact statements. The independent financial consultant is to be nominated by the Auditor-General. The consultant must not be a public authority, a public official or an official of a political party.

### **Confidentiality of information and documents relating to Treasury costings**

**Schedule 1 [11]–[17]** provide that the information and documents that cannot be disclosed will be extended to include information and documents relating to a review by the Auditor-General. The prohibition on the Secretary of the Treasury or members of Treasury staff disclosing such information or documents will be extended so that the Auditor-General and the independent financial consultant and their staff are also prohibited from disclosing the information and documents.

### **Other amendments**

**Schedule 1 [18]** enables the Secretary of the Treasury to revise a Treasury costing or budget impact statement to correct any errors identified by a review by the Auditor-General.

**Schedule 1 [3], [6] and [8]** replace notes that referred to relevant dates in relation to the 2007 State election with the relevant dates for the upcoming 2011 State election.

**Schedule 1 [1]** inserts relevant definitions.

## **Issues Considered by the Committee**

- |   |
|---|
| <p>9. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
|---|

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



### 3. COMMERCIAL ARBITRATION BILL 2010

Date Introduced:	12 May 2010
House Introduced:	Legislative Council
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General

#### Purpose and Description

1. This Bill relates to the conduct of commercial arbitrations; to repeal the *Commercial Arbitration Act 1984*; and for other purposes.
2. The main object of this Bill is to facilitate the fair and final resolution of commercial disputes by impartial tribunals without unnecessary delay or expense. It aims to provide a new procedural framework for the conduct of domestic commercial arbitrations.
3. It seeks to encourage the use of arbitration as a means of resolving domestic commercial disputes and harmonises the procedures for resolution of such disputes with those applicable to the resolution of international commercial disputes under the *International Arbitration Act 1974* of the Commonwealth (the Commonwealth Act).
4. The Bill contains a number of additional provisions supporting the arbitration process and some optional provisions which may be used by the parties to an arbitration agreement should a dispute arise between them. These include provisions relating to assistance from the Supreme Court (or another court nominated by the parties), the consolidation of arbitral proceedings, the disclosure of confidential information and the awarding of interest and costs. It also provides for the issue of subpoenas, and the recognition and enforcement of awards with respect to domestic commercial arbitrations.
5. In addition, this Bill also repeals the *Commercial Arbitration Act 1984*, and enacts provisions of a savings and transitional nature and makes consequential amendments to other Acts.
6. Part 1 of this Bill applies to domestic commercial arbitration and clarifies that it is not a domestic arbitration if it is an international arbitration for the purposes of the Commonwealth Act. Part 2 defines an arbitration agreement and requires a court before which an action is brought to refer that matter to arbitration if it is the subject of a arbitration agreement and a party so requests. Part 3 deals with the composition of arbitral tribunals and provides flexibility and autonomy to parties in selecting the arbitrator or arbitral tribunal to decide their dispute. It enables parties to agree on the number of arbitrators as well as the process by which they will be selected and how they may be challenged. It provides a default position should the parties not be able to reach agreement. Clause 12 sets out the grounds on which the appointment of an arbitrator may be challenged and the proposed arbitrators are to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence.

7. Part 4 deals with the jurisdiction of arbitral tribunals, which makes it clear that an arbitral tribunal is competent to determine whether it has jurisdiction in a dispute but also enables a party to seek a ruling on the matter from the court where a tribunal determines that it has jurisdiction. Interim measures are dealt with in Part 4A. It provides power to arbitral tribunals to grant interim measures for purposes such as maintenance of the status quo and the preservation of assets and evidence. The Bill also contains power to grant enumerated interim and procedural orders in addition to those contained in the UNCITRAL Model Law.
8. Part 4A also provides for the recognition and enforcement of interim measures, issued under a law of New South Wales or of another State or Territory, in certain circumstances. The grounds for refusing recognition or enforcement of an interim measure are contained in Part 4A.
9. Part 5 provides for the conduct of arbitral proceedings, which includes that parties must be given a fair hearing and that they are free to agree on the procedure to be followed by an arbitral tribunal, or, in the absence of agreement, for the arbitral tribunal to conduct the arbitration as it considers appropriate.
10. Part 5 includes provisions additional to those in the model law aim to ensure that arbitrations can be conducted efficiently and cost-effectively. Clause 24B imposes a duty on parties to do all things necessary for the proper and expeditious conduct of arbitral proceedings. Additional powers to those contained in the UNCITRAL model are provided by clause 25 to ensure that arbitral tribunals have sufficient powers to deal with delay by parties or failure to comply with a direction of the tribunal.
11. Clause 27A enables parties, with the consent of the arbitral tribunal, to make an application to the court to issue a subpoena requiring a person to attend arbitral proceedings or to produce documents. Clause 27D provides that an arbitrator can act as a mediator, conciliator or other non-arbitral intermediary, if the parties so agree, to provide further flexibility for parties to agree on how their disputes are to be determined. If a mediation or conciliation is not successful, an arbitrator cannot resume as an arbitrator without the written consent of all parties.
12. Part 5 also provides an optional confidentiality regime. The provisions apply on an opt-out basis to cover situations in which an arbitration agreement does not cover confidentiality.
13. Part 6 covers the making of awards and the termination of proceedings.
14. Clause 33B in Part 6 enables an arbitral tribunal to limit the costs of arbitration, or any part of the arbitral proceedings, to a specified amount, unless otherwise agreed by the parties. This gives arbitral tribunals the flexibility to cap costs on the basis of proportionality, which is a mechanism to ensure that arbitrations can be conducted in a proportionate manner to the money and complexity of the issues involved.
15. Part 7 provides for recourse against award, which outlines the circumstances in which an application can be made for the setting aside of an award, or grounds upon which parties can appeal an award, if parties have agreed to allow appeals under the optional provision.

16. Recognition and enforcement of awards is dealt with in Part 8, which allows for the recognition of awards irrespective of the State or Territory in which it was made, and which outlines the grounds on which enforcement can be refused.

## Background

17. The Bill facilitates the use of arbitration agreements to manage domestic commercial disputes by adopting the provisions of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the Model Law), taking into account the Commonwealth Act and with appropriate modifications for domestic commercial arbitration.
18. The current legislation is part of uniform domestic arbitration legislation across all States and Territories. This uniform legislation has not kept pace with changes in international best practice and still reflects the old English arbitration Acts. There is a need for reform and many stakeholders, including the Chief Justice of New South Wales, have advocated for the update of commercial arbitration legislation.
19. At the May 2010 meeting of the Standing Committee of Attorneys General (SCAG), Ministers agreed to update the uniform legislation. This updated legislation would be based on the United Nations Commission on International Trade Law [UNCITRAL] Model Law on International Commercial Arbitration.
20. At the April 2009 meeting of the SCAG, it was agreed that the UNCITRAL model law would form the basis for the reform of domestic arbitration legislation. It was agreed that additional provisions, consistent with the UNCITRAL law and necessary for domestic dispute management, would be appropriate. Jurisdictions such as New Zealand and Singapore have also based their domestic arbitration legislation on the UNCITRAL model law.
21. Following the Ministers' agreement at the April 2009 meeting, a draft model Commercial Arbitration Bill was drafted. The draft Bill was sent out for targeted consultation with stakeholders.
22. New South Wales will be the first jurisdiction to introduce legislation based on the model Bill.
23. The Commonwealth Government also introduced in November 2009 the International Arbitration Amendment Bill to increase effectiveness, efficiency and affordability in international commercial arbitration.
24. Basing domestic commercial arbitration legislation on the UNCITRAL model law creates national consistency in the regulation and conduct of international and domestic commercial arbitration. The Commonwealth *International Arbitration Act 1974* gives effect to the model law in relation to international arbitrations.
25. This Bill supplements the model law to provide for domestic dispute management. The Second Reading Speech explained that:

At the April 2009 standing committee meeting, Ministers agreed on two principles to guide the drafting of the uniform legislation. They were: that the bill should give effect to the overriding purpose of commercial arbitration, namely, to provide a quicker, cheaper and less formal method of finally resolving disputes than litigation; and that the bill

should deliver a nationally harmonised system for international and domestic arbitration, noting the Commonwealth's review of the *International Arbitration Act 1974*. The purpose of the law, also agreed to by Ministers, is found in section 1AC of the bill, the paramount object provision, to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense. Stakeholders advocated for and endorsed the inclusion of a paramount object clause, noting the absence of such a provision as a weakness in the present uniform commercial arbitration Acts.

26. The UNCITRAL Model Law has been supplemented by additional provisions to deal with costs and the awarding of interest. Stakeholders suggested that harmonised treatment of costs and interests across international and domestic legislation was desirable, and these are dealt with consistently with the Commonwealth Act.

## The Bill

### 27. Outline of provisions

#### Part 1A Preliminary:

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

**Clause 1B** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 1C** states that the paramount object of the proposed Act is to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense.

#### Part 1 General provisions:

**Clause 1** applies the proposed Act to domestic commercial arbitrations. An arbitration is a **domestic arbitration** if the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in Australia and have (whether in the arbitration agreement or in any other document in writing) agreed that any dispute that has arisen or may arise between them is to be settled by arbitration. It is not a domestic arbitration if it is an arbitration to which the Model Law (as given effect by the Commonwealth Act) applies as that Act covers the field with respect to international commercial arbitrations. Clause 1 (5) also makes it clear that the proposed Act is not intended to affect any other Act that provides that certain disputes may not be submitted to arbitration or may only be submitted according to provisions other than those of the proposed Act.

**Clause 2** defines certain words and expressions used in the proposed Act. In particular, it defines **confidential information**, **disclose**, **Model Law** and **party**. The clause also contains provisions for interpreting referential phrases in the proposed Act, including provisions relating to the meaning of a reference to the fact that the parties have agreed and that a reference to leaving the parties free to determine an issue includes the right of the parties to authorise a third party (including an institution) to determine the issue.

**Clause 2A** makes it clear that in interpreting the proposed Act regard should be had to promoting uniformity between the application of the proposed Act to domestic commercial arbitrations and the application of the Model Law (as given effect by the Commonwealth Act) to international commercial arbitrations.

**Clause 3** deems written communications to have been received by a party in specified circumstances.

**Clause 4** waives the right of a party to object to non-compliance with a provision of the proposed Act or of an arbitration agreement if the party proceeds with arbitration but fails to object to that non-compliance either without delay or within any time-limit.

**Clause 5** makes it clear that a court is not to intervene in matters governed by the proposed Act, except as provided by the Act.

**Clause 6** specifies the functions of arbitration assistance and supervision to be performed by the Supreme Court, or by the District Court or Local Court if the parties so provide in the arbitration agreement, under the proposed Act.

### **Part 2 Arbitration agreement:**

**Clause 7** defines an *arbitration agreement* as an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement must be “in writing”. The proposed section makes it clear that “in writing” has an expanded meaning. An agreement may be concluded orally, by conduct or other means, provided that its content is recorded in some form, including electronic communication. An agreement will also be in writing if it is contained “in an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other”.

**Clause 8** requires a court before which an action is brought in a matter that is the subject of an arbitration agreement to refer the matter to arbitration if a party so requests in the circumstances specified in the proposed section. It also enables an arbitration to be commenced or continued while the issue is pending before the court.

**Clause 9** enables a party to obtain an interim measure of protection from a court, before or during arbitral proceedings.

### **Part 3 Composition of arbitral tribunal:**

**Clause 10** enables the parties to determine the number of arbitrators and specifies that, in the absence of agreement between the parties, the default number of arbitrators is one.

**Clause 11** allows the parties to agree on the procedure for appointing arbitrators. It provides a default procedure with ultimate recourse to the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) if agreement cannot be reached or the agreed procedure is not followed.

**Clause 12** sets out the grounds on which the appointment of an arbitrator may be challenged. It obliges proposed arbitrators to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. This obligation starts when a person is approached to be an arbitrator and continues throughout the person’s appointment as an arbitrator. Clause 12 (5) and (6) provide that the test for whether there are justifiable doubts as to the impartiality or independence of an arbitrator is whether there is a real danger of bias. This is based on the test for bias applied by the House of Lords in *R v Gough* [1993] AC 646.

**Clause 13** provides that the parties are free to determine the procedure for challenging an arbitrator and provides a default procedure for challenging the appointment or continued appointment of an arbitrator in the absence of agreement for such a challenge. It also provides that if a challenge fails, a party may have recourse to a court to determine the matter.

**Clause 14** provides for the termination of the mandate of an arbitrator in certain circumstances.

**Clause 15** requires the appointment of a substitute arbitrator according to the appointment procedure and any other eligibility requirements that were applicable to the arbitrator being replaced.

#### **Part 4 Jurisdiction of arbitral tribunal:**

**Clause 16** makes it clear that an arbitral tribunal is competent to make a determination as to whether or not it has jurisdiction to arbitrate a commercial dispute. It also makes it clear that an arbitration agreement may be severed from the contract in which it is contained (if applicable) so that it may stand independently. It expressly provides that any determination that the contract is invalid does not mean that the arbitration clause is invalid. The provision also enables a party to seek a ruling from the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) from a determination of the tribunal that it has jurisdiction.

#### **Part 4A Interim measures:**

##### **Division 1 Interim measures:**

**Clause 17** confers power on an arbitral tribunal to grant interim measures (unless otherwise agreed by the parties) similar to the ex parte orders that could be obtained from a court during litigation prior to the final determination of a dispute for purposes such as maintenance of the status quo and preservation of assets and evidence.

**Clause 17A** requires a party requesting certain interim measures to satisfy the arbitral tribunal (to the extent the arbitral tribunal considers appropriate) that if the measure concerned is not ordered then harm not adequately reparable by an award of damages is likely to result and that there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

##### **Division 2 Preliminary orders:**

Articles 17B and 17C of the Model Law are not adopted by the proposed Act but the clause numbering is retained to maintain consistency with the numbering of the Model Law.

##### **Division 3 Provisions applicable to interim measures:**

**Clause 17D** enables an arbitral tribunal to modify, suspend or terminate an interim measure either on the application of any party or, in exceptional circumstances and having given prior notice, on the tribunal's own initiative.

**Clause 17E** enables an arbitral tribunal to require a party that requests an interim measure to provide appropriate security.

**Clause 17F** enables an arbitral tribunal to require any party to disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.

**Clause 17G** imposes a liability on a party that requests an interim measure for any costs and damages caused by the measure to any party to the arbitration agreement, if the tribunal subsequently determines that it should not have granted that interim measure.

#### **Division 4 Recognition and enforcement of interim measures:**

**Clause 17H** provides for the recognition and enforcement of an interim measure issued under a law of New South Wales, or an interim measure issued under a law of another State or Territory of Australia, in certain circumstances.

**Clause 17I** outlines the circumstances in which the recognition or enforcement of an interim measure may be refused.

#### **Division 5 Court ordered interim measures:**

**Clause 17J** makes it clear that the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) has the same power to issue an interim measure in arbitration proceedings as it has in relation to proceedings in courts.

#### **Part 5 Conduct of arbitral proceedings:**

**Clause 18** makes it clear that parties must be given a fair hearing.

**Clause 19** provides that the parties are free to agree on the procedure to be followed by the arbitral tribunal and enables the arbitral tribunal to conduct the arbitration in such manner as it considers appropriate in the absence of such agreement. The clause specifies the powers conferred on the arbitral tribunal and provides that, by leave of the Supreme Court (or another court agreed by the parties as referred to in proposed section 6), an arbitral tribunal's order or direction may be enforced by a judgment being entered in terms of the order or direction.

**Clause 20** provides that the parties are free to agree on the place of arbitration and enables an arbitral tribunal to determine the place of arbitration in the absence of such agreement.

**Clause 21** provides for arbitral proceedings to commence on the date that a request for the referral to arbitration is received by the respondent. The clause applies unless otherwise agreed by the parties.

**Clause 22** provides that the parties are free to agree on the language or languages to be used in arbitral proceedings. Failing such agreement the arbitral tribunal is to determine the language or languages to be used. The agreement or determination applies to written statements and any hearing, award, decision or other communication of the arbitral tribunal unless otherwise agreed by the parties. The proposed section also enables an arbitral tribunal to make an order for documentary evidence to be accompanied by an appropriate translation.

**Clause 23** sets out requirements with respect to statements of claim and defence. The clause applies unless otherwise agreed by the parties and is subject to directions of the arbitral tribunal.

**Clause 24** sets out the procedure for the conduct of the arbitral proceedings. Unless otherwise agreed by the parties, the arbitral tribunal is enabled to decide whether to hold an oral hearing or to make a decision on the papers and other materials submitted. The discretion to make a decision on the papers is limited in so far as the arbitral tribunal must hold an oral hearing if requested by a party, provided that they have not agreed beforehand that no hearings are to be held. The proposed section makes it clear that documents sought to be relied upon must be communicated to another party to the arbitration.

**Clause 24A** enables a party to appear in person or be represented by any person of their choice in oral hearings of the tribunal.

**Clause 24B** imposes a duty on the parties to do all things necessary for the proper and expeditious conduct of arbitral proceedings.

**Clause 25** states the powers of an arbitral tribunal in the event of a party's failure to communicate a statement of claim or a statement of defence or to appear at a hearing or produce documentary evidence. The clause applies unless otherwise agreed by the parties.

**Clause 26** empowers an arbitral tribunal, unless otherwise agreed by the parties, to appoint experts to report on specific issues determined by the tribunal, and if necessary to appear at a hearing for the purpose of examination. It also empowers the arbitral tribunal, unless otherwise agreed by the parties, to require a party to give information or to provide access in order to inspect documents, goods or other property.

**Clause 27** enables a request to be made to the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) by an arbitral tribunal or a party with the approval of an arbitral tribunal, for assistance in taking evidence.

**Clause 27A** enables the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) to issue a subpoena requiring a person to attend the arbitral proceedings for examination, or to produce documents, on the application of a party made with the consent of the arbitral tribunal. The clause is based on section 17 of the *Commercial Arbitration Act 1984*.

**Clause 27B** provides that, unless otherwise agreed by the parties, on application to the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) by a party or the arbitral tribunal the court may order a person in default to comply with a subpoena or a requirement of the arbitral tribunal and may make consequential orders as to the transmission of evidence or documents to the arbitral tribunal. The clause is based on section 18 of the *Commercial Arbitration Act 1984*.

**Clause 27C** enables the consolidation of certain arbitral proceedings. The clause applies unless otherwise agreed by the parties. The clause is based on section 26 of the *Commercial Arbitration Act 1984*.



**Clause 27D** provides that an arbitrator can act as mediator in the proceedings if the parties so agree. It also outlines the circumstances in which mediation can be terminated. This includes where any party withdraws their consent to the mediation. It also prohibits an arbitrator who has acted in mediation proceedings that have been terminated from conducting subsequent arbitration, unless the written consent of all the parties to the arbitration has been obtained.

**Clause 27E** provides for the protection of confidential information. **Confidential information** is defined in proposed section 2 as information that relates to arbitral proceedings or to an award made in those proceedings and covers documents associated with the proceedings such as statements of claim and pleadings, evidence supplied to the arbitral tribunal, transcripts of evidence, submissions and rulings and awards of the arbitral tribunal. The clause applies unless otherwise agreed by the parties. It prohibits the disclosure of confidential information by either the parties to the arbitration or the tribunal, except as allowed by proposed sections 27F–27I.

**Disclose** is defined in proposed section 2 to include publishing or communicating or otherwise supplying confidential information. The provisions are adapted (with modifications) from similar provisions of the *Arbitration Act 1996* of New Zealand.

**Clause 27F** sets out the general circumstances in which confidential information can be disclosed by a party to the proceedings or the arbitral tribunal. These circumstances include where all the parties have consented, it is necessary for the establishment or protection of the legal rights of a party, disclosure is required by subpoena or a court order or where disclosure is authorised or required by another relevant law (including a law of the Commonwealth or of another State or Territory) or for the purposes of enforcing an arbitral award.

**Clause 27G** allows an arbitral tribunal to authorise the disclosure of confidential information in circumstances other than those mentioned in proposed section 27F at the request of one of the parties and only once the other parties have been heard.

**Clause 27H** outlines the circumstances in which the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) may make an order prohibiting the disclosure of confidential information on the application of a party and after giving all parties an opportunity to be heard. It requires consideration of whether or not the public interest would be served by disclosure or non-disclosure and whether disclosure is more than reasonable for the purpose. The proposed section deals with the situation where consent of all the parties has not been obtained under proposed section 27F (2) or where the arbitral tribunal refuses to make an order under proposed section 27G.

**Clause 27I** outlines the circumstances in which the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) may make an order allowing the disclosure of confidential information and sets out the matters the court must take into consideration before making an order.

**Clause 27J** enables a party to make an application to the Supreme Court (or another court agreed by the parties as referred to in proposed section 6), and confers jurisdiction on the court, to determine a question of law that arises in the course of arbitration, unless otherwise agreed.

## **Part 6 Making of award and termination of proceedings:**

**Clause 28** enables the parties to choose the substantive law to be applied to the particular facts of the matter in dispute (as opposed to determining the arbitral law under which the dispute is resolved). It makes it clear that an arbitral tribunal is to make a determination in accordance with the terms of the contract, taking into account the usages of the trade applicable to it.

**Clause 29** specifies that a majority of arbitral tribunal members (if there is more than one arbitrator) is necessary to constitute a decision of the tribunal unless otherwise agreed by the parties.

**Clause 30** provides for the recording of a settlement between the parties in the form of an award.

**Clause 31** prescribes the form and content of an award.

**Clause 32** describes the circumstances in which arbitral proceedings are terminated.

**Clause 33** enables the correction or interpretation of a provision of the award, or the making of an additional award. It makes it clear that any interpretation of the tribunal forms part of the award.

**Clause 33A** enables an arbitrator to make an order for specific performance of a contract in circumstances where the Supreme Court would have power to do so, unless otherwise agreed by the parties.

**Clause 33B** allows the arbitral tribunal (unless otherwise agreed by the parties) to determine costs (including the fees and expenses of the arbitrator or arbitrators) at its discretion and to direct that they be limited to a specified amount. A direction limiting the amount must be given sufficiently in advance for the parties to take it into account in managing their own costs.

**Clause 33C** applies Division 11 (Costs assessment) of Part 3.2 (Costs disclosure and assessment) of the *Legal Profession Act 2004* to the assessment of costs by a court exercising jurisdiction under proposed section 33B.

**Clause 33D** enables the Supreme Court (or another court agreed by the parties as referred to in proposed section 6), to make orders with respect to the costs of an abortive arbitration. It is based on section 36 of the *Commercial Arbitration Act 1984*.

**Clause 33E** provides for the imposition (unless otherwise agreed by the parties) by the arbitral tribunal of interest in an award for payment of money for the period before the making of the award.

**Clause 33F** provides for the imposition (unless otherwise agreed by the parties) by the arbitral tribunal of interest on the debt under an award.

#### **Part 7 Recourse against award:**

**Clause 34** outlines the circumstances in which an application to the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) may be made for

the setting aside of an award, or an appeal against an award, and the criteria to be applied. In particular it requires the court to find either that the subject matter of the dispute is not capable of settlement by arbitration under a law of New South Wales, or that the award is in conflict with public policy. Section 19 of the Commonwealth Act declares that, for the purposes of the application of the Model Law by that Act, an award is in conflict with public policy if the making of the award was induced or affected by fraud or corruption or a breach of the rules of natural justice occurred in connection with the making of the award.

**Clause 34A** enables an appeal to the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) on a question of law, if the parties have agreed prior to the commencement of arbitration that such appeals may be made and the court grants leave.

### **Part 8 Recognition and enforcement of awards:**

**Clauses 35 and 36** establish a framework for the recognition and enforcement of arbitral awards.

### **Part 9 Miscellaneous:**

**Clause 37** outlines the effect that the death of a party has on an arbitration agreement. It is based on section 52 of the *Commercial Arbitration Act 1984*.

**Clause 38** makes provision for relief by way of interpleader. It is based on section 54 of the *Commercial Arbitration Act 1984*.

**Clause 39** confers immunity on an arbitrator acting in good faith.

**Clause 40** provides that the proposed Act binds the Crown.

**Clause 41** enables rules of court to make further provision for giving effect to the proposed Act.

**Clause 42** repeals the *Commercial Arbitration Act 1984*.

**Clause 43** enables the making of regulations.

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

**Schedule 1** enables the making of regulations of a savings and transitional nature, and contains savings and transitional provisions, consequent on the enactment of the proposed Act.

### **Schedule 2 Amendment of Acts and regulations:**

**Schedule 2** contains amendments to various Acts and regulations 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: Disclosure Of Confidential Information And Self Incrimination - Clause 27D (7) of Part 5 – Power of arbitrator to act as mediator, conciliator or other non-arbitral intermediary:**

28. Clause 27D provides that an arbitrator can act as mediator in the proceedings if the parties so agree. It also outlines the circumstances in which mediation can be terminated. This includes where any party withdraws their consent to the mediation. It also prohibits an arbitrator who has acted in mediation proceedings that have been terminated from conducting subsequent arbitration, unless the written consent of all the parties to the arbitration has been obtained.
29. Clause 27D (2) provides that: an arbitrator acting as a mediator: (a) may communicate with the parties collectively or separately, and (b) must treat information obtained by the arbitrator from a party with whom he or she communicates separately as confidential, unless that party otherwise agrees or unless the provisions of the arbitration agreement relating to mediation proceedings otherwise provide.
30. However, clause 27D (7) further provides that: If confidential information is obtained from a party during mediation proceedings as referred to in subsection (2)(b) and the mediation proceedings terminate, the arbitrator must, before conducting subsequent arbitration proceedings in relation to the dispute, disclose to all other parties to the arbitration proceedings so much of the information as the arbitrator considers material to the arbitration proceedings.
31. There is also no equivalent of this proposed section in the Model Law [the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration].

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| <ol style="list-style-type: none"><li>32. <b>The Committee raises the concern as to whether clause 27D (7) may contradict or undermine subclause (2)(b) with regard to treating the confidentiality of information obtained by the arbitrator acting as mediator from a party with whom he or she communicated separately if that party did not agree to the information being treated as non-confidential or if the arbitration agreement relating to mediation did not provide for the treatment of such information or communication.</b></li><li>33. <b>The Committee will be concerned if a Bill removes or restricts a person's potential right against self incrimination. The right against self incrimination is well recognised both at common law and in international law. Article 14(3)(g) of the <i>International Covenant on Civil and Political Rights</i> provides that a person has a right not to be compelled to testify against himself or herself.</b></li></ol> |
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34. However, the right against self-incrimination needs to be balanced with the public benefit that may flow from obtaining or disclosing information. Nonetheless, any abrogation of the right against self-incrimination should not be more than is justified in the circumstances. Accordingly, the Committee is concerned that confidential information that is obtained separately from a party during mediation when the same arbitrator acted as a mediator, and when such information may not have been ordinarily obtained under arbitration, may be circumstances that do not justify any disclosure of confidential information and abrogation of the potential right against self incrimination. The Committee believes that this should be in keeping with safeguard provisions proposed for other persons such that they will not be compelled under any subpoena or a court order to answer any question or produce any document that the person could not be compelled to answer or produce in a proceeding before the Court as available under clause 27A (3) and clause 27B (5).
35. Therefore, the Committee refers this to Parliament to consider whether clause 27D (7) of Part 5 in providing for the disclosure of otherwise confidential information, may lead to the circumstances of restricting the potential right against self-incrimination and an undue trespass on the rights and liberties of individuals.

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

#### **Issue: Excludes Appeal And Review – Clause 27I (4) of Part 5 – The Court may allow disclosure of confidential information in certain circumstances:**

36. Clause 27I outlines the circumstances in which the Supreme Court (or another court agreed by the parties as referred to in proposed section 6) may make an order allowing the disclosure of confidential information and sets out the matters the court must take into consideration before making an order.
37. Confidential information is defined in clause 2 as information that relates to arbitral proceedings or to an award made in those proceedings but also covers documents associated with the proceedings such as statements of claim and pleadings, evidence supplied to the arbitral tribunal, transcripts of evidence, submissions and rulings and awards of the arbitral tribunal. The clause applies unless otherwise agreed by the parties. It prohibits the disclosure of confidential information by either the parties to the arbitration or the tribunal, except as allowed by proposed sections 27F–27I.
38. Clause 27I (1) states that: The Court may make an order allowing a party to disclose confidential information in relation to the arbitral proceedings in circumstances other than those mentioned in section 27F if the Court is satisfied, in the circumstances of the particular case, that:
- (a) the public interest in preserving the confidentiality of arbitral proceedings is outweighed by other considerations that render it desirable in the public interest for the confidential information to be disclosed, and
  - (b) the disclosure is no more than is reasonable for that purpose.

39. Clause 271 (4) proposes that: An order of the Court under this section that is made within the limits of the authority of the Court is final. The Committee notes that there is no equivalent to this proposed section in the Model Law.

**40. Therefore, the Court may order the disclosure of confidential information in certain circumstances where such an order may not be subject to an appeal.**

**41. The Committee will be concerned when a Bill seeks to exclude a review or an appeal and refers this to Parliament to consider whether clause 271 (4) of Part 5 may subject individual rights such as those concerning the disclosure of confidential information, to be unduly dependent on decisions that cannot be appealed or reviewed.**

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

**Issue: Clause 1B of Part 1A - Commencement By Proclamation - Provide the executive with unfettered control over the commencement of an Act.**

42. 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. However, the Committee accepts the advice received from the Attorney-General's office that "the consequential amendments...that the Bill will necessitate involve changes to both the Supreme Court Rules and the Civil Procedure Rules. [Clause] 1B proposes proclamation rather than assent to allow time for the court to make these changes and will also allow courts and arbitrators to have some notice of the new Act. Normally getting the rule amendments through would take 2-3 months (they are non-legislative, but require meetings of the committees responsible for the Rules)".

**43. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.**

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

## 4. CORONERS AMENDMENT (DOMESTIC VIOLENCE DEATH REVIEW TEAM) BILL 2010

Date Introduced:	13 May 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General

### Purpose and Description

1. This Bill amends the *Coroners Act 2009* with respect to the establishment and functions of the Domestic Violence Death Review Team; and for other purposes.
2. The object of this Bill is to create a statutory framework that will support the operation of the expert, multidisciplinary Domestic Violence Death Review Team. The team will work to identify systemic issues and causes of deaths occurring in a domestic violence context. The focus is on reducing the incidence of these types of deaths through facilitating improvements in systems and services. The review process is not a coronial investigation; it does not reinvestigate matters.
3. The Domestic Violence Death Review Team will have the following functions: review closed cases of domestic violence deaths in New South Wales, or a death of a person who usually resides in New South Wales; analyse data to identify patterns and trends related to such deaths; make recommendations to prevent or reduce the likelihood of such deaths; establish and maintain a database about such deaths; and undertake research that aims to help prevent or reduce the likelihood of such deaths.
4. It will enable the team to review a death, even if it may be the subject of review by the Child Death Review Team. It contains provisions that will enable information transfer between the two review mechanisms.
5. The Bill will allow the team to review a range of deaths occurring in a domestic violence context, including the homicide of a spouse, partner or children, as well as suicides or fatal accidents that are domestic violence related. The effective operation of the Domestic Violence Death Review Team depends on its ability to obtain information about the services accessed by those affected by domestic violence-related deaths. Therefore, the Bill includes provisions that impose a duty on certain persons, including department heads, chief executive officers and senior members of any government department, the Police Commissioner, medical practitioners and health care professionals to provide the team with access to records that will enable the team to obtain this information.
6. The access to and use of this information will be restricted and protected by provisions requiring all persons associated with the team to keep such information confidential and not disclose for any reason, other than those exceptions contained in the Bill. These exceptions include situations where a disclosure is made in good faith for the purpose of exercising a relevant function; authorised by the convenor to be made in connection with related research—this relates to de-identified information

only; or made by the convenor to the relevant authorities for a range of specific purposes. Examples of which may include investigating possible criminal offences; reporting children at risk of harm; providing information relating to a death within the State Coroner's jurisdiction; providing information to the Child Death Review Team in relation to its functions; providing information to the Ombudsman concerning a death relevant to the Ombudsman's function; and providing information to the NCIS (National Coroners Information System).

## Background

7. This Bill establishes an expert, multidisciplinary team, convened by the State Coroner, to review deaths that occur in the context of domestic violence.
8. From the Agreement in Principle Speech:

Part of this process involves identifying gaps in services and systems with the aim of developing a better understanding of how these can be improved to ensure that people who are victims of domestic violence do not fall through the cracks.
9. This mechanism to review domestic violence-related deaths follows the recommendations contained in the 2009 report of the Domestic Violence Homicide Advisory Panel. The panel was convened following the death of Melissa Cook, who was fatally shot by her estranged husband on 19 December 2008. New South Wales will be one of the first Australian jurisdictions to introduce a mechanism to review domestic violence deaths.
10. The establishment of a domestic violence death review mechanism supports work being done at the Commonwealth level. The release of "Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children" in May 2009 identified the establishment of domestic homicide review processes in all States and Territories. The Prime Minister has also referred *Time for Action* to the Council of Australian Governments for its consideration and has proposed that a national plan to reduce violence against women be developed by 2010.
11. Community advocates were represented on the Domestic Violence Homicide Advisory Panel and have been consulted on the development of this Bill. The Bill will empower the team comprised of Government and non-government representatives to compile information from agencies and organisations who may have had contact with victims of domestic violence where there has been a fatality. This information will enable the team to identify potential intervention points and to establish where policies, procedures and services require review.
12. According to the Agreement in Principle Speech:

This Bill will enable the convenor of the team to enter into agreements or arrangements for the exchange of information between the team and a person or body having functions similar to those of the team in other States or Territories, where the information is relevant to the functions of the team. This will enable the team to feed into the National Coroners Information System [NCIS]. Coroners in all Australian jurisdictions have access to NCIS, which is a national Internet-based data storage and retrieval system for Australian coronial cases. Information about every death reported to an Australian coroner since July 2000, or January 2001 for Queensland, is stored within the system, providing a valuable hazard identification and death prevention tool



## Coroners Amendment (Domestic Violence Death Review Team) Bill 2010

for coroners and research agencies. The NCIS has a primary role to assist coroners in their role as death investigators by providing them with the ability to review previous coronial cases that may be similar in nature to current investigations, thereby enhancing their ability to identify and address systemic hazards within their jurisdiction.

13. The Domestic Violence Death Review Team will consist of at least 15 and not more than 19 members appointed by the Attorney General. The convenor is to be a current or former State or Deputy State Coroner. Key government service providers are to be represented, including the New South Wales Police Force, the Department of Health, the Department of Premier and Cabinet, the Department of Education and Training, the Department of Justice and Attorney General, the Department of Human Services, including representatives from within Community Services, Housing New South Wales, Aboriginal Affairs, Juvenile Justice and Ageing, Disability and Homecare. The team will also have representation from two non-government service providers and another two persons with expertise appropriate to the functions of the team. The Bill provides for the appointment of an Aboriginal or Torres Strait Islander member who is representative of a non-government service provider agency.

## The Bill

14. The objects of this Bill are as follows:
- (a) to amend the *Coroners Act 2009* to establish the Domestic Violence Death Review Team (the *Team*) and to provide for its membership and functions,
  - (b) to exempt the Team from the operation of legislation relating to public access to government information,
  - (c) to amend the *Commission for Children and Young People Act 1998* to enable the Child Death Review Team to exercise functions relating to a child death that may also be the subject of review by the Domestic Violence Death Review Team.

## 15. Outline of provisions

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

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

### Schedule 1 Amendment of *Coroners Act 2009* No 41:

**Schedule 1 [1]** inserts a definition of ***Domestic Violence Death Review Team*** for the purposes of the *Coroners Act 2009*.

**Schedule 1 [2]** inserts the State Coroner's and Deputy Coroners' functions relating to the Team in the list of their functions. The functions include supporting and assisting the Team in the exercise of its functions.

**Schedule 1 [3]** inserts proposed Chapter 9A (proposed sections 101A–101P) into the *Coroners Act 2009*.

Proposed Part 9A.1 of Chapter 9A (proposed sections 101A–101C) sets out the object of the proposed Chapter and defines words and expressions used in the proposed Chapter.

Proposed Part 9A.2 of Chapter 9A (proposed sections 101D and 101E) constitutes the Team, which is to consist of the Convenor of the Team and other members appointed by the Attorney General. The Convenor appointed by the Attorney General is to be the State

Coroner, a Deputy State Coroner or a former State Coroner or Deputy State Coroner. The other members are to consist of representatives of specified State government agencies, including the Departments of Human Services (and agencies within that Department), Premier and Cabinet, Health, Education and Training and Justice and Attorney General and the NSW Police Force. There are also to be other non-government service provider and expert representatives. The total membership of the Team (in addition to the Convenor) is to be not less than 15 members and not more than 19 members.

Division 1 of proposed Part 9A.3 of Chapter 9A (proposed sections 101F–101I) confers on the Team the functions of reviewing closed cases of domestic violence deaths, analysing data relating to such cases, making recommendations as to legislation, policies, practices and services for preventing or reducing domestic violence deaths, maintaining a database of such deaths and undertaking research. The Team can review a case of a domestic violence death even if it is the subject of action by the Child Death Review Team. The proposed Division requires the Team, when reviewing cases, to consider the effectiveness of support and other services for victims and perpetrators of domestic violence and to look at the availability and failures of such services and related systems. The Team is to select the domestic violence deaths that are to be the subject of a review.

Division 2 of proposed Part 9A.3 of Chapter 9A (proposed sections 101J and 101K) requires the Team to report to Parliament each year on domestic violence deaths reviewed in the previous year.

Proposed Part 9A.4 of Chapter 9A (proposed sections 101L and 101M) places a duty on specified persons, including heads of government Departments and agencies, the Commissioner of Police, coroners and medical professionals, to provide the Team with access to records that are required by the Team for the purpose of exercising its functions. Members of the Team and persons assisting the Team are prohibited from making a record of, or directly or indirectly disclosing, information acquired in Team related functions, except for specified purposes. Such persons are also protected from having to produce documents or reveal information to a court if the documents or information are acquired because of the person's Team related functions.

Proposed Part 9A.5 of Chapter 9A (proposed sections 101N–101P) provides for Team documents to be signed by the Convenor or a person authorised by the Convenor and protects Team members or persons acting under their direction from liability for matters done or omitted in good faith for the purposes of executing the *Coroners Act 2009* or any other Act. Liability for such actions will attach to the Crown. The proposed Part also provides for the proposed Chapter to be reviewed 3 years after it commences and for a report on the outcome of the review to be tabled in Parliament within a further 12 months.

**Schedule 1 [4]** enables regulations to be made for or with respect to the constitution, functions, procedure and other matters relating to the Team.

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

**Schedule 1 [6]** inserts provisions relating to the members and procedure of the Team.

#### **Schedule 2 Amendment of other Acts:**

##### ***Commission for Children and Young People Act 1998 No 146:***

**Schedule 2.1 [1]** amends the *Commission for Children and Young People Act 1998* to provide that the Child Death Review Team may exercise its functions with respect to the death of a child even though the death is the subject of a review by the Domestic Violence Death Review Team.

**Schedule 2.1 [2]** amends the *Commission for Children and Young People Act 1998* to permit a person engaged in exercising functions in relation to the Child Death Review Team to provide information to the Domestic Violence Death Review Team.

***Government Information (Public Access) Act 2009 No 52:***

**Schedule 2.2** amends the *Government Information (Public Access) Act 2009* to prohibit applications being made for access to information of the Team in respect of all of its functions.

## 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.**

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 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. However, the Committee notes from the Agreement in Principle speech that the establishment of the Domestic Violence Death Review Team and appointment of various representatives and members may require appropriate process and time as key government service providers are to be represented, including the New South Wales Police Force, the Department of Health, the Department of Premier and Cabinet, the Department of Education and Training, the Department of Justice and Attorney General, the Department of Human Services, including representatives from within Community Services, Housing New South Wales, Aboriginal Affairs, Juvenile Justice and Ageing, Disability and Homecare. The team will also have representation from two non-government service providers and another two persons with expertise appropriate to the functions of the team as well as the appointment of an Aboriginal or Torres Strait Islander member who is representative of a non-government service provider agency.

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

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

## 5. LIQUOR LEGISLATION AMENDMENT BILL 2010

Date Introduced: 14 May 2010  
House Introduced: Legislative Assembly  
Minister Responsible: Hon Kevin Greene MP  
Portfolio: Gaming and Racing

### Purpose and Description

1. The object of this Bill is to give effect to certain measures set out in the Government's action plan entitled "Hassle Free Nights". For that purpose, the Bill:
  - (a) provides for the establishment and implementation of precinct liquor accords (which will operate on an on-going basis in precincts designated by the Director-General of Communities NSW) and community event liquor accords (which will operate on a temporary basis in relation to community events designated by the Director-General), and
  - (b) enables any such liquor accord to include measures to minimise or prevent alcohol-related violence or harm in, or to protect and support the good order or amenity of, the precinct or area to which the liquor accord applies, and
  - (c) enables the Director-General to impose licence conditions requiring licensees to participate in a precinct or community event liquor accord and, in the case of a precinct liquor accord, also enables the Director-General to require licensees to pay contributions towards the costs associated with the operation of the accord, and
  - (d) enables the Director-General to impose licence conditions affecting the trading hours of any licensed premises, and
  - (e) extends, for a further period of 12 months, the freeze on the granting of liquor licences and various other liquor-related authorisations and development consents in relation to certain premises in central Sydney, and
  - (f) enables police officers and local council employees authorised by the Commissioner of Police to confiscate alcohol from persons who are drinking in a public place (such as a public park) that is situated in the precinct or area to which a precinct or community event liquor accord applies and in which the drinking of alcohol is prohibited under the *Local Government Act 1993* by a local council, and
  - (g) makes other amendments of a consequential or minor nature.

## Background

2. According to the Agreement in Principle speech the bill implements some of the measures in the Government's Hassle Free Nights Action Plan. The action plan consists of a range of initiatives to further reduce alcohol-related crime in some of the most popular entertainment precincts in New South Wales, including areas of the Sydney central business district [CBD], Manly, Newcastle-Hamilton, Wollongong and Parramatta. The action plan also includes measures which aim to improve liquor licensing outcomes across New South Wales.
3. Under the bill, the Director General of Communities NSW will be able to designate a precinct as one to which a precinct liquor accord is to apply or an event to which a community event liquor accord is to apply and may approve the terms of the particular accord. To do so, the director general will need to be satisfied that in the precinct there is, or there is a potential for, a significant risk of harm to members of the public associated with the misuse and abuse of liquor, including harm arising from violence or other antisocial behaviour. The director general must also be satisfied that the measures to be adopted by the accord are necessary to prevent harm to members of the public associated with the misuse and abuse of liquor in the precinct or area, or to protect and support the good order or amenity of the precinct or area in connection with issues arising from the presence or proposed increase in the number of licensed premises in the precinct or area.
4. Five high-risk precincts where liquor accords will be established have already been identified. The precincts are the Sydney CBD and surrounding areas, Manly, Newcastle and Hamilton, Parramatta and Wollongong. There is a history of alcohol-related problems in these precincts and they can obviously benefit from the types of measures that will be developed under a liquor accord. While the initial focus is on these five precincts, the legislation provides for the establishment of precinct liquor accords in other areas if that is necessary. Another new initiative in the bill is a community event liquor accord. The Government has already identified New Year's Eve, Australia Day celebrations, the Sydney Gay and Lesbian Mardi Gras and the Bathurst car races as examples of events that may be subject to community event liquor accords.
5. Accords may also be established for other events when there is a significant risk of harm to members of the public associated with the misuse and abuse of alcohol and accord measures are necessary to prevent that harm or to protect and support the good order or amenity of the area in which the event is being held in relation to certain issues. An important principle driving the establishment of precinct liquor accords and community event liquor accords is that of local stakeholders coming together to develop local solutions to local problems. This is an established principle that has applied to local liquor accords for many years. The precinct liquor accord and community event liquor accord provisions in this bill are based on existing local liquor accord provisions in part 8 of the *Liquor Act*.

## 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.

### **Schedule 1 Amendment of *Liquor Act 2007* No 90 Precinct liquor accords and community event liquor accords**

**Schedule 1 [20]** provides for the approval by the Director-General of Communities NSW of precinct liquor accords and community event liquor accords. These liquor accords may contain measures to minimise or prevent alcohol-related violence or to protect or support the good order and amenity of the relevant precinct or area to which the accord applies and may involve the participation of a variety of stakeholders. The Director-General will be able to designate precincts to which a precinct liquor accord is to apply and such an accord will operate until terminated by the Director-General. A community event liquor accord will not be precinct-based but rather will apply in relation to a particular event that might require the implementation of liquor accord measures in more than one area. In either case, the Director-General will be able to require licensees in the relevant precinct or area to participate in (which includes comply with) the relevant liquor accord. The Director-General will also be able, in the case of a precinct liquor accord, to direct the licensee to contribute to the costs associated with the operation of the accord. The amendment made by **Schedule 1 [22]** provides that a direction by the Director-General to contribute to the costs of a precinct liquor accord is reviewable by the Casino, Liquor and Gaming Control Authority (*the Authority*).

**Schedule 1 [23]** provides that the Authority can, on review, vary or revoke the direction only if the amount of the contribution was not determined in accordance with the relevant precinct liquor accord.

**Schedule 1 [1], [2], [9], [10] and [12]–[19]** are consequential on the insertion of provisions relating to precinct and community event liquor accords. In particular, certain provisions that currently apply to local liquor accords are extended to precinct and community event liquor accords.

### **Licence conditions imposed by Director-General**

**Schedule 1 [4]** enables the Director-General of Communities NSW to impose licence conditions that affect the trading hours of licensed premises (such conditions may currently be imposed by the Director-General but only as the result of a disturbance complaint).

**Schedule 1 [5]** enables the Director-General to vary or revoke licence conditions that have previously been imposed by the Authority if the condition relates to the trading hours of licensed premises or relates to licensed premises situated in the precinct or area to which a precinct or community event liquor accord applies.

**Schedule 1 [6]** makes it clear that the Director-General is not required to give a licensee the opportunity to make submissions on a proposed variation or revocation by the Director-General of a licence condition if the Director-General is making the variation or revocation on the application of the licensee.

**Schedule 1 [7], [8] and [21]** are consequential on the amendments made by **Schedule 1 [4] and [5]**.

### **Miscellaneous amendments**

**Schedule 1 [3]** extends, to 24 June 2011, the period during which the granting of liquor licences and other liquor-related authorisations (including development consents) is restricted in relation to certain premises in central Sydney.

**Schedule 1 [11]** makes it clear that the power under section 77 of the *Liquor Act 2007* to turn people out of licensed premises does not limit any other right a person may have to refuse to admit a person to, or to turn a person out of, licensed premises.

**Schedule 1 [24]** enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.

### **Schedule 2 Amendment of Local Government Act 1993 No 30**

**Schedule 2** authorises police officers and local council employees authorised by the Commissioner of Police to confiscate alcohol from persons who are drinking in a public place (such as a public park) that is situated in the precinct or area to which a precinct or community event liquor accord applies and in which the drinking of alcohol is prohibited by a local council by a notice under section 632 of the *Local Government Act 1993*. The power to confiscate alcohol from persons drinking in such places includes the power to tip out the alcohol from the thing in which the alcohol is contained. A similar confiscation and tip out power currently applies in relation to alcohol-free zones (but these existing powers only apply in relation to street drinking).

## **Issues Considered by the Committee**

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

#### **Issue: Oppressive Official Powers - Schedule 2 Amendment of the *Local Government Act 1993* – Confiscation of alcohol in alcohol-free zones**

6. The Committee has previously commented in the *Liquor Legislation Amendment Bill 2008* (*Legislation Review Digest no.14, 24 November 2008*) about the fact that the operation of alcohol free zones and associated penalties regarding issuing of notices and confiscation or disposing of alcohol may sometimes affect differentially, or impact disproportionately, on marginalised groups. This provision now extends this power to precincts under liquor accords

**7. Schedule 2 now extends alcohol-free zone powers and penalties under Section 632 of the *Local Government Act 2010* to precincts under liquor accords. The Committee has previously expressed concerns about the fact that the operation of alcohol free zones and associated penalties regarding the issuing of notices and confiscation or disposing of alcohol may sometimes affect differentially, or impact disproportionately, on marginalised groups.**

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

## 6. LOCAL GOVERNMENT AMENDMENT (GENERAL RATE EXEMPTIONS) BILL 2010

Date Introduced:	13 May 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Barbara Perry MP
Portfolio:	Local Government

### Purpose and Description

1. This Bill amends the *Local Government Act 1993* in relation to rate exemptions for land partly used by religious or charitable bodies.
2. It provides for the granting of a partial rate exemption where part of a parcel of land is commercially let to a body that is not exempt from rates. Any activities undertaken by a charitable body on the land will be deemed to be part of the charitable body's activities and would be exempt. For example, this includes activities undertaken by the body, such as opportunity shops and cafes.

### Background

3. The purpose of this Bill is to clarify the exemptions from general rates that apply for public benevolent institutions, public charities and religious bodies. These bodies are exempt from paying general rates on properties that they own and that they use for charitable purposes. However, the *Local Government Act* is currently silent on how such a property should be treated if part of the property is commercially let to a non-exempt body. Currently, the Act does not allow a council to partially rate the non-exempt part of a parcel of land. As a result, charitable bodies are being charged rates on a whole parcel of land because part of the land is commercially let.
4. The Agreement in Principle Speech explained that:

I am also aware that some councils are utilising section 28A of the *Valuation of Land Act* to obtain separate valuations in those instances and applying partial ratings. Unfortunately, however, the *Local Government Act* does not currently allow that to occur. Therefore, the Bill provides for the granting of a partial rate exemption where part of a parcel of land is commercially let to a body that is not exempt from rates. It is important to note that any activities undertaken by a charitable body on the land will be deemed to be part of the charitable body's activities and would be exempt. This includes activities undertaken by the body, such as opportunity shops and cafes.
5. The Agreement in Principle Speech stated that both the Catholic Archdiocese of Sydney and the council of the City of Sydney have requested that the *Local Government Act* be amended in line with the proposed Bill. The Local Government and Shires Associations also support these amendments.
6. According to the Agreement in Principle Speech:

The Bill will ensure a consistent approach between councils and ensure that land owned by a religious body, benevolent institution or charity is afforded a rate exemption to the full extent envisaged under the *Local Government Act*. It will also ensure that



## Local Government Amendment (General Rate Exemptions) Bill 2010

those councils that are currently applying a partial rate exemption are complying with the legislation. There will be no net impact on the level of a council's rating income as a result of this Bill, although there may be a minor redistribution in the rating burden within a local government area. There should be no negative implications for benevolent institutions, charities or religious bodies as, in most cases, the terms of the lease agreement will allow the religious body, benevolent institution or charity to pass on the rates liability to the lessee. However, where the terms of an existing lease agreement between a charitable body and a commercial tenant do not provide for the lessee to pay the rates, the amendment provides transitional arrangements to ensure no benevolent institution, charity or religious body will be worse off under these changes.

In such cases, the entire parcel of land will remain exempt from rates until the land ceases to be the subject of that lease. The Bill provides for the determination of the rateable and non-rateable components of both land and buildings. In those cases where part of a single parcel of land is subject to a commercial lease, for example where a parcel of land has on it a church and a commercially leased car park, a council may request from the Valuer General separate valuations for each part under section 28A of the *Valuation of Land Act*, and to then apply rates to the car park component. In addition, where a parcel of land consists of one building that is partially subject to a commercial lease, the bill provides for the valuation of that building on a stratum basis, thus allowing rates to be charged on those components of the building that are commercially let.

## The Bill

7. The object of this Bill is to amend the *Local Government Act 1993* (**the principal Act**) to enable the separate valuation of parts of a parcel of land owned by a religious body, public benevolent institution or public charity that is used partly in a manner that is exempt from rating and partly in a manner that is not exempt from rating if rates are to be levied on the non-exempt part.

## 8. Outline of provisions

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

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

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

**Schedule 1 [1]** amends section 555 of the principal Act to provide that if rates are to be levied on land belonging to a religious body that is occupied and used partly for purposes that are exempt from rating and partly for other purposes, the relevant council must cause the land to be valued in accordance with section 28A of the *Valuation of Land Act 1916*. Section 28A provides for the separate valuation of a part of land that is subject to rates where the rest of the land is exempt from rates.

**Schedule 1 [2]** makes a similar amendment to section 556 of the principal Act with respect to land belonging to a public benevolent institution or public charity.

**Schedule 1 [3]** amends Schedule 8 to the principal Act to enable regulations to be made containing provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.

**Schedule 1 [4]** amends Schedule 8 to the principal Act to provide that land belonging to a religious body that is subject to a lease entered into before the enactment of the proposed Act, that does not provide that the lessee is to pay the rates (if any) levied on the land, is

taken to be land that is occupied and used by the religious body for a purpose that is exempt from rating, but only if part of the land is actually used by the religious body for a purpose that is exempt from rating. The Schedule includes a similar provision for land belonging to a public benevolent institution or public charity.

## **Issues Considered by the Committee**

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| <p>9. <b>The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</b></p> |
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*The Committee makes no further comment on this Bill.*

## 7. TRANSPORT ADMINISTRATION AMENDMENT BILL 2010

Date Introduced:	13 May 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon. David Campbell MP
Portfolio:	Transport

### Purpose and Description

1. The object of this Bill is to establish a new framework for the administration and governance of the delivery of transport services and infrastructure by public transport agencies (such as RailCorp, RTA, the State Transit Authority and Sydney Ferries) under the general direction of the Director-General of Transport NSW. For that purpose, the Bill:
  - (a) confers on the Director-General of Transport NSW (which is currently known as the Department of Transport and Infrastructure) specific functions in relation to such matters as transport planning and policy, the administration of the allocation of public funding for public transport agencies, transport infrastructure, contracting for the delivery of public transport services, transport services co-ordination, incident management and the provision and deployment of staff to public transport agencies, and
  - (b) enables the Director-General, for the purposes of exercising his or her functions, to give directions to public transport agencies and provides that the chief executive of a public transport agency is to manage the affairs of the agency in accordance with any directions of the Director-General, and
  - (c) consequently abolishes the Boards of management of various public transport agencies, and
  - (d) changes the Transport Infrastructure Development Corporation (TIDC) and the Rail Infrastructure Corporation (RIC) from State owned corporations to statutory corporations having structures, accountabilities and staffing arrangements similar to RailCorp and Sydney Ferries, and
  - (e) renames TIDC as the Transport Construction Authority and RIC as the Country Rail Infrastructure Authority, and
  - (f) retains the Independent Transport Safety and Reliability Regulator (which will be renamed the Independent Transport Safety Regulator as a consequence of the changes made by the proposed Act) as the independent regulator for rail and other transport safety and also enables the Director-General to obtain assistance from the ITSR for his or her passenger safety responsibilities under the *Passenger Transport Act 1990*, and

(g) provides for the review by the ITSR (or by the Maritime Authority of NSW in the case of ferry services) of directions of the Director-General that may affect the safety management systems of certain transport authorities, and

(h) provides for the abolition of the Public Transport Ticketing Corporation and Sydney Metro as statutory corporations, but provides for their temporary continuation for the purposes of managing their existing assets, rights and liabilities, and

(i) consolidates and rationalises various provisions of the *Transport Administration Act 1988 (TA Act)* as a consequence of the new framework for the governance of the delivery of transport services and infrastructure by public transport agencies, and

(j) makes amendments of a consequential, minor or administrative nature to various other Acts and legislation.

## Background

2. In 2009, the Public Sector Employment and Management (Departmental Amalgamations) Order established a central transport department, NSW Transport and Infrastructure. This Bill builds on that order by expanding the role of the department, to be renamed Transport NSW, with the Director General being provided with overarching accountability for the delivery of all transport infrastructure, transport policy, planning and service coordination, timetabling, incident management and the power to administer a single transport budget across all rail, bus, ferry and cycle roads and freight.
3. According to the Agreement in Principle speech, the Bill sets out four key objectives, including: to create an integrated approach to the delivery of transport services and infrastructure; to better coordinate the delivery of transport services; to enhance accountability of public sector agencies; and to ensure that safety remains the top priority.
4. In 2009 – 10 the NSW Government set aside \$7.1 billion to invest in operating and expanding the NSW public transport system and a further \$4.4 in maintaining and upgrading the New South Wales road network.
5. The changes effected by this Bill comprehensively restructure the operating entities relating to roads and transport in NSW. One Minister has now been given the responsibility for both transport and roads and they have been arranged under one department, Transport NSW. This department will have primary responsibility to deliver the \$50.2 billion Metropolitan Transport Plan. The department will be led by a single Director-General in which all the transport operators – including RailCorp, State Transit Authority, Sydney Ferries and the Roads and Traffic Authority – will fall under. The streamlining of all the transport agencies will also be realised through a single roads and transport budget. The streamlined governance arrangements include abolishing existing boards in the portfolio and converging them into a single statutory Transport Advisory Council. This Council will enable advice to be sought from industry experts and key stakeholders with specialist knowledge.

6. The Bill also establishes a coordination division for Transport NSW, which will be an integrated team drawing staff from across the various agencies, whose goal will be to better coordinate the daily transport task for commuters and improve the coordination at existing interchange facilities.
7. The Bill allows flexibility in the moving of staff to areas across the sections without affecting their working conditions. The employment arrangements of front-line staff remain unaffected.
8. Lastly, the Bill transfers the reliability functions of the Independent Transport Safety Reliability Regulator to Transport NSW.

## The Bill

### 9. Outline of provisions

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

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

#### Schedule 1 Principal amendments

**Schedule 1.1 Transport Administration Act 1988 No 109 Schedule 1.1 [1]** provides for the objects of the TA Act in so far as they relate to the administration of the transport services provided to the people of NSW.

**Schedule 1.1 [2] and [3]** define the terms *Director-General* and *Transport NSW* for the purposes of the TA Act.

**Schedule 1.1 [4]** consolidates the existing provisions of the TA Act relating to Ministerial control over the chief executives of public transport agencies and the Director-General in the exercise of their functions.

**Schedule 1.1 [5]** confers on the Director-General general functions in relation to transport planning and policy, transport public funding, transport infrastructure, contracting for the delivery of transport services, transport services co-ordination, incident management, transport information, provision and deployment of transport agency staff and services, ticketing for transport services and precinct land planning.

The Director-General also continues to have functions in relation to the provision of light rail services and under the *Passenger Transport Act 1990* (as well as under other legislation).

Schedule 1.1 [5] also enables the Director-General to give directions to the various public transport agencies for the purposes of exercising his or her functions. The amendments made by **Schedule 1.1 [8], [13], [16] and [20]** require the Chief Executives of RailCorp, STA, Sydney Ferries and RTA (in addition to the proposed Transport Construction Authority and renamed Country Rail Infrastructure Authority) to exercise their functions of managing the affairs of the agency concerned in accordance with any such directions of the Director-General. Public transport agencies will also be required to provide budget and other information to enable the Director-General to exercise his or her functions. The Director-

General will also be able to delegate his or her functions in the usual manner. Schedule 1.1 [5] also provides for the review, by either the Independent Transport Safety Regulator (in the case of directions relating to rail services or infrastructure or to bus services if an arrangement under proposed section 6B of the *Passenger Transport Act 1990* is in place) or by the Maritime Authority of NSW (in the case of directions relating to ferry services), of directions of the Director-General to a transport authority that may impact on the safety management system of the transport authority. Such a review may be requested by either the Director-General or by the transport authority concerned and the request operates to suspend the direction. As a result of the review by the relevant safety regulator, the Director-General may confirm, change or revoke the direction.

**Schedule 1.1 [6]** abolishes the boards of directors of RailCorp, STA and Sydney Ferries.

**Schedule 1.1 [7], [12], [15] and [19]** provide for the Director-General, with the approval of the Minister, to appoint the Chief Executives of RailCorp, STA, Sydney Ferries and RTA. The Director-General will also appoint the Chief Executives of the renamed Transport Construction Authority and Country Rail Infrastructure Authority.

**Schedule 1.1 [9]** transfers from the Minister to the Director-General functions relating to the corporate plans of RailCorp, STA and Sydney Ferries.

**Schedule 1.1 [10], [11], [14] and [17]** make consequential amendments. **Schedule 1.1 [18]** establishes a Transport Advisory Council to advise the Minister and Director-General. The new advisory council will replace the existing Transport Advisory Group and the Roads and Traffic Advisory Council.

**Schedule 1.1 [21]** consolidates existing provisions that enable transport authorities (including the proposed newly renamed authorities and the Director-General) to exercise functions through public subsidiary corporations constituted by the regulations, private subsidiary corporations or joint ventures or partnerships with the private sector.

**Schedule 1.1 [22]** makes specific provision to enable the Director-General, by order, to transfer staff from one transport authority to another transport authority, subject to the preservation of existing remuneration and other conditions of employment on transfer.

### **Schedule 1.2 Public Sector Employment and Management Act 2002 No 43**

**Schedule 1.2** changes the name of the Department of Transport and Infrastructure To Transport NSW (which will continue as a Department of the Public Service with the Director-General as the Department Head). Schedule 1.2 also creates a branch of Transport NSW (known as the Transport Special Services Group) which will comprise staff of Transport NSW who are not subject to Chapter 2 of the *Public Sector Employment and Management Act 2002*.

### **Schedule 2 Amendments relating to Transport Construction Authority (formerly TIDC)**

**Schedule 2.1** contains the following amendments to the TA Act:

- (a) **Schedule 2.1 [3]** constitutes the Transport Construction Authority (which is a continuation of, and the same legal entity as, TIDC but which will not be a State owned corporation), specifies its functions (which are generally based on the present functions of TIDC) and provides for the appointment by the Director-

General of a Chief Executive of the Authority who will be responsible for managing and controlling the affairs of the Authority in accordance with any directions of the Director-General.

(b) **Schedule 2.1 [1], [2] and [7]–[12]** are consequential on the change of name from TIDC to the Transport Construction Authority (the **TCA**).

(c) **Schedule 2.1 [4]** enables the ITSR to monitor, audit and carry out certain other functions in relation to the TCA.

(d) **Schedule 2.1 [5]** enables the TCA to employ its own staff and provides that the s staff are not part of the Government Service.

(e) **Schedule 2.1 [6]** provides for the establishment of the Transport Construction Authority Fund and for the payment of money into and out of the Fund. **Schedule 2.2, 2.4, 2.5 and 2.7** amend superannuation legislation to replace references to TIDC with references to the TCA which will continue to be an employer for the purposes of that legislation.

**Schedule 2.3** lists the TCA as a statutory body for the purposes of the *Public Finance and Audit Act 1983* (which also means the TCA will be subject to the usual auditing and annual reporting requirements).

**Schedule 2.6** consequentially removes TIDC from the list of statutory State owned corporations under the *State Owned Corporations Act 1989*.

### **Schedule 3 Amendments relating to Country Rail Infrastructure Authority (formerly RIC)**

**Schedule 3.1** contains the following amendments to the TA Act: (a) **Schedule 3.1 [3]** constitutes the Country Rail Infrastructure Authority (which is a continuation of, and the same legal entity as, the Rail Infrastructure Corporation (RIC) but which will not be a State owned corporation), specifies its functions (which are based on the present functions of RIC) and provides for the appointment by the Director-General of a Chief Executive of the Authority who will be responsible for managing and controlling the affairs of the Authority in accordance with any directions of the Director-General. (b) **Schedule 3.1 [1], [2], [4] and [7]–[12]** are consequential on the change of name from RIC to the Country Rail Infrastructure Authority (**CRIA**). (c) **Schedule 3.1 [5]** enables CRIA to employ its own staff and provides that the staff are not part of the Government Service. (d) **Schedule 3.1 [6]** provides for the establishment of the Country Rail Infrastructure Authority Fund and for the payment of money into and out of the Fund.

**Schedule 3.2** replaces a reference to RIC in the definition of **electricity supply authority** in the *Electricity (Consumer Safety) Act 2004* with a reference to CRIA.

**Schedule 3.3, 3.5, 3.6 and 3.8** amend superannuation legislation to replace references to RIC with references to CRIA which will continue to be an employer for the purposes of that legislation.

**Schedule 3.4** lists the CRIA as a statutory body for the purposes of the *Public Finance and Audit Act 1983* (which also means CRIA will be subject to the usual annual reporting requirements).

**Schedule 3.7** removes RIC from the list of statutory State owned corporations under the SOC Act.

**Schedule 3.9** is a consequential repeal.

**Schedule 4 Amendments relating to Sydney Metro** **Schedule 4.1** contains the following amendments to the TA Act: (a) **Schedule 4.1 [15]** continues Sydney Metro for the purposes of managing the remaining assets, rights and liabilities of Sydney Metro pending its final dissolution and provides for the Director-General to manage its affairs. Sydney Metro is to be dissolved on a date to be proclaimed by the Governor. (b) **Schedule 4.1 [1]–[14]** remove references to Sydney Metro from the TA Act. **Schedule 4.2–4.5** amend various Acts to remove references to Sydney Metro as a consequence of the amendments made by Schedule 4.1.

#### **Schedule 5 Amendments relating to Public Transport Ticketing Corporation**

**Schedule 5.1** contains the following amendments to the TA Act: (a) **Schedule 5.1 [3]** continues the Public Transport Ticketing Corporation for the purposes of managing the remaining assets, rights and liabilities of the Corporation pending its final dissolution and provides for the Director-General to manage its affairs. The Public Transport Ticketing Corporation is to be dissolved on a date to be proclaimed by the Governor. (b) **Schedule 5.1 [1], [2] and [4]** remove references to the Public Transport Ticketing Corporation.

**Schedule 5.2** abolishes the separate Division of the Government Service comprising the staff of the Public Transport Ticketing Corporation.

#### **Schedule 6 Amendments relating to Independent Transport Safety and Reliability Regulator**

**Schedule 6.1** amends the TA Act to change the name of the regulator from the Independent Transport Safety and Reliability Regulator to the Independent Transport Safety Regulator (the *ITSR*) and to make consequential amendments.

**Schedule 6.2** amends the *Passenger Transport Act 1990* to enable the Director-General to arrange for the *ITSR* to assist in the exercise of (or to exercise by way of delegation) the Director-General's passenger transport safety functions under that Act (such as assessing whether accredited bus service operators meet the relevant safety standards).

**Schedule 6.3 and 6.4** contain amendments that are consequential on the change of name of the *ITSR*.

#### **Schedule 7 Consequential and other amendments**

**Schedule 7.1** contains consequential and other amendments to the TA Act.

**Schedule 7.2** provides for RailCorp to have the status of an electricity supply authority for the purposes of the *Electricity (Consumer Safety) Act 2004*.

**Schedule 7.3** amends the *Local Government Act 1993* to exempt rail infrastructure facility land owned or vested in a public transport agency from being subject to local council rates.

**Schedule 7.4** amends the *Passenger Transport Act 1990 (PTA)* to replace references relating to the Department of Transport and Infrastructure with references to Transport



NSW. Schedule 7.4 also transfers, to the PTA, the provision in the TA Act that enables the Director-General to delegate his or her functions under the PTA.

**Schedule 7.5** amends the list of Departments in Schedule 3 to the *Public Finance and Audit Act 1983* to replace a reference to the Department of Transport and Infrastructure with a reference to Transport NSW.

**Schedule 7.6** amends the *Public Sector Employment and Management Act 2002*: (a) to provide that a branch of a Department is not part of the Public Service (ie subject to the requirements of Chapter 2 of that Act) if the branch is specified in Part 3 of Schedule 1 to that Act as a Special Employment Division (as a consequence of Schedule 1.2 which establishes the Transport Special Services Group as such a branch), and (b) to provide that the Director-General of Transport NSW is the employer of the chief executives of the various public transport agencies constituted under the TA Act and may determine their remuneration.

**Schedule 7.7** repeals a provision of the *Public Sector Employment and Management (Departmental Amalgamations) Order 2009* relating to the transfer of certain staff of public transport agencies as the provision is now redundant because of the new transfer of staff provisions to be inserted in the TA Act by the proposed Act.

## 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.
11. However, the Committee recognises that this Bill primarily deals with a substantial restructure of transport agencies in NSW and appreciates the significant administrative arrangements that need to take place before the Bill can commence operation. The Office of the Minister of Transport and Roads has advised the Committee that many of the anticipated changes are neither practical nor feasible to commence at the same time, or to specify a commencement date in advance. Given this, and considering the Committee has not identified any other issues with this Bill, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

**12. The Committee recognises the significant administrative arrangements that need to take place before this Bill can commence operation and therefore has not identified any issues under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.**

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

# Appendix 1: Index of Bills Reported on in 2010

	Digest Number
Appropriation (Budget Variations) Bill 2010	6
Building and Construction Industry Long Service Payments Amendment Bill 2009	1
Carers Recognition Bill 2010*	3
Carers Recognition Bill 2010*	5
Carers (Recognition) Bill 2010	5
Casino Control Amendment Bill 2010	2
Charter of Budget Honesty (Election Promises Costing) Amendment Bill 2010	6
Charter of Budget Honesty Amendment (Independent Election Costings) Bill 2010*	5
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	4
Coal Mine Health and Safety Amendment Bill 2010	4
Commercial Arbitration Bill 2010	6
Companion Animals Amendment (Dogs in Outside Eating Areas) Bill 2010*	4
Companion Animals Amendment (Outdoor Dining Areas) Bill 2010	5
Coroners Amendment (Domestic Violence Death Review Team) Bill 2010	6
Court Information Bill 2010	4
Credit (Commonwealth Powers) Bill 2010	2
Crimes (Administration of Sentences) Amendment Bill 2010	2
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	3
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	4
Crimes Amendment (Police Pursuits) Bill 2010	2
Environmental Planning and Assessment Amendment (Development Consents) Bill 2010	5
Gas Supply Amendment Bill 2009	1
Housing Amendment (Community Housing Providers) Bill 2009	1
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment Bill 2009	1
Liquor Legislation Amendment Bill 2010	6
Local Government Amendment (General Rate Exemptions) Bill 2010	6
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	5
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010	2
National Park Estate (Riverina Red Gum Reservations) Bill 2010	5
National Parks and Wildlife Amendment Bill 2010	2
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	5

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	Digest Number
Paediatric Patient Oversight (Vanessa's Law) Bill 2010*	5
Parliamentary Electorates and Elections Amendment Bill 2010	4
Registrar-General Legislation (Amendment and Repeal) Bill 2010	4
Relationships Register Bill 2010	5
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010	4
State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010	5
State Senate Bill 2010	2
Sydney Olympic Park Authority Amendment Bill 2009	1
Transport Administration Amendment Bill 2010	6
Trees (Dispute Between Neighbours) Amendment Bill 2010	5
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	3
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)	4
Weapons and Firearms Legislation Amendment Bill 2010	4
Workers Compensation Amendment (Commission Members) Bill 2010	2

## Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1			
Casino Control Amendment Bill 2010	Minister for Gaming and Racing and Attorney General	08/03/10	18/03/10				2, 5
Civil Liability Legislation Amendment Bill 2008	Attorney General	28/10/08			12		
Contaminated Land Management Amendment Bill 2008	Minister for Climate Change and the Environment	22/09/08	03/12/08		10	1	
Credit (Commonwealth Powers)	Minister for Fair Trading	08/03/10					2
Crimes (Administration of Sentences) Amendment Bill 2008	Attorney General and Minister for Justice	2/12/07			15		
Crimes (Administration of Sentences) Amendment Bill 2009	Minister for Corrective Services	08/08/09				10	
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	06/02/09		9		
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07		1		2	
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1		
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning		12/06/08		8		
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7			
Home Building Amendment	Minister for Fair Trading		30/10/08		10, 13		
Liquor Legislation Amendment Bill 2008	Minister for Gaming and Racing	24/11/08	05/01/09		14	2	
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07		1		2	
Parking Space Levy Bill 2009	Minister for Transport	23/03/09	26/05/09			3, 8	

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1,2			
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1			
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2	

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

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Building and Construction Long Service Payments Amendment Bill 2009				N	
Casino Control Amendment Bill 2010	N, R, C		N, R		
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	N				
Coal Mine Health and Safety Amendment Bill 2010	N, R			N, R	
Commercial Arbitration Bill 2010	N, R		N, R	N	
Coroners Amendment (Domestic Violence Death Review Team) Bill 2010				N	
Court Information Bill 2010	N, R			N	
Credit (Commonwealth Powers) Bill 2010	N, R, C			N, R, C	
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	N			N	
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	N, R				
Crimes Amendment (Police Pursuits) Bill 2010	N, R				
Environment Planning and Assessment Amendment (Development Consents) Bill 2010			N, R		
Gas Supply Amendment Bill 2009				N	
Housing Amendment (Community Housing Providers) Bill 2009	N				
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment 2009				N	
Liquor Legislation Amendment Bill 2010	N				

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	N, R				
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010				N	N
National Parks and Wildlife Amendment Bill 2010	N, R			N, R	
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	N, R			N	
Relationships Register Bill 2010	N			N	
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010				N, R	
Sydney Olympic Park Authority Amendment Bill 2009	N, R			N	
Transport Administration Amendment Bill 2010				N	
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	N			N	
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)				N	
Weapons and Firearms Legislation Amendment Bill 2010	N, R			N	

Key

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

## Appendix 4: Index of correspondence on regulations

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