

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 15 of 2004

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* Denotes Private Member's Bill

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations:

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

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CRIMES AND FIREARMS LEGISLATION AMENDMENT (APPRENDENDED VIOLENCE ORDERS) BILL 2004*

Date Introduced: 28 October 2004
House Introduced: Legislative Council
Member Responsible: The Hon John Tingle MLC

Purpose and Description

1. This Bill amends :

- (a) the provisions of the *Crimes Act 1900* that deal with apprehended violence orders (AVOs):
 - (i) to provide that a court must refuse to make an AVO, or to confirm an interim AVO, if it is satisfied that the defendant was not advised of the particulars of the complaint or matter, and given a chance to be interviewed, before the complaint was made or the interim AVO was re-heard or is satisfied that the matter was not adequately investigated or that the complaint or request is frivolous, vexatious or without substance, and
 - (ii) to require a court making an AVO to explain to the defendant how long the order operates, that it can be revoked and the procedure for revocation, and
 - (iii) to create an obligation to return firearms licences and permits to the defendant when an AVO is revoked, and
 - (iv) to create offences of making vexatious, frivolous or false applications (complaints) or requests for AVOs, and
- (b) the provisions of the *Firearms Act 1996* that require firearms and firearms licences and permits to be surrendered when an AVO is made:
 - (i) to provide that the current restrictions on being issued with a licence or permit that apply to any person who has, at any time within 10 years before applying for a licence or permit, been subject to an AVO only apply if the person held a firearms licence or permit at the time the AVO was made, and
 - (ii) to provide that a licence or permit is no longer automatically suspended or revoked on the making of an interim AVO or an AVO but is suspended or revoked only if the court specifically so orders, and
 - (iii) to provide that the negative consequences of the making of an AVO on a person's ability to obtain a licence, permit or certain employment do not

- apply automatically but apply only when the court specifically so orders, and
- (iv) to provide that if an AVO is revoked, any licence or permit that was revoked by the making of the AVO is restored and must be returned to its holder, and
 - (v) to provide for any firearm surrendered or seized because of the suspension or revocation of a licence or permit to be immediately returned to its owner if an AVO is revoked.

Background

2. According to the Member introducing the Bill:

this bill is not about dismantling the apprehended violence order [AVO] laws; it is about trying to make them more sensible, more fair and more workable and to remove some glitches that allow these laws to be used in a way that was never intended and result in injustice flowing from their use.

...the AVO—good idea that it was—has gone astray. What was intended as a shield has become a weapon, often used maliciously, frivolously and vexatiously.¹

Making of Apprehended Violence Orders

- 3. The *Crimes Act 1900* provides for both apprehended domestic violence orders (ADVOs), which relate to an order between persons who have a domestic relationship,² and apprehended personal violence orders (APVOs), which relate to persons who do not have a domestic relationship.
- 4. Similar procedures apply to obtaining both types of AVOs.
- 5. Generally, a court may make an AVO on a complaint being brought if it is satisfied that a person has reasonable grounds to fear and in fact fears the commission by the other person of:
 - a personal violence offence;
 - harassment or molestation sufficient to warrant the making of an order;
 - intimidation; or

¹ The Hon J Tingle MLC, Legislative Council Hansard, 28 October 2004.

² A person has a *domestic relationship* with another person if the person:

- (a) is or has been married to the other person, or
- (b) has or has had a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the other person, or
- (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) is living or has lived in the same household or other residential facility as the other person, or
- (e) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or
- (f) is or has been a relative (within the meaning of section 4 (6)) of the other person: s 4 of the *Crimes Act 1900*.

Crimes and Firearms Legislation Amendment (Apprehended Violence Orders) Bill 2004*

- stalking [ss 562AD & 562AI].
6. A complaint for an order may only be made by a person for whose protection the order would be made or a police officer [s 562C].
 7. On a complaint being made, an authorised justice may, and if the complaint is made by a police officer must, issue either a summons for the appearance or a warrant for the arrest of the defendant [s 562AJ].

Making of Interim Apprehended Violence Orders

8. A court may make an interim apprehended violence order if it appears to the court that it is necessary or appropriate to do so in the circumstances [s 562BB]. It is not necessary for a complaint to be made in order for the court to make an interim order.
9. If the court makes an interim order, it is to summon the defendant to appear at a further hearing as soon as practicable. At that hearing, the court may make an AVO or revoke the interim order.

The Bill

10. The Bill amends the *Crimes Act 1900* and the *Firearms Act 1996* to achieve the objects set out above.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

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

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

Purpose and Description

1. The Bill amends the *Crimes (Administration of Sentences) Act 1999* (the Act) so as to, among other things reconstitute the Parole Board as the State Parole Authority (the Authority), to vary its membership and to restate its functions.

Background

2. According to the second reading speech:

The object of the *Crimes (Administration of Sentences) Amendment (Parole) Bill 2004* is to make various amendments to the *Crimes (Administration of Sentences) Act 1999* with respect to the operation of the parole system and the workings of the Parole Board which is a statutory body.

The provisions of the *Crimes (Administration of Sentences) Amendment (Parole) Bill 2004* will closely align the parole system with the expectations of the community. A particular focus for the Government has been on the interests of victims of crime. Victims groups have already welcomed the proposal and are anticipating the bill.

The Minister asked Mr Dalton³ to examine the structure, membership and procedures of the Parole Board and its secretariat with a view to ensuring that the Board discharges its functions efficiently and effectively. Mr Dalton subsequently submitted a report for the Minister's consideration. Many of the provisions of the *Crimes (Administration of Sentences) Amendment (Parole) Bill 2004* stem from the recommendations in Mr Dalton's report.⁴

The Bill

3. Most of the provisions of the Bill will commence on proclamation. However, a number of consequential provisions will commence at a later date (see clause 2).

³ According to the second reading speech, "Mr Dalton is a former Chairman of the Corrective Services Commission, which was the authority under the old Prisons Act 1952 that was responsible for the administration of the Department of Corrective Services. Mr Dalton served as Chairman of the Corrective Services Commission from 14 December 1981 until 27 March 1987. After leaving this position, Mr Dalton served as the Director-General of the Department of Community Services. Following his retirement from the public sector, Mr Dalton served as chief of staff to the Hon. Virginia Chadwick, MLC, a Minister in the Greiner and Fahey Coalition governments." Mr Tony Stewart MP, Parliamentary Secretary, Second Reading Speech, Legislative Council Hansard, 27 October 2004.

⁴ Mr Tony Stewart MP, Parliamentary Secretary, Second Reading Speech, Legislative Council Hansard, 27 October 2004.

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

Reconstitution of Parole Board as State Parole Authority

4. The Parole Board is replaced by a newly constituted State Parole Authority [Schedule 1 [49]]. A few changes are made to the composition of the new State Parole Authority, including removing the requirement in current s 183 that the Secretary of the Authority (formerly the Parole Board) be a member of the Authority (Schedule 1[50]).
5. In addition, section 183 is amended to require one of the Parole Authority's community members to be a person who has an appreciation or understanding of the interests of victims of crime.
6. The functions of the Parole Authority are now set out in proposed section 185. Proposed section 185A allows the Authority to establish guidelines in relation to the exercise of its functions. These are to be prepared in consultation with the Minister.

Matters to be considered in relation to the granting of parole

7. Proposed new section 135 provides that the Parole Authority is not to grant parole unless it is satisfied that the release of the offender is appropriate in the public interest and, except in exceptional circumstances, unless the Review Council⁵ has advised that it is appropriate for the offender to be considered for release. It also restates the matters that the Parole Authority must take into consideration in deciding whether the offender's release is appropriate in the public interest, including reports of the Review Council, the Commissioner, the Probation and the Parole Service.
8. Proposed section 135A sets out the matters to be addressed by a report prepared by the Probation and Parole Service for the purposes of proposed section 135 and include the likelihood of the offender being able to adapt to normal lawful community life.

Parole Authority procedures as to forming of initial intention

9. Current sections 137 and 143 provide that if an offender or serious offender as the case may be is not released on parole when the offender first becomes eligible for release, the Parole Board must reconsider the matter within each successive year unless the offender is no longer eligible for release on parole. Reconsideration of the matter by the Board is automatic.
10. The Bill amends this process, among other things, to require the Parole Authority to consider an offender for parole in subsequent years *only if* the offender applies for parole (Schedule 1[19], proposed s 137A in the case of non-serious offenders and Schedule 1[26] proposed s 1143A in the case of serious offenders). The Parole Authority can decline to consider an offender's case for up to 3 years after it last considered it. An offender can seek review in the Supreme Court of a decision of the Authority not to consider his or her case(s. 155).
11. However, proposed sections 137B and 143B allows the Parole Authority to consider an offender or serious offender for parole at any time, and without the need for an

⁵ The Review Council means the Serious Offenders Review Council constituted by section 195.

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application, if satisfied that to do so is necessary to avoid “manifest injustice”. The Regulations may prescribe the circumstances that may constitute “manifest injustice”.

Parole Authority procedures after initial intention formed

12. The Bill amends the procedures to be followed after the Parole Authority’s initial consideration of an offender or a serious offender for parole as follows.
13. Where the Parole Authority proposes to refuse parole, it must notify the offender of that fact and give the offender an opportunity to apply for the Parole Authority to reconsider the matter and, if the offender so desires and the circumstances so warrant, to conduct a hearing at which the offender can address the Parole Authority before it makes its final decision [proposed s 139].
14. For serious offenders, where the Parole Authority proposes to grant parole, it must notify victims of the serious offender of that fact and give the victims an opportunity to apply for the Parole Authority to reconsider the matter. If the victim wishes, the Authority is to conduct a hearing at which the victim can address the Parole Authority before it makes its final decision. If any victim seeks a hearing, the Parole Authority must then notify the offender that there will be a hearing and that the offender will be entitled to appear at the hearing [proposed ss 145-7].
15. Where the Parole Authority proposes to refuse parole to a serious offender, it must notify the offender of that fact and give the offender an opportunity to apply for the Parole Authority to reconsider the matter. If the offender so desires and the circumstances so warrant, the Authority is to conduct a hearing at which the offender can address the Parole Authority before it makes its final decision. If the offender seeks a hearing, the Parole Authority must then notify all victims and the offender that there will be a hearing and that any such victim will be entitled to appear at the hearing [proposed s 146].

Review of Parole Authority decisions

16. The Act allows for an offender (including a serious offender) to apply to the Court of Criminal Appeal for review of the Parole Authority’s decision not to grant parole on the grounds that the decision of the Parole Board has been made on the basis of false, misleading or irrelevant information [s 155].
17. In the case of serious offenders, the Attorney General or the Director of Public Prosecutions can also apply for review of a decision of the Parole Board to grant parole to a serious offender on these same grounds [s 156].
18. While these review rights are preserved, the Bill provides that decisions of the Parole Authority are to be reviewable by the Supreme Court and not the Court of Criminal Appeal (Schedule 1[36]).

Parole order to give effect to post-release plan

19. Current section 128 sets out the conditions governing parole. In addition, the Bill requires that the conditions must also give effect to a post-release plan prepared for

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the offender by the Probation and Parole Service and adopted by the Authority [proposed s 128(2A)].

Suspension of parole orders

20. The Bill enables the Commissioner to apply to a judicial member of the Parole Authority for an order suspending an offender's parole order and, if necessary, a warrant for the offender's arrest. Such an order will only be made if the judicial member is satisfied that the Commissioner has reasonable grounds for believing that the offender is in breach of the parole order or that there is a serious risk that the offender will leave the State, harm another person or commit an indictable offence, and that there is insufficient time to call a meeting of the Parole Authority to deal with the matter. A suspension order will remain in force for up to 28 days after the offender is returned to custody, so as to allow time for an inquiry to be conducted into those allegations [proposed s 172A].

Penalty for misconduct before Parole Authority

21. The Bill increases the maximum penalty for misconduct before the Parole Authority from 10 penalty units (\$1,100) to 20 penalty units (\$2,200) or imprisonment for 28 days [proposed amendment to s 189]. Misconduct includes wilfully insulting any member of the Parole Board and wilfully and without lawful excuse interrupting the hearing.

Access to documents held by Parole Authority

22. The Bill entitles the Minister to be given access to all documents held by the Parole Authority. In addition, the Bill entitles victims of a serious offender to be given access to all such documents other than those whose release is prohibited by section 194 [proposed s 193A].
23. Section 194 is amended to add two further grounds on which a judicial member of the Parole Authority may prohibit disclosure of a document. These additional grounds are that release of the document might adversely affect the supervision of offenders who have been released on parole or that the document might disclose the contents of an offender's medical, psychiatric or psychological report.

Parole Authority to record reasons for its decisions

24. The Bill compels the Parole Authority to keep records of the reasons for its decisions, and to supply copies of those reasons to the Minister, Commissioner or Probation and Parole Service on request (Schedule 1[56] proposed s193C).

Reports by Serious Offenders Review Council

25. One of the functions of the Serious Offenders Review Council set out in section 197 of the Act is to provide reports and advice to the Parole Board concerning the release on parole of serious offenders [s 197(2)(b)]. Current section 198 sets out the matters that the Council is to take into account when exercising certain of its advisory functions under section 197. However, s 197 is silent on the matters the Council is

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to consider when acting under paragraph 197(2)(b) in giving advice to the Parole Authority.

26. The Bill amends section 198 to prescribe matters for consideration by the Review Council when it prepares a report on the release on parole of a serious offender under s 197. These considerations include the public interest, the offender's classification history, the offender's conduct in custody and any other matter the Council considers relevant.

Issues Considered by the Committee

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

Privacy of offender: Proposed ss 193A and 194

27. Proposed section 193A(2) entitles victims of a serious offender to be given access to all documents held by or on behalf of the Parole Authority in relation to the offender, except certain documents listed in s 194.
28. The documents that need not be disclosed to a victim under that section, as amended by the Bill, are those that the provision of which to the victim may, in the opinion of a judicial member:
- (a) adversely affect the security, discipline or good order of a correctional centre, or
 - (b) endanger the person or any other person, or
 - (c) jeopardise the conduct of any lawful investigation, or
 - (d) prejudice the public interest, or
 - (e) adversely affect the supervision of any offender who has been released on parole; or
 - (f) disclose the contents of any offender's medical, psychiatric or psychological report.
29. The presumption in subsection 193A(2) is that all documents held by the Authority can be disclosed to victims of the offender concerned. According to the second reading speech, the justification for entitling victims to access such documents is that:
- ...on occasions a victim may better deal with the prospect of the proposed release on parole of an offender if the victim has access to some of the information in the possession of the [Authority].⁶
30. The Committee notes that the process of considering parole requires that some of an offender's personal information be made public. To the extent necessary to ensure that the parole system remains appropriately open and accountable, personal information will be disclosed during parole hearings. In this regard, an offender's right to privacy must give way to the public interest in the proper and open administration of justice.

⁶ Mr Tony Stewart MP, Parliamentary Secretary, Second Reading Speech, Legislative Council Hansard, 27 October 2004.

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31. However, the Authority is not required under the legislation to consider protection of the serious offender's right to privacy before deciding which information to disclose to victims.
 32. The exclusion for medical, psychiatric or psychological reports is the only exclusion that goes to protecting the privacy rights of a serious offender. In referring only to "reports", it may not exclude all of the offender's medical records or other health information. In addition, there is no exclusion for other personal information held by the Authority that may not be sufficiently relevant to the decision of whether to grant parole to warrant its disclosure to the victims in violation of the offender's right to privacy.
 33. The Committee notes that the right to privacy is not absolute and that there may be public interest considerations requiring the restriction of that right. However, as with any trespass on a personal right, the Committee considers that when the right to privacy needs to be trespassed to achieve an important public purpose, that trespass should be no more than is necessary to achieve that end.
 34. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners should retain their human rights and fundamental freedoms,⁷ including the right to privacy.
- | |
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| <ol style="list-style-type: none"> 35. The Committee notes that the right to privacy is not absolute and may need to be balanced with competing public interest considerations. 36. The Committee further notes the ongoing interest of victims of serious offenders in the administration of the offender's sentence. 37. The Committee has written to the Minister for advice on what measures can be taken to better protect a serious offender's right to privacy while obtaining the objects of the Bill. 38. The Committee refers to Parliament the question as to whether the disclosure provisions in this Bill trespass unduly on personal rights and liberties. |
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Delegation of legislative powers [s 8A(1)(b)(iv) LRA]

Issue: Commencement by proclamation; Clause 2(1)

39. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. While there are often good reasons why such discretion is required, the Committee considers that, in some

⁷ The Committee also notes the General Assembly of the United Nation's resolution on the *Basic Principles for the Treatment of Prisoners* (1990), which states that:

5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

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circumstances, it can give rise to concerns about an inappropriate delegation of legislative power.

40. The Department of Corrective Services has advised the Committee that the delay in commencement of most of the provisions of the Bill is required to provide time for a number of important measures that need to be implemented before the Bill can commence. These measures include:

- the making of regulations (eg to prescribe the circumstances that may constitute “manifest injustice” for the purposes of proposed sections 137B and 143B); and
- to finalise Parole Authority Guidelines.

The Committee makes no further comment on this Bill.

3. GENE TECHNOLOGY (GM CROP MORATORIUM) AMENDMENT BILL 2004

Date Introduced: 27/10/04
House Introduced: Legislative Council
Minister Responsible: The Hon Ian Macdonald MLC
Portfolio: Primary Industries

Purpose and Description

1. The object of this Bill is to:
 - (a) clarify the process by which the Minister for Primary Industries ('the Minister') consults with the NSW Agricultural Advisory Council on Gene Technology ('Advisory Council') in relation to the making of an exemption order under the *Gene Technology (GM Crop Moratorium) Act 2003*; and
 - (b) clarify that the Minister may impose conditions on an exemption order that relate to the handling, storage, transport or other use (including destruction or disposal) of any GM food plant⁸ that is permitted to be cultivated by the exemption order or that relate to the ongoing use or monitoring of any land on which any such plant has been cultivated; and
 - (c) create an offence if a person who cultivates, or has cultivated, a GM food plant as permitted by an exemption order, without reasonable excuse, contravenes, or causes or permits any other person to contravene, any condition to which the exemption order is subject.

Background

2. The *Gene Technology (GM Crop Moratorium) Act 2003* regulates the cultivation of GM food plants in NSW, in recognition of the potential economic, health and environmental impacts of these plants.⁹
3. Section 6 of the *Gene Technology (GM Crop Moratorium) Act 2003* provides for the Minister to prohibit the cultivation of a specified GM food plant or class thereof by publishing a moratorium order. It is an offence under s 7 of that Act for a person to knowingly or recklessly cultivate a GM food plant contrary to such an order.

⁸ A GM food plant is a plant primarily grown for human consumption that has been modified by gene technology or which has inherited from another plant particular traits that occurred in that other plant because of gene technology: *Gene Technology (GM Crop Moratorium) Act 2003*, ss 4 and 5.

⁹ The *Gene Technology (GM Crop Moratorium) Act 2003* complements the broader regulation of dealing in GM Organisms by the Commonwealth Gene Technology Regulator, established under the Cth. *Gene Technology Act 2000*. The *Gene Technology Act 2000* and the *Gene Technology (Licence Charges) Act 2000* of the Commonwealth have been incorporated into NSW law so as to promote a uniform, national approach to GMOs: *Gene Technology (New South Wales) Act 2003*, s 3.

Gene Technology (GM Crop Moratorium) Amendment Bill 2004

4. Section 8 of that Act provides for the Minister to exempt the cultivation of a GM food plant from any moratorium order if certain procedures are followed, including that the Minister has sought a recommendation from the Advisory Council¹⁰ on whether an exemption order should be made. Under s 8(6) of the *Gene Technology (GM Crop Moratorium) Act 2003*, any exemption order may be conferred unconditionally or conditionally.
5. The second reading speech notes that, in relation to the amendments to the consultation process between the Minister and the Advisory Council, the Council Chairman was consulted prior to the Bill's introduction and supports the changes.¹¹

The Bill

6. The Bill is to commence on assent [cl 2].

Consultation with the Advisory Council [schedule 1, clause 1]

7. The Bill proposes that the Minister is not to make an exemption order unless the Advisory Council has been provided with a copy of certain material relating to the proposed order and has been asked to provide its written recommendation as to whether an order should be granted [proposed s 8(2)].
8. The existing provision requires that the Minister consult with the Advisory Council and seek in writing its recommendation as to whether an exemption order should be made.¹² The proposed provision does not alter the existing requirement for the Minister to seek a recommendation. However, it is more specific in describing how the Minister is to involve the Advisory Council in determining whether to confer an exemption.

Conditions on the post-harvest handling of GM crops [schedule 1, clause 2]

9. The Bill empowers the Minister to subject an exemption order to:
 - conditions that relate to the handling, storage or other use (including destruction or disposal) of any GM food plant that is permitted to be cultivated; or
 - conditions that relate to the ongoing use or monitoring of any land on which any such plant has been cultivated [proposed s 8(6A)].¹³

¹⁰ The Advisory Council includes an independent chair and representatives from groups such as the NSW Farmers Association, the Australian Wheat Board, Grain Corp, CSIRO and the Nature Conservation Council: The Hon. Ian Macdonald MLC, second reading speech, *Legislative Council Hansard*, 28 October 2004.

¹¹ The Hon Ian Macdonald MLC, second reading speech, *Legislative Council Hansard*, 28 October 2004.

¹² According to the second reading speech, this open-ended requirement to consult meant that "under a strict interpretation of section 8 and as a matter of practice, the Minister responsible must go backwards and forwards to the council with applications for exemptions, draft orders, amendments to draft orders and recommendations": The Hon. Ian Macdonald MLC, second reading speech, *Legislative Council Hansard*, 28 October 2004.

¹³ This is an amendment that serves to clarify s 8(6) of the *Gene Technology (GM Crop Moratorium) Act 2003* and make transparent the nature of the conditions that may be imposed by the Minister on exemption orders: The Hon Ian Macdonald MLC, *Legislative Council Hansard*, 28 October 2004.

Gene Technology (GM Crop Moratorium) Amendment Bill 2004

10. The Bill makes it an offence for a person to contravene any condition of an exemption order *without reasonable excuse*. The maximum penalty for this new offence is 1,250 penalty units (\$27,500) in the case of a corporation and 500 penalty units (\$55,000) or 2 years imprisonment in any other case [proposed s 8(6B)].
11. A person cannot be prosecuted for both this offence and the offence of contravening a moratorium order under s 7 of the *Gene Technology (GM Crop Moratorium) Act 2003* in relation to the same act or omission [proposed s 8(GC)]. The maximum penalties under s 7 of the Act are identical to those proposed in respect of the new offence.

Savings and transitional provision [schedule 1, clause 3]

12. The proposed new offence of contravening a condition of an exemption order without reasonable excuse is not to apply to any condition imposed before the commencement of the Bill.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

4. HEALTH LEGISLATION AMENDMENT (COMPLAINTS) BILL 2004; HEALTH REGISTRATION LEGISLATION AMENDMENT BILL 2004; & NURSES AND MIDWIVES AMENDMENT (PERFORMANCE ASSESSMENT) BILL 2004

Date Introduced: 26 October 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Morris Iemma MP
Portfolio: Health

Purpose and Description

1. These three Bills are cognate.

Health Legislation Amendment (Complaints) Bill 2004

2. The object of the *Health Legislation Amendment (Complaints) Bill 2004* (the Complaints Bill) is to amend the *Health Care Complaints Act 1993* (HCCA) to:
 - enable the Health Care Complaints Commission (the HCCC) to focus on dealing with serious complaints concerning health practitioners, health service providers and the provision of health services;
 - establish the Health Conciliation Registry (the Registry) as a separate unit within the HCCC to deal with the conciliation of complaints;
 - enable the HCCC, in appropriate circumstances, to deal with complaints through alternative dispute resolution procedures; and
 - require the HCCC to appoint a member of staff as Director of Proceedings to exercise the function of the HCCC of determining whether a complaint should be prosecuted before a disciplinary body.

Health Registration Legislation Amendment Bill 2004

3. The object of the *Health Registration Legislation Amendment Bill 2004* (the Registration Bill) is to amend as follows various Acts which provide for the registration of health practitioners:
 - to standardise, as far as practicable, the concepts of professional misconduct and unsatisfactory professional conduct where used in those Acts so that they relate to conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the relevant health practitioner in the practice of their profession is significantly below the standard reasonably expected of such a health practitioner of an equivalent level of training or experience;

Health Legislation Amendment (Complaints) Bill 2004; Health Registration Legislation Amendment Bill 2004; & Nurses and Midwives Amendment (Performance Assessment) Bill 2004

- to make a contravention of proposed s 34A(4) of the HCCA by a health practitioner (relating to requirements to provide information to the HCCC) a type of unsatisfactory professional conduct under those Acts;
 - to make it clear that when disciplinary proceedings in relation to a complaint are taken under those Acts the complaint may at that stage relate to matters arising out of the investigation of the complaint as originally made; and
 - as a consequence of the cognate Complaints Bill.
4. The Bill also amends the *Medical Practice Act 1992* (MPA) and the *Nurses and Midwives Act 1991* (NAM Act) to enable a person to be represented before the relevant Professional Standards Committees by a non-legal adviser, and to ensure that members of the New South Wales Medical Board or the Nurses and Midwives Board cannot sit on the relevant Professional Standards Committees.

Nurses and Midwives Amendment (Performance Assessment) Bill 2004

5. The object of the *Nurses and Midwives Amendment (Performance Assessment) Bill 2004* (the Performance Assessment Bill) is to amend the NAM Act to include provisions enabling the performance assessment of nurses and midwives that mirror those in the MPA.

Background

6. As stated in the second reading speech, the Bills implement the recommendations of the *Special Commission of Inquiry into Campbelltown and Camden Hospitals* (the Walker Inquiry) and the review of the HCCA undertaken by the Cabinet Office.¹⁴
7. The Minister noted that the three main objects of the Bills are to:
- refocus the HCCC on investigating serious complaints about health service providers;
 - improve the operation of the complaints handling process to make the process faster and more effective; and
 - make the complaints system fairer for all parties by giving proper protection to practitioners, to complainants and to the general public.¹⁵

The Bills

Health Legislation Amendment (Complaints) Bill 2004

8. In order to emphasise that the primary role of the HCCC is the investigation of *serious complaints*¹⁶, the Bill amends s 3 of the HCCA to provide as follows:

¹⁴ Hon M Iemma MP, Minister for Health, Legislative Assembly *Hansard*, 26 October 2004. For the Final Report of the Walker Inquiry see www.lawlink.nsw.gov.au/lawlink/Corporate/II_corporate.nsf/pages/sci_final_report; for the Cabinet Office Review of the HCCA see www.cabinet.nsw.gov.au/pdfs/Introduction.pdf

¹⁵ Hon M Iemma MP, Minister for Health, Legislative Assembly *Hansard*, 26 October 2004.

Health Legislation Amendment (Complaints) Bill 2004; Health Registration Legislation Amendment Bill 2004; & Nurses and Midwives Amendment (Performance Assessment) Bill 2004

- (1) The primary object of this Act is to establish the Health Care Complaints Commission as an independent body for the purposes of:
 - (a) receiving and assessing complaints under this Act relating to health services and health service providers in New South Wales; and
 - (b) investigating and assessing whether any such complaint is serious and if so, whether it should be prosecuted, and
 - (c) prosecuting serious complaints, and
 - (d) resolving or overseeing the resolution of complaints.
 - (2) In exercising its functions under this Act, the Commission is to have as its primary object *the protection of the health and safety of the public* [emphasis added].
9. To reinforce this, the Bill outlines the respective roles of the HCCC¹⁷, the Director-General of the Department of Health (the Director-General), public health organisations under the *Health Services Act 1997*, and health profession registration authorities in connection with the health care system [proposed s 3A].

Outcomes of consultation

10. The Bill provides for a new, more detailed, range of outcomes to the consultation process between the HCCC and registration authorities concerning complaints [proposed s 13].
11. These include the options of referring a complaint to the relevant registration authority for the taking of action under the relevant health registration Act. Such action may include performance assessment or impairment assessment [proposed new s 13(2)].¹⁸
12. If investigation or referral to the appropriate registration authority is not suitable, the complaint may be referred for conciliation [proposed s 13(3)].¹⁹

Complaint process

13. The Bill provides that notice of a complaint must be given to the person against whom the complaint is made not later than 14 days after the complaint is *assessed* by the

¹⁶ See Hon M Iemma MP, Minister for Health, Legislative Assembly Hansard, 26 October 2004. One example of this new approach is the omission of s 80(1)(j) which set out the function of the HCCC to investigate the frequency, type and nature of allegations made in legal proceedings of malpractice by health practitioners.

¹⁷ The Health Care Complaints Commission is described in proposed s 3A(2) as an independent body with responsibility for dealing with complaints under the *Health Care Complaints Act 1993*, with particular emphasis on the investigation and prosecution of serious complaints in consultation with relevant registration authorities.

¹⁸ However, only the *Medical Practice Act 1992* currently contains provisions relating to performance assessment. Similar provisions are therefore inserted into the *Nurses and Midwives Act 1991* by the cognate *Nurses and Midwives Amendment (Performance Assessment) Bill 2004*.

¹⁹ The Bill substitutes s 24 of the HCCA (currently dealing with referral of complaints to the Health Conciliation Registry for conciliation) to provide that the HCCC *must* refer a complaint for conciliation if required by s 13 of the HCCA, or if it decides to do so under proposed s 20A, and to enable the HCCC, in appropriate circumstances, to deal with a complaint under proposed Division 9 of Part 2 of the HCCA.

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HCCC for the determining what action to take [proposed new s 16(1)]. Currently, the initial notice is to be given within 14 days after the HCCC's *receipt* of the complaint.

14. The HCCC is *not* required to give notice under s 16 if it appears, on reasonable grounds, that the giving of the notice will or is likely to:
 - prejudice the investigation of the complaint;
 - place the health or safety of a client at risk; or
 - place the complainant or another person at risk of intimidation or harassment [proposed s 16(4)].
15. However, the HCCC must give the notice, regardless of the circumstances, if it considers on reasonable grounds that it is essential on the grounds of natural justice, or to investigate the complaint effectively, or it is otherwise in the public interest [proposed s 16(5)].²⁰
16. The HCCC must also, as part of its assessment of a complaint - and as soon as practicable after commencing the assessment - identify the *specific allegations* comprising the complaint and the person or persons whose conduct appears to be the subject of the complaint and use its best endeavours to confirm those matters with the persons who provided the information [proposed s 20(2)].²¹
17. The Minister noted that proposed s 20(2) is a response to:

a key finding of Commissioner Walker, namely, that the HCCC failed in many cases properly to identify and notify those against whom a complaint had been made.²²
18. The HCCC must also keep under review its assessment of a complaint while dealing with it. If the HCCC revises its assessment of a complaint at any time it may take appropriate action in relation to the revised assessment, after consulting with the appropriate registration authority [proposed s 20A].²³
19. When assessing a complaint, the HCCC may exercise the powers conferred on it by proposed s 34A to obtain hospital and medical records and documents relating to a health practitioner's practice [proposed s 21A; see below paragraph 28].

²⁰ The *Protected Disclosures Act 1994* places a similar obligation on public authorities dealing with protected disclosures to give notice to a person who is the subject of the disclosure.

²¹ The Bill removes the requirement that a complainant must verify a complaint by statutory declaration. However, the note to s 9 of the HCCA is amended to indicate that the provision of false or misleading information under the HCCA to the HCCC, or staff of the HCCC, is an offence.

²² Hon M Iemma MP, Minister for Health, Legislative Assembly *Hansard*, 26 October 2004.

²³ If the HCCC does revise its assessment of a complaint, it must give certain notices to the persons who are the subject of the complaint: proposed s 20A(3) & (4) of the *Health Care Complaints Act 1993*. The Bill also expands the scope of s 25 of the HCCA to require the HCCC to notify the Director-General of the Department of Health if it appears that a complaint involves a possible breach of the *Anatomy Act 1977*, the *Health Records and Information Privacy Act 2002* and the *Human Tissue Act 1983*: proposed amended s 25 of the *Health Care Complaints Act 1993*.

Referring complaints

20. The Bill substitutes s 24 of the HCCA (currently dealing with referral of complaints to the Health Conciliation Registry for conciliation) to provide that the HCCC must refer a complaint for conciliation if required by s 13 of the HCCA, or if it decides to do so under proposed s 20A; and to enable the HCCC, in appropriate circumstances, to deal with a complaint under proposed Div 9 of Part 2 of the HCCA (see Sch 2 [9] relating to alternative dispute resolution procedures).
21. The HCCC may refer a complaint to the Director-General (with the Director-General's consent), if the HCCC considers the complaint relates to a matter that could be the subject of an inquiry by the Director-General under s 71 of the *Public Health Act 1991*²⁴ or s 123 of the *Health Services Act 1997* [proposed s 25A].²⁵
22. The HCCC may also refer a complaint to the appropriate registration authority for the taking of action under the relevant health registration Act. If the HCCC makes such a referral, it must discontinue dealing with the complaint [proposed s 25B].²⁶
23. The Minister noted that proposed s 25B:

is specifically designed to recognise the co-regulatory regime and will clarify that the HCCC does not have a supervisory role over the registration boards in relation to performance assessment. The proposed section will make it clear that investigation by the HCCC and performance assessment by the registration boards are alternative streams.²⁷
24. Currently, the HCCA provides that the HCCC can discontinue dealing with a complaint if it raises issues required to be investigated by another person or body. The Bill enables the HCCC to discontinue dealing with a complaint if it has actually been *referred* to another person or body for appropriate action [proposed new s 27(1)(d)].

Action following assessment

25. The Bill makes provision for the following actions of the HCCC in the wake of assessing a complaint:
 - notice to the parties to a complaint of the proposed action must be given within 14 days;

²⁴ Pursuant to s 71 of the *Public Health Act 1991* the Director-General may inquire into:

- (a) any matter relating to the health of the public; or
- (b) any matter that, under this Act, authorises a direction by, or that requires the approval or consent of, the Minister or the Director-General.

Similarly, the Director-General may inquire into the administration, management and services of any organisation or institution providing health services (other than a public health organisation) if those services are wholly or partly funded with money paid from the Consolidated Fund: s 123 of the *Health Services Act 1997*.

²⁵ However, the HCCC is *not* prevented from continuing to deal with a complaint in so far as it concerns the professional conduct of a health practitioner or a health service which affects the clinical management or care of an individual client: proposed s 25A(3) of the *Health Care Complaints Act 1993*.

²⁶ The HCCC may also refer a complaint to a public health organisation for resolution at a local level if the public health organisation consents: proposed amended s 26 of the *Health Care Complaints Act 1993*.

²⁷ Hon M Iemma MP, Minister for Health, Legislative Assembly *Hansard*, 26 October 2004.

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- notice *may* be given of the investigation of a complaint against a health practitioner to a person who currently employs or engages the health practitioner;
 - such notice must be given despite certain exemptions if it is essential on the ground of natural justice and certain other grounds;
 - decisions to withhold notice must be reviewed;
 - notification (if possible) of the outcomes of the assessment must be given to a client whose treatment is the subject of the complaint, and who is not otherwise required to receive a notification under the HCCA;
 - notification (if possible) of the outcomes of the assessment, in a case where the client was treated in a hospital or health care facility, must be given to the recorded contact person for the client if the client is deceased, or the client is incapable of understanding the notification and the authorised representative of the client (within the meaning of the *Health Records and Information Privacy Act 2002*) consents; and
 - notification (if possible) of the outcomes of the assessment of a complaint must be given to other persons associated with a client whose treatment is the subject of the complaint if the client is deceased or the client is incapable of understanding the notification and the authorised representative of the client (within the meaning of the *Health Records and Information Privacy Act 2002*) consents [proposed new s 28 & s 28A].
26. The Minister noted that the purpose of the notification amendments is to address concerns that arose during the HCCC's investigation into Camden and Campbelltown hospitals, when some patients and families were not notified directly of problems identified with the health care they received.²⁸

Investigative powers of the HCCC

27. The Bill extends the HCCC's current power to enter premises so that an authorised person may enter any premises *if it is necessary for the investigation of the complaint* [proposed amended s 33].²⁹
28. The Bill empowers the HCCC, during the investigation of a complaint, to require the production of information or documents (including medical records) from the complainant, the person against whom the complaint was made or a health service provider [proposed s 34A].³⁰

²⁸ Hon M Iemma MP, Minister for Health, Legislative Assembly *Hansard*, 26 October 2004.

²⁹ This power cannot be exercised except with the consent of the owner or occupier of the premises or with the authority of a search warrant: s 32 of the *Health Care Complaints Act 1993*.

³⁰ To facilitate proposed s 34A, the Bill amends s 35(d) of the *Health Care Complaints Act 1993* to extend the current offence of furnishing false or misleading information to an authorised person to ensure that it covers the situations where information is given to the Commissioner or a member of staff of the HCCC.

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Failing to comply with a request from the HCCC for information, without reasonable excuse, is an offence with a maximum penalty of 20 penalty units (currently \$22,000) [proposed s 34A(4)].³¹

29. These amendments are based on Commissioner Walker's conclusion that:
- early characterisation and assessment of complaints involving Campbelltown and Camden hospitals could well have been assisted by giving the HCCC greater access to records.³²
30. The Bill protects from personal liability a person making a complaint, or reporting any matter that could give rise to a complaint, if the person's actions were done in good faith [proposed s 96(2)].
31. The offence of improperly disclosing information obtained during the exercise of investigative functions under the HCCA (ie under Division 5) is omitted, but re-enacted, with an extended application to information obtained whilst exercising *any* function under the HCCA [proposed s 99A].
32. The HCCC is provided with an additional option, on concluding an investigation into a complaint, of referring the complaint to the appropriate registration authority for consideration that the health practitioner be referred for performance assessment or impairment assessment [proposed s 39(1)(c)].
33. The Bill also clarifies that the HCCC is not precluded by anything in the HCCA, or by any other Act or law, from providing information to the Ombudsman in connection with a preliminary inquiry under s 13AA of the *Ombudsman Act 1974* or an investigation under that Act [proposed s 103A(2)].³³
34. Other amendments made by the Bill to the investigative processes of the HCCC are dealt with in detail below [see paragraphs 54 - 74].

Complaints resolution

35. The Bill substitutes Division 8 of Part 2 of the HCCA which deals with the conciliation of complaints and inserts a new Division 9 of Part 2 relating to other complaints resolution procedures that may be carried out by the HCCC.³⁴

³¹ The failure of a health practitioner to comply with a request under s 34(4) may constitute unsatisfactory professional conduct under the relevant health registration Act.

³² Hon M Iemma MP, Minister for Health, Legislative Assembly *Hansard*, 26 October 2004.

³³ Section 12 of the *Ombudsman Act 1974* enables a person to make a complaint about a wide range of conduct of a public authority relating to administrative action or inaction by the public authority. Section 13AA of that Act enables the Ombudsman to conduct preliminary inquiries into such a complaint and s 13 of that Act enables the Ombudsman to investigate such conduct whether or not a complaint has been made if it appears to the Ombudsman that the conduct may be, for example, contrary to law.

³⁴ Proposed Division 9 of the *Health Complaints Commission Act 1993* contains the following provisions:

- (a) proposed s 58B, which sets out the objects of the Commission when dealing with complaints under the proposed Division,
- (b) proposed s 58C, which sets out the function of the Commission under the proposed Division, being to take appropriate measures to assist in the resolution of complaints,

36. Proposed Division 8 re-enacts (with certain modifications) the repealed Division and contains provision for:
- the appointment of a conciliator to conciliate a complaint referred to the Registry [proposed s 46];
 - the Registrar to give notice of the referral of a complaint for conciliation [proposed s 47],
 - participation in the conciliation process under the proposed Division being voluntary [proposed s 48];
 - the role of conciliators [proposed s 49];
 - the parties to a complaint not being entitled to be legally represented during conciliation of the complaint but may, in certain circumstances, be assisted by another person who is not a legal practitioner [proposed s 50];
 - prevention of anything said or documents prepared in connection with the conciliation of a complaint from being used in proceedings without the consent of the persons concerned [proposed s 51];
 - the conciliation process being concluded when either party terminates it, the parties reach agreement or the conciliator terminates it for specified reasons [proposed s 52];
 - the conciliator to give a report to the Registrar on the conclusion of the conciliation process and the Registrar to give a copy of the report to the HCCC, the parties to the complaint and the appropriate registration authority [proposed s 53];
 - conciliators to furnish certain information to the Registrar for the purposes of proposed s 55 [proposed s 54];
 - the Registrar to make six-monthly reports to the registration authorities providing specified information about the complaints dealt with by way of conciliation [proposed s 55];
 - the HCCC to be able to investigate a complaint that has been dealt with under the proposed Division, but only in limited circumstances [proposed s 56];
 - a member of staff of the HCCC employed in the Registry or a conciliator not to be subject to the direction and control of the Commissioner in relation to dealing with any particular complaint [proposed s 57];
 - it to be an offence for a conciliator or a member of staff of the HCCC employed in the Registry to disclose information obtained during the conciliation of a complaint except in specified circumstances [proposed s 58]; and
 - for a conciliator not to be liable to be proceeded against under s 316 of the *Crimes Act 1900* (dealing with offences for concealing information relating to a

(c) proposed s 58D, which provides that participation in the complaints resolution process under the proposed Division is voluntary.

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serious indictable offence) in relation to information obtained in connection with the conciliation process [proposed s 58A].³⁵

Director of Proceedings

37. The Bill establishes a position of Director of Proceedings within the HCCC [proposed Part 6A].

38. The proposed Part provides that:

- the HCCC must appoint a member of its staff as Director of Proceedings [proposed s 90A],
- the Director is to exercise the functions of the HCCC relating to the determination of whether a complaint should be prosecuted before a disciplinary body and must consult with the appropriate registration authority (if any) before making any such determination [proposed s 90B];
- the Director must take certain matters into account when making such a determination, including the protection of public health and safety and any submissions received in accordance with the HCCA from the health practitioner concerned [proposed s 90C]; and
- the Director is *not* subject to the direction and control of the Commissioner when dealing with any particular complaint [proposed s 90D].

Other legislative amendments

39. The Bill also amends:

- the *Freedom of Information Act 1989* (FOI Act), consequent on the establishment of the Registry as a unit within the HCCC and to protect certain documents provided by the HCCC to registration authorities [proposed amendments to Sch 1 & Sch 2 to the FOI Act];
- the *Health Administration Act 1982*, to formalise the procedures for appointing root cause analysis (RCA) teams to look into particular incidents involving the provision of health services by an area health service (and certain other health services organisations); and to give certain protections to those teams, including qualified privilege in proceedings for defamation [proposed Division 6C]; and
- the *Health Services Act 1997*, to require chief executive officers of public health organisations to report possible professional misconduct or unsatisfactory professional conduct of visiting practitioners and employees [proposed s 99A and s117A].

³⁵ The Bill also extends the functions of the Parliamentary Joint Committee on the HCCC to include the function of monitoring and reviewing the exercise of functions by the Registry [proposed new s65(1)(a1)], and converts the Registry from a statutory corporation to a unit of the HCCC: proposed new Part 6 of the *Health Care Complaints Act 1993*.

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Health Registration Legislation Amendment Bill 2004

40. This Bill standardises the reference to unsatisfactory professional conduct (as referred to in paragraph 3 above) in the following Acts:
- *Chiropractors Act 2001*;
 - *Dental Practice Act 2001*;
 - *Medical Practice Act 1992*;
 - *Nurses Amendment Act 2003*;
 - *Nurses and Midwives Act 1991*;
 - *Optometrists Act 2002*;
 - *Osteopaths Act 2001*;
 - *Physiotherapists Act 2001*;
 - *Podiatrists Act 1989*;
 - *Podiatrists Act 2003*; and
 - *Psychologists Act 2001*.

Nurses and Midwives Amendment (Performance Assessment) Bill 2004

41. This Bill amends the NAM Act so that performance assessment of nurses and midwives is provided for in the same manner as in the relevant sections of the *Medical Practice Act 1992* [proposed s 42E – s 42ZB].³⁶
42. Accordingly, *professional performance* of a nurse or midwife is a reference to the knowledge, skill or care possessed and applied by the nurse or midwife in the practice of nursing or midwifery [proposed 42E]; and *unsatisfactory* in relation to such professional performance is where it is below the standard reasonably expected of a nurse or midwife of an equivalent level of training or experience [proposed s 42F].
43. The Bill also amends the NAM Act to give assessors³⁷ certain powers [Sch 2A]. These include:
- powers of entry to premises and inspection of premises and equipment [proposed cl 2(1) of Sch 2A];³⁸
 - powers to ask questions³⁹ and require the production of substances and records [proposed cl 2(3)]; and

³⁶ The Minister noted that performance assessment has proven to be an effective means of reviewing a medical practitioner's performance because it occurs in an environment focused on rehabilitation rather than punishment: Hon M Iemma MP, Minister for Health, Legislative Assembly *Hansard*, 26 October 2004.

³⁷ An *assessor* means a person appointed as an assessor under Division 6 of Part 4A: proposed amended s 3(1) of the *Nurses and Midwives Act 1991*.

³⁸ However, an assessor may enter premises only:

- (a) with the consent of the occupier and the nurse or midwife to whom the assessment relates; or
- (b) after having given the occupier of the premises, and the nurse or midwife to whom the assessment relates, at least 14 days notice of the assessor's intention to enter the premises: proposed cl 2(2) of Sch 2A to the *Nurses and Midwives Act 1991*.

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- powers requiring a nurse or midwife to take part in an assessment exercise [proposed cl 3].⁴⁰
44. Proposed Part 1 creates certain offences for:
- obstructing assessors in the performance of their functions [proposed cl 5(a) & (b) – maximum penalty 50 penalty units (currently \$5,500)];
 - furnishing false information [proposed cl 5(c) – maximum penalty 20 penalty units (currently \$2,200)]; and
 - impersonating assessors [proposed cl 6] – maximum penalty 50 penalty units (currently \$5,500)].
45. Proposed Part 1 also provides that an assessor's report to the Nurses and Midwives Board, or to a Performance Review Panel, is not admissible in civil proceedings without consent [proposed cl 8].
46. Part 2 of proposed Schedule 2A contains provisions in relation to the conduct of a performance review by a Performance Review Panel.⁴¹ A Panel may:
- summon witnesses and take evidence [proposed cl 11];
 - obtain documents [proposed cl 12];
 - seek reports from experts [proposed cl 14] and
 - gain assistance from assessors [proposed cl 15].
47. The nurse or midwife concerned is entitled to make representations to the Panel [proposed cl 13] and the Panel may allow affected third parties to make submissions [proposed cl 17].⁴²

³⁹ Any information furnished by a person in answering a question asked by an assessor for the purposes of an assessment under Part 4A of the Act is not admissible against the person in any civil proceedings before a court except with the consent of the person: proposed cl 4(1) of Sch 2A to the *Nurses and Midwives Act 1991*.

⁴⁰ Although failure or refusal by a nurse or midwife to take part in, or to continue with, an assessment exercise does not constitute an offence against the Act, it *is*, in the absence of a reasonable excuse, evidence that the professional performance of the nurse or midwife is unsatisfactory: proposed cl 3(7) of Sch 2A to the *Nurses and Midwives Act 1991*.

⁴¹ A Performance Review Panel is appointed by the Nurses and Midwives Board and consists of one lay person ie, a person who is not a nurse or midwife and either two nurses if the performance review concerns a nurse, or two midwives if the performance review concerns a midwife: proposed s 42X(4) of the *Nurses and Midwives Act 1991*.

⁴² If such a submission is made, the Performance Review Panel *must* take it into account before giving a direction or making an order: proposed cl 17(1)(b) of Sch 2A to the *Nurses and Midwives Act 1991*.

Issues Considered by the Committee

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

Proposed amended s 35(d) of the HCCA: Strict liability offence

48. The Bill replaces the existing offence in s 35(d) of the HCCA of furnishing an authorised person with information *knowing* that it is false or misleading in a material particular with an offence of simply furnishing such information.
49. This is in effect, a new strict liability offence⁴³ with a maximum penalty of 20 penalty points (currently \$2,200).
50. Removing the element of *knowing* that information furnished is false and misleading places on a person furnishing such information the obligation of ensuring that it is not false or misleading in order to avoid liability under the offence.

51. The Committee notes that criminal intent is normally required to be proved by the prosecution as an element of an offence.
52. The Committee refers to Parliament the question of whether, having regards to the aims of the Health Care Complaints Act 1993, the creation of this strict liability offence trespasses unduly on personal rights and liberties.

Proposed s 37A of the HCCA: privilege against self-incrimination

53. Pursuant to proposed s 37A(1), a person is *not* excused from a requirement under proposed s 34A to answer a question, or produce a document on the ground that to do so might incriminate the person, or make the person liable to a penalty.
54. However, any answer given by a natural person in compliance with a requirement under proposed s 37A is *not* admissible in evidence against the person in any civil or criminal proceedings (except disciplinary proceedings or proceedings for an offence under Part 2 of the HCCA), if:
 - the person objected at the time to answering the question on the ground that it might incriminate the person; or
 - the person was not warned on that occasion that the person may object to answering the question on the ground that it might incriminate the person [proposed s 37A(2)].
55. This exception is limited to information or answers given by a natural person,⁴⁴ and does *not* extend to documents produced in compliance with s 34A [proposed s 37A(4)].

⁴³ Strict liability offences do not have a requirement that the prosecution prove that the accused had the intention to commit the crime (*mens rea*).

⁴⁴ The High Court has held that the privilege against self-incrimination does not extend to corporate bodies: *EPA v Caltex* (1993) 178 CLR 447. This is also the situation in Canada [*R v Amway of Canada Ltd.* (1989) 56

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56. However, the HCCC, the Commissioner or a member of staff of the HCCC cannot be required (whether by subpoena or any other procedure) to produce, in connection with any proceedings, a document that contains any information or answer that has been obtained as a result of a requirement under s 34A, if the information or answer is not admissible in evidence in those proceedings because of this section [proposed s 37A(5)].

“Right to silence”

57. The common law of Australia protects the privilege against self-incrimination. It applies both in the pre-trial and trial phase.
58. The principle *nemo tenetur accusare se ipsum* (no person is bound to accuse himself or herself) originated as a means of protecting suspects from torture and oppressive interrogation, but is now recognised as a basic human right protecting personal freedom and human dignity.⁴⁵
59. Article 14(3)(g) of the *International Covenant of Civil and Political Rights* (ICCPR) states that a person has the right “[n]ot to be compelled to testify against himself or to confess guilt”. Outside the criminal context, the privilege is an attribute of the wider right to a fair trial protected by Art 14(1) of the ICCPR.
60. The privilege against self-incrimination provides that a person is not under a duty to answer questions, or otherwise cooperate with public officials engaged in the investigation or prosecution.

This is often called the *right to silence*. This right has been described by the High Court as:

an entitlement to remain silent when questioned or asked to supply information by any person in authority about the occurrence of an offence, the identity of participants and the roles that they played.⁴⁶

61. It is clear that the HCCC, or its staff, is acting as a “person in authority”, and that the exercise of the HCCC’s powers poses a threat to the privilege against self-incrimination.
62. Thus, the privilege against self-incrimination is restricted to proceedings where the person had made a prior statement that they may have been about to incriminate themselves, or had not been advised of the right to make such a statement [proposed s 37A(2)].

DLR (4th) 309], although not in New Zealand: *New Zealand Apple and Pear Marketing Board v Master & Sons Ltd.* [1986] 1 NZLR 195.

⁴⁵ The historical origins and modern rationale of the privilege are explored in *EPA v Caltex* (1993) 178 CLR 447. In that case the High Court held that although a corporation could not be a witness, it could confess its guilt through answering interrogatories or producing documents: Deane, Dawson and Gaudron JJ at 535.

⁴⁶ Adverse inferences cannot be drawn from the failure to answer in these circumstances: *R v Petty* (1991) 173 CLR 95 at 95.

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63. In *Pavic and Swaffield*,⁴⁷ the High Court emphasised that the right to silence was a fundamental rule of law (not restricted to formal interviews) and that this could be infringed even by covert questioning by police or informers.

In that case, the rationale for exclusion of a confession was that the confession was unfairly elicited in derogation of the free choice to speak or be silent.

64. The approach favoured by the Complaints Bill actually places the accused under an *obligation* to speak, in order to assert the entitlement once he or she has been advised of the issue of self-incrimination.

65. The Supreme Court of Canada has rejected this approach, observing that:

[i]t would be absurd to impose on the accused an obligation to speak in order to activate the right to silence.⁴⁸

66. The scope of the protection afforded by proposed s 37A(2) is further restricted, in that *further information* obtained as a result of an answer given under that section is not inadmissible on the ground that the answer had to be given or that the answer might incriminate [proposed s 37A(4)].

67. Thus, information obtained that would otherwise be inadmissible due to the operation of proposed s 37A(2) may nonetheless provide the basis for further procedures, such as questioning of third parties, during which further independent incriminating material of the person may be found.

In this indirect way, information that was otherwise inadmissible on the ground that it violated the privilege against self-incrimination may be used to incriminate that person.

Documents

68. While the compulsory *acquisition* of documents does not infringe the privilege against self-incrimination,⁴⁹ the High Court has observed that compelling a person to themselves produce such documents does.⁵⁰ However, the Court has noted that the case for the privilege for testimonial evidence is much stronger than that for documentary evidence.⁵¹

⁴⁷ *R v Swaffield; Pavic v The Queen* (1998) 192 CLR 159.

⁴⁸ *R v Liew* [1999] 3 SCR 227 at paragraph 44.

⁴⁹ The High Court has observed that the privilege:

...has no application to the seizure of documents or their use for the purpose of incrimination provided that they can be proved by some independent means. The privilege is not a privilege against incrimination; it is a privilege against self-incrimination: *Controlled Consultants Pty Ltd v Commissioner for Corporate Affairs* (1985) 156 CLR 385 at 393.

⁵⁰ In *EPA v Caltex* (1993) 178 CLR 447, Mason CJ and Toohey J stated that:

the privilege against self-incrimination protects an accused person who is required by process of law to produce documents which tend to implicate that person in the commission of the offence charged. The privilege likewise protects a person from producing in other proceedings, including civil proceedings, documents which might tend to incriminate that person.

⁵¹ In *EPA v Caltex* (1993) 178 CLR 447, Mason CJ and Toohey J observed that:

69. The High Court has also held that the privilege against exposure to penalties (which bears "some similarity with the privilege against incrimination") prevented a discovery order being made requiring the production of documents.⁵²
70. The European Court of Human Rights has, by majority,⁵³ distinguished between material compulsorily *acquired* and that which has an existence independent of the will of the suspect:
- The right not to incriminate oneself is primarily concerned, however, with respecting the will of an accused person to remain silent. As commonly understood... it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers *but which has an existence independent of the will of the suspect* such as, inter alia, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.⁵⁴
71. This has been held to mean that being compelled to produce a document does not infringe the privilege against self-incrimination.⁵⁵

Plainly enough the case for protecting a person from compulsion to make an admission of guilt is much stronger than the case for protecting a person from compulsion to produce books or documents which are in the nature of real evidence of guilt and are not testimonial in character.

Deane, Dawson and Gaudron JJ also observed that:

So far as documents are concerned, it may be thought that the maxim *nemo tenetur seipsum prodere* has a limited application, for documents are more in the nature of real evidence and speak for themselves in contrast to evidence of a testimonial kind. It is said, particularly in the United States, that there is a testimonial element in the production of documents because the person producing them identifies the documents produced as those being sought ((152) *Braswell v. United States* (1988) 487 US 99, at pp.111-118.). There is a certain technicality about that explanation. In reality, the privilege protects a person from being compelled to produce evidence which will incriminate him, whether testimonial or not. That is clear enough in a criminal trial where an accused cannot be compelled by the prosecution to produce documents. But the immunity enjoyed by an accused in a criminal trial extends to evidence of any kind, whether incriminating or not. The immunity is, perhaps, better explained by the principle that the prosecution bears the onus of proving its case, than by the more confined principle that an accused has a privilege against self-incrimination, notwithstanding that both have a common origin.

⁵² *Rich v Australian Securities and Investments Commission* [2004] HCA 42.

⁵³ In dissent, Judges Martins and Kuris stated:

...it is - to put it mildly - open to grave doubt whether the distinction made between the licence to use in criminal proceedings material which has "an existence independent from the will of the suspect" and the prohibition of such use of material which has been obtained "in defiance of his will" is a sound one. Why should a suspect be free from coercion to make incriminating statements but not free from coercion to cooperate to furnish incriminating data? The Court's newly adopted rationale does not justify the distinction since in both cases the will of the suspect is not respected in that he is forced to bring about his own conviction. Moreover, the yardstick proposed is not without problems: can it really be said that the results of a breathalyser test to which a person suspected of driving under the influence has been compelled have an existence independent of the will of the suspect? And what about a PIN code or a password into a cryptographic system which are hidden in the suspect's memory?

In sum: I cannot accept the new doctrine. I stick to the notion of the privilege against self-incrimination and the right to remain silent being two separate, albeit related, immunities which allow for limitations: *Saunders v United Kingdom* [1996] 23 EHRR 313.

⁵⁴ *Saunders v United Kingdom* [1996] 23 EHRR 313, emphasis added.

⁵⁵ *L v United Kingdom* Report 1999 VI.

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72. The Committee notes that the right against self-incrimination (or "right to silence") is a fundamental right. This right should only be eroded when it is overwhelmingly in the public interest to do so.⁵⁶
73. The Committee notes that, under the terms of proposed s 37A(2) of the Bill, information can only be used against a person in civil or criminal proceedings if, after being advised of the consequences of not doing so, the person does not make a statement that the information they are about to give might tend to incriminate them. Such protection against the consequences of self-incrimination may be of limited value if the information so obtained can form the basis of investigations leading to criminal proceedings.⁵⁷
74. The Committee also notes that the protection does not extend to documents produced in compliance with a requirement under proposed s 34A.
75. The Committee also notes the public benefit of obtaining information regarding serious complaints in respect of the professional conduct of a health practitioner, or a health service.
76. The Committee refers to Parliament the question of whether the power in the Bill to compel a person to answer a question or produce a document that may incriminate that person trespasses unduly on personal rights and liberties.

Proposed cl 2(1) of Sch 2A to the Nurses and Midwives Act 1991: Entry without warrant

77. The Committee notes in respect of the Performance Assessment Bill that the power given to assessors to enter private land is a trespass on the rights to property and privacy. The power to enter private land without a warrant should only be given when overwhelmingly in the public interest.
78. The Committee notes that the powers of entry in the Bill:
 - are limited to premises related to the professional practice of a nurse or midwife;
 - exclude premises used as for residential purposes;
 - may only be exercised at a reasonable time; and

⁵⁶ Thus, legislative abrogation of the right to silence in the United Kingdom has been held to infringe the right to a fair trial contained in Article 6 of the European Convention on Human Rights: *Condon v United Kingdom* [2001] 31 EHRR 1. This is, however, an *implied* right, and is open to "modifications or restrictions that have a legitimate aim in the public interest, and which are proportionate": *Brown v Stott* [2000] 2 All ER 97 per Lord Hope of Craighead.

⁵⁷ The Senate Standing Committee for the Scrutiny of Bills "generally holds to the view that the interest of having government properly informed can more easily prevail where the loss of a person's right to silence is balance by a prohibition against both the direct and indirect use of the forced disclosure. The Committee is concerned to limit exceptions to the prohibition against such use. In principle, a forced disclosure should be available for use in criminal proceedings only when they are proceedings for giving false or misleading information in the statement which the person has been compelled to make." (emphasis in original) Senate Standing Committee for the Scrutiny of Bills, *The Work of the Committee during the 39th Parliament, November 1998 – October 2001*.

- must be exercised with the consent of the nurse or midwife, or after 14 days' prior notice.

79. Given the limitations on the entry powers and the significant public interest in ensuring the satisfactory professional conduct of nurses and midwives, the Committee does not consider that the powers of entry and search without a warrant in the Bill unduly trespass on individual rights.

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

Clause 2 of each Bill: Commencement by proclamation

80. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. While there are often good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to concerns about an inappropriate delegation of legislative power.
81. With respect to the Performance Assessment Bill, the Minister noted that:
- The Government recognises that the implementation of [the relevant provisions] will require considerable consultation by the Nurses and Midwives Board with the profession, including the Nurses Association. It is therefore proposed that the commencement of those provisions will be delayed until the necessary consultation and preparation is complete.⁵⁸
82. The Department of Health has advised the Committee that the cognate Bills are commencing on proclamation to ensure that all stakeholders across the area health services are aware of the proposed changes, so that the appropriate policies and procedures have been put in place.
83. The Department also notes the importance for the Bills' legislative changes to commence concurrently and consistently.

The Committee makes no further comment on this Bill.

⁵⁸ Hon M Iemma MP, Minister for Health, Legislative Assembly *Hansard*, 26 October 2004.

5. HEALTH SERVICES AMENDMENT BILL 2004

Date Introduced: 28 October 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Morris Iemma MP
Portfolio: Health

Purpose and Description

1. The object of this Bill is to amend the *Health Services Act 1997* for the following purposes:
 - (a) to provide that area health services are to be governed by their chief executives, and consequentially to abolish the existing area health boards;
 - (b) to provide for the establishment of area health advisory councils to give advice with respect to certain matters affecting the operations of area health services;
 - (c) to provide that statutory health corporations may be governed by their chief executives as an alternative to their being governed by health corporation boards, and to enable the Governor, by order published in the Gazette, to change a statutory health corporation's governance from one form to another;
 - (d) to provide for the establishment of advisory councils to give advice with respect to matters affecting the operations of statutory health corporations that are governed by their chief executives;
 - (e) to provide for the establishment of a Health Executive Service, similar to the Senior Executive Service under the *Public Sector Employment and Management Act 2002*, in which health executives of the NSW Health Service are to be employed;
 - (f) to enact savings and transitional provisions consequent on the other amendments made by the Bill; and
 - (g) to make other minor, consequential and ancillary amendments.

The Bill also makes consequential amendments to the *Public Sector Employment and Management Act 2002*.

Background

2. According to the Minister in his second reading speech:

This Bill is central to the Government's ... reforms to the New South Wales public health system, which I announced on 27 July this year. Among other things, the reforms I announced on 27 July include the amalgamation of the 17 area health services into eight larger health service areas. The new area health services will be formed on 1 January 2005...

Area health service boundaries were drawn up almost 20 years ago and no longer reflect New South Wales's population distribution, make-up and growth, health work force distribution, and patterns of clinical referrals and patient flows...

...

The new area structure will also facilitate much-needed corporate service reform. Instead of each area providing its own corporate and business support services, some of these services will be able to be delivered on a statewide or regional basis.

The reforms to area health service boundaries and shared services arrangements are, over time, expected to free up \$100 million annually, with the savings being reinvested in additional frontline health services in the areas where they are realised.

...

The reforms outlined in this Bill are designed to address board governance arrangements to cope effectively with the demands of modern health care delivery, the need to improve accountability in health administration and the important role clinicians, health consumers and the community should have in health service decision-making processes.⁵⁹

The Bill

3. The Bill commences on a day or days to be appointed by proclamation.
4. According to the Minister in his second reading speech, the key changes made in the Bill include:
 - abolition of area boards and their replacement by a chief executive with the support of an executive management team;
 - implementation of area health advisory councils (AHACs) comprising 13 ministerially appointed clinicians and community based consumer representatives (including experts in Aboriginal health); and
 - establishment of a health executive service to be employed by the Director-General who will have responsibility for appointment, contracts of employment, performance review and termination of employment.⁶⁰
5. The Bill sets out the employment conditions for health executives. Health executives are to be employed under similar terms and conditions as those applying to the Senior Executive Service. These conditions include:
 - employment under contract for a specified period;
 - annual performance review;
 - exclusion of employment matters relating to health executives from the application of the *Industrial Relations Act 1996*; and
 - no appeal to the Government and Related Employees Appeal Tribunal in relation to the employment of health executives.

⁵⁹ The Hon Morris Iemma MP, Minister for Health, Second Reading Speech, Legislative Assembly Hansard, 28 October 2004.

⁶⁰ Ibid.

Issues Considered by the Committee

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

Issue: Commencement by proclamation, Clause 2

6. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. While there are often good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to concerns about an inappropriate delegation of legislative power.
7. The Department of Health has advised the Committee that it anticipates that the Bill will commence on or about 1 January 2005 to correspond with the timing of the amalgamation of the area health services.
8. The Department further advised that the Bill is commencing on proclamation to allow for flexibility, as provisions regarding the Health Executive Service and the Area Health Advisory Councils may not be fully in place by 1 January 2005.

The Committee makes no further comment on this Bill.

6. JURY AMENDMENT BILL 2004

Date Introduced: 27/10/2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus, MP
Portfolio: Attorney General

Purpose and Description

1. The object of this Bill is to amend the *Jury Act 1977* so as to:
 - (a) prevent jurors in a trial of any criminal proceedings from making inquiries about the accused, or matters relevant to the trial, except in the proper exercise of functions as a juror;
 - (b) prevent a person soliciting information from, or harassing, a juror or former juror for the purpose of obtaining information about how a juror, or the jury, formed any opinion or conclusion in relation to an issue arising in a trial or coronial inquest, and to prevent a person from disclosing such information in certain circumstances; and
 - (c) allow the sheriff to investigate any irregularities in the conduct of jury members in a trial for criminal proceedings that may affect or have affected the jury verdict.

Background

2. Some recent trials have been aborted and criminal convictions overturned because jurors have conducted private inquiries which were found to have been prejudicial to the fair conduct of the trial.⁶¹
3. According to the second reading speech, the Bill:

seeks to reduce the incidence of retrials resulting from jury misconduct... The bill will discourage jury misconduct and improve the procedures for investigating jury misconduct without discouraging participation in this important civic duty. There will also be broader prohibitions on soliciting information from a juror.⁶²
4. The provisions in the Bill are intended to complement existing offences in relation to more serious instances of jury misconduct.⁶³

⁶¹ The Second Reading Speech details two criminal convictions overturned in the last twelve months, and a recently aborted District Court trial, due to juror misconduct: Mr Tony Stewart MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 27 October 2004.

⁶² Mr Tony Stewart MP, Second Reading Speech, *Legislative Assembly Hansard*, 27 October 2004.

⁶³ The Second Reading Speech notes that "[m]ore serious instances of jury misconduct, such as the acceptance of a bribe, could be prosecuted as contempt of court or perverting the course of justice – offences that carry much higher maximum penalties": Mr Tony Stewart MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 27 October 2004

5. Prior to the introduction of the Bill, consultations on the recommended changes to the *Jury Act 1977* were conducted with a number of persons and organisations, including the Chief Justice, the Chief Judge of the District Court, the Office of the Director of Public Prosecutions, the NSW Law Society and the Public Defender's Office.⁶⁴

The Bill

6. The amendments to the *Jury Act 1977* are to commence on the date of assent of the Bill [cl 2].

Amended offence in relation to soliciting information from or harassing jurors or former jurors [schedule 1, cl 2 and 3]

7. Proposed s 68A(1) makes it an offence for a person to solicit information from, or harass, a juror or former juror for the purpose of obtaining information about the deliberations of a jury⁶⁵ or how a juror, or the jury, formed any opinion or conclusion in relation to an issue arising in a trial or coronial inquest⁶⁶. The soliciting of information between jurors during a trial or inquest is exempted [proposed s 68A(4A)].⁶⁷ The maximum penalty for this offence is 7 years imprisonment.
8. Under the *Jury Act 1977*, the offence is currently limited to solicitation or harassment in relation to information about jury deliberations. The proposed new offence also prohibits solicitation or harassment in relation to information about how a juror, or jury, formed any opinion or conclusion in relation to an issue arising in a trial or inquest.⁶⁸

Amended offences in relation to the disclosure of information [schedule 1, cl 4 and 5]

9. Proposed s 68B(1) makes it an offence for a juror to wilfully disclose to any person *during* a trial or coronial inquest information about the deliberations of the jury, or how a juror or the jury formed any opinion or conclusion in relation to an issue arising in that trial or inquest, except with the consent of or at the request of the judge or coroner. The disclosure of information between jurors during a trial or coronial inquest is exempted [proposed s 68B(4)]. The maximum penalty for this offence is 20 penalty units (\$2,200).
10. Proposed s 68B(2) of the Bill makes it an offence for a person (including a juror or former juror) to disclose or offer to disclose to any person, for a fee, gain or reward, information about the deliberations of a jury, or how a juror or a jury formed any

⁶⁴ Mr Tony Stewart MP, Second Reading Speech, *Legislative Assembly Hansard*, 27 October 2004.

⁶⁵ For the purposes of s 68A, the deliberations of a jury is defined to "include statements made, opinions expressed, arguments advanced or votes cast by members of the jury in the course of their deliberations": *Jury Act 1977*, s 68A(2).

⁶⁶ A coronial inquest means an inquest or inquiry held before a coroner and a jury pursuant to section 18 of the *Coroners Act 1980: Jury Act 1977*, s 4.

⁶⁷ Sections 68A(3) and (4) of the *Jury Act 1977* specify particular persons and bodies conducting certain research, investigations or prosecutions who are not prohibited by s 68A(1) from soliciting information from a juror or former juror. The Bill does not alter these exemptions.

⁶⁸ The Second Reading Speech notes that the amendments will extend the prohibition to asking jurors whether they considered any extraneous material or about any part of their decision-making: Mr Tony Stewart MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 27 October 2004.

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opinion or conclusion in relation to an issue arising in that trial or inquest. The maximum penalty for this offence is 50 penalty units (\$5,500).

11. Under the *Jury Act 1977*, the current s 68B offences prohibit jurors from disclosing information in relation only to the “deliberations of a jury”.⁶⁹ The proposed new offences “extend the prohibitions to encompass all aspects of the activities undertaken by the jury in discharge of their duties, and not simply the final deliberative process after retirement”.⁷⁰

New offence of making private inquiries about a trial matter [schedule 1, cl 6]

12. The Bill makes it an offence for a juror to make an inquiry for the purpose of obtaining information about an accused, or any matters relevant to a trial, except in the proper exercise of his or her functions as a juror. The maximum penalty for this offence is 2 years imprisonment and 50 penalty units (\$5,500) [proposed s 68C(1)].
13. “Making an inquiry” is defined to include:
- asking a question of any person;
 - conducting any research;
 - viewing or inspecting any place or object;
 - conducting an experiment; or
 - causing someone else to make an inquiry [proposed s 68C(5)].
14. This prohibition applies from the time a juror is sworn in and until the court having conduct of the proceedings discharges the juror or the jury of which he or she forms part [proposed s 68C(2)].
15. The Bill exempts from the scope of the offence the making of an inquiry to the court or another member of the jury or the making of an inquiry authorised by the court, such as the handling of exhibits in the jury room⁷¹ [proposed s 68C(3)]. However, if a juror contravenes a judicial direction in the course of making an inquiry, this is not to be regarded as a proper exercise of his or her functions as a juror [proposed s 68C(4)].

Examination of jurors about the making of inquiries about trial matters [schedule 1, cl 1]

16. The Bill empowers a judge to examine a juror on oath to determine whether a juror has engaged in any conduct that may constitute a contravention of s 68C [proposed s 55DA(1)].
17. A juror is not excused from giving evidence during such an examination on the basis that the answers may incriminate him or her [proposed s 55DA(2)].

⁶⁹ For the purposes of s 68B, the deliberations of a jury is defined to “include statements made, opinions expressed, arguments advanced or votes cast by members of the jury in the course of their deliberations”: *Jury Act 1977*, s 68B(3).

⁷⁰ Mr Tony Stewart MP, Second Reading Speech, *Legislative Assembly Hansard*, 27 October 2004.

⁷¹ Mr Tony Stewart MP, Second Reading Speech, *Legislative Assembly Hansard*, 27 October 2004

18. However, if the evidence given tends to prove the commission of a s 68C offence, the judge is to give the juror an evidentiary certificate [proposed s 55DA(3)]. The person may then produce that certificate in any subsequent proceedings for a s 68C offence, so as to prevent the evidence given in the s55DA examination from being used against him or her [proposed s 55DA(4)].

Investigation by sheriff of jury irregularities [schedule 1, cl 7]

19. The Bill empowers the Office of the Sheriff to investigate whether the verdict of a jury in any criminal trial may be, or may have been, affected because of improper conduct by a juror or jury members, and to report the outcome of the investigation to the court [proposed 73A(1)].
20. The investigation must be conducted "with the consent of or at the request of the Supreme Court or District Court" [proposed 73A(1)]. An investigation can only be triggered if there is "reason to suspect that the verdict" may be, or may have been, affected because of improper conduct by a juror or jurors.
21. Section 139(2) of the *Evidence Act 1995* applies to any questioning conducted by the sheriff for the purpose of a 73A investigation [proposed s 73A(4)]. Section 139(2) of the *Evidence Act 1995* specifies the criteria by which evidence of a statement made or an act done by a person during official questioning has been improperly obtained. One criterion is that a person was not advised of their right to silence prior to making a statement.

Transitional and savings provision [schedule 1, cl 8 and 9]

22. The amendments to the s 68A and 68B offences, the newly created s 68C offence and the investigatory mechanism established by s 73A do not apply in respect of a trial or coronial inquest commenced before assent.

Issues Considered by the Committee

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

Issue: Scope of protection against self-incrimination [schedule 1, clause 1]

23. Proposed s 55DA compels a juror to give evidence during an examination conducted by a judge under that section whether or not the evidence may tend to prove that the juror committed the offence of making private inquiries about a trial matter.⁷²
24. However, if the judge is satisfied that the evidence may tend to prove that the juror has committed such an offence, the judge is to give the juror a certificate that prevents that evidence being used against the juror in any proceeding for the offence [s 55DA(4)].

⁷² Other grounds for refusing to answer a question, such as to do so would tend to prove that the juror committed a different offence, are not affected.

25. The Committee notes that the right against self-incrimination (or “right to silence”) is a fundamental right. This right should only be eroded when overwhelmingly in the public interest.⁷³
26. Given the limitation on the use of self-incriminating answers and the significant public interest in the fair conduct of trials, the Committee does not consider that a judge’s power to compel answers under section 55DA(2) trespasses unduly on personal rights or liberties.

The Committee makes no further comment on this Bill.

⁷³ Legislative abrogation of the right to silence in the United Kingdom has been held to infringe the right to a fair trial contained in Article 6 of the European Convention on Human Rights: *Condon v United Kingdom* [2001] 31 EHRR.

7. SMOKE-FREE ENVIRONMENT AMENDMENT BILL 2004

Date Introduced: 27/10/04
House Introduced: Legislative Assembly
Minister Responsible: The Hon Morris Iemma MP
Portfolio: Health

Purpose and Description

1. The *Smoke-free Environment Act 2000* prohibits smoking in an enclosed public place but contains certain exemptions in relation to a hotel, club, nightclub or casino (licensed premises).⁷⁴
2. The object of this Bill is to phase out those exemptions by 1 July 2007. Smoking will continue to be permitted in a casino private gaming area after that date, but this exemption is to be regularly reviewed by the Minister for Health to determine whether it is justified on the grounds of maintaining parity with smoking restrictions in casinos in other States and Territories.

Background

3. The *Smoke-free Environment Act 2000* makes it an offence for a person to smoke in a smoke-free area, being a non-exempt enclosed public place [s 2]. It also requires an occupier of a smoke-free area to not allow such smoking, to display certain signs, and to prevent smoke spreading to smoke free areas [ss 8-10]. Inspectors appointed under s 14 of the Act have broad powers to enter and inspect premises [Part 4].
4. In his second reading speech the Minister states that:

Several compelling reasons shape the decision to bring in further smoking bans... A plethora of eminent research bodies and health bodies have affirmed that passive smoking causes harm... There have been 20 successful Australian prosecutions for passive smoking in the workplace. Tobacco-related illnesses account for 54,000 hospital admissions annually at a cost of \$180 million per annum or \$500,000 per day... Similar smoking bans will be introduced in other States and Territories.⁷⁵

The Bill

5. The Bill is to commence on 1 January 2005, except for cl 13 of Schedule 1, which is to commence on 1 July 2007 [cl 2].

⁷⁴ Proposed s 10A of the Bill defines these types of premises by referring to the NSW legislation governing their licensing and operation.

⁷⁵ Mr Frank Sartor MP, Minister Assisting the Minister for Health (Cancer), second reading speech, *Legislative Assembly Hansard*, 28 October 2004.

Smoke-free Environment Amendment Bill 2004

Amendment of the Smoke-free Environment Act 2000 [cl 3 and schedule 1]

Application of the general prohibition on smoking

6. The Bill provides that the general prohibition on smoking in an enclosed public place does not apply to residential accommodation in a motel or hostel [Schedule 1, clause 12]. It also provides for regulations to be made about the issuing of guidelines about what is an enclosed public place [proposed s 23(2)(e)].

Exemptions from the general prohibition

7. The Bill progressively narrows the exemptions that licensed premises can seek and under which they can operate from 1 January 2005 until 30 June 2007.
 - From 1 January 2005 until 1 July 2005, the bar rooms, gaming machine rooms and recreation rooms in licensed premises may be exempt from the general prohibition. However, at least one of each of these types of areas (if there is more than one in a licensed premises) must be smoke-free, as must any dining area and any counter at which drinks or foods are ordered or served [proposed s 11A].
 - From 1 July 2005 until 1 July 2007, the situation is reversed. Only one bar room, gaming machine room or recreation room in licensed premises may be exempted from the general prohibition. The size of the exempted area must not exceed 50% (between 1 July 2005 and 30 June 2006) or 25% (between 1 July 2006 and 1 July 2007) of the premise's total area. Certain areas in licensed premises must be smoke-free and are to be disregarded in determining the permitted size of an exempted area [proposed 11B].
8. On 1 July 2007, all areas in licensed premises, except casino private gaming areas⁷⁶, are to be smoke-free [Schedule 1, cl 13].
9. Under the Bill, a casino private gaming area is exempted indefinitely. However, this exemption is to be reviewed by 31 January each year (starting from 2006) by the Minister for Health to determine whether it is justified on the grounds of maintaining parity with the smoking restrictions in casinos in other States and Territories. Such reviews must be tabled in Parliament [proposed s 11C].
10. The Bill clarifies that any duty a person may have under the *Occupational Health and Safety Act 2000* is not affected by any exemption granted under the *Smoke-free Environment Act 2000* [proposed s 12(3)].

No compensation from the State in respect of matters relating to the regulation of smoking in enclosed public places

11. The Bill provides that monetary compensation is not payable by or on behalf of the Crown arising directly or indirectly from any of the following matters, whether they occurred before or after the Bill's commencement:

⁷⁶ Proposed s 10A defines a casino gambling area as an area in a casino that is used substantially for gaming by international visitors to the casino other than an area used substantially for the purposes of gaming machines.

- The enactment or operation of the *Smoke-free Environment Act 2000* or the Bill;
- The exercise by a person of a function under the Bill or a failure to exercise any such function; or
- Any statement or conduct relating to the regulation of smoking in enclosed public places [proposed s 21A].

Amendment of other Acts and Regulations [cl 4 and schedule 2]

12. The Bill amends the *Liquor Act 1982* to permit a licensee or his or her employee to refuse to admit to, or to turn out of, licensed premises any person who smokes in a smoke-free area. The Bill amends the *Registered Clubs Act 1976* to provide the secretary or an employee thereof with the same power.
13. The Bill amends cl 6 of the *Smoke-free Environment Regulation 2000* to substitute the phrase "exempt premises" with the phrase "exempt area". No substantive change is made to the requirements that apply under cl 6.

Issues Considered by the Committee

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

Issue: Denial of compensation [Schedule 1, cl 10, proposed s 21A]

14. The Bill removes the right of a person to be compensated *by the Crown* for any loss that person may have suffered arising directly or indirectly from the occurrence of any of the matters specified in proposed s 21A.
 15. The matters specified in proposed s 21A relate to the regulation of public smoking in enclosed public places by the Crown and persons acting on the Crown's behalf, including the manner in which inspectors appointed pursuant to s 14 of the *Smoke-free Environment Act 2000* exercise their functions. The s 21 matters, therefore, reflect the special position of the Government as a regulator.
 16. Similar provisions to proposed s 21A can be found in other NSW legislation.⁷⁷ However, other legislation that provide for the inspection of places defines the scope of matters for which Crown compensation is not payable more narrowly. For example, s 56 of the *Occupational Health and Safety Act 2000* requires WorkCover to pay compensation for any loss or damage caused by any inspector in the exercise of any power to enter premises, but not if that loss or damage is caused because the occupier obstructed, hindered or restricted the inspector in the exercise of that power.
17. The Committee notes that the Bill removes the right of a person to be compensated by or on behalf of the Crown for a loss arising directly or indirectly from the occurrence of a matter specified in proposed s 21A.

⁷⁷ For example, see s 20 of the *Sydney Marketing Authority (Dissolution) Act 1997*, s 48 of the *Freight Rail Corporation (Sale) Act 2001* and s 88ZG of the *Transport Administration Act 1988*.

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| 18. | The Committee also notes the public interest in the Crown regulating public smoking in enclosed public places without potential litigation constraining how it chooses to regulate. |
| 19. | The Committee has written to the Minister for Health for advice as to the rationale for the wide scope of s 21A and whether the scope of the s 21A matters may be narrowed, for example by excluding damage caused by an inspector entering premises, without impeding the Crown's capacity to regulate smoking in enclosed public places. |

Issue: Retrospectivity [Schedule 1, cl 10]

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| 20. | The Bill abrogates the right of a person to be compensated by or on behalf of the Crown for loss arising directly or indirectly from any proposed s 21A matter that occurred <i>before</i> the Bill's commencement. |
| 21. | The Committee is concerned that persons may have commenced claims for compensation against the Crown for matters falling within the scope of proposed s 21A. The Committee notes that the Bill will have the effect of rendering any such claims ineffective. |
| 22. | The Committee is always concerned with any retrospective effect of legislation which adversely impacts on any person. |
| 23. | The Committee notes that the Bill will remove any right to, and render ineffective any existing claims for, compensation against the Crown in relation to matters falling within s 21A that occurred before the Bill's commencement. |
| 24. | The Committee refers to Parliament the question of whether the retrospective operation of the Bill trespasses unduly on personal rights and liberties. |

The Committee makes no further comment on this Bill.

8. SPECIAL COMMISSION OF INQUIRY (JAMES HARDIE RECORDS) ACT 2004

Date Introduced: 19 October 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Carr MP
Portfolio: Premier

The Bill passed all stages in the Legislative Assembly and the Legislative Council on 20 October 2004. It was assented to on 21 October 2004.

Purpose and Description

1. The objects of this Bill are:
 - (a) to provide for the transfer of the control of records of the Special Commission of Inquiry into the Medical Research and Compensation Foundation to the Australian Securities and Investments Commission (ASIC), and
 - (b) to make provision with respect to the use, and admissibility in proceedings, of the transferred records, and
 - (c) to facilitate the use of records of the Special Commission held by the Medical Research and Compensation Foundation (the Foundation) in certain civil proceedings brought by the Foundation (and certain other bodies and persons) in NSW courts by preventing certain claims of privilege from being brought in respect of the records.
2. Part 2 of the Bill provides for the statutory transfer to ASIC of the records of the Special Commission to overcome potential procedural impediments to ASIC pursuing efficiently and expeditiously any functions or powers conferred on it by or under the *Australian Securities and Investments Commission Act 2001*, or any other legislation, of the Commonwealth. In the absence of this legislation, the transfer of documents would result in a lengthy process of giving notice to owners of documents and settling any objections to transfer. This may frustrate the expeditious investigation and prosecution of potential offences that have come to light as a consequence of the Special Commission.
3. Section 23 of the *Special Commissions of Inquiry Act 1983* makes an answer made, or record produced, by a witness to or before the Special Commission who objects to answering the question or producing the document on the ground of legal professional or other privilege or any other ground inadmissible in evidence against the person in civil or criminal proceedings. Part 3 of the Bill includes provisions to overcome the effect of section 23 in this respect and to ensure that such privilege cannot be claimed so as to make such evidence inadmissible in civil proceedings brought by the Foundation and certain other bodies and persons. The Part also provides that certain directions given by the Commissioner of the Special Commission do not apply to prevent or restrict the publication of evidence contained in specified records.

Background

James Hardie Special Commission of Inquiry

4. On 27 February 2004, DF Jackson QC was appointed under the *Special Commissions of Inquiry Act 1983* (the *Special Commissions of Inquiry Act*) to inquire into and report on:
 1. the current financial position of the Medical Research and Compensation Foundation (the MRCF), and whether it is likely to meet its future asbestos-related liabilities in the medium to long term;
 2. the circumstances in which MRCF was separated from the James Hardie Group and whether this may have resulted in or contributed to a possible insufficiency of assets to meet its future asbestos-related liabilities;
 3. the circumstances in which any corporate reconstructions or asset transfers occurred within or in relation to the James Hardie Group prior to the separation of MRCF from the James Hardie Group to the extent that this may have affected the ability of MRCF to meet its current and future asbestos-related liabilities; and
 4. the adequacy of current arrangements available to MRCF under the Corporations Act to assist MRCF to manage its liabilities, and whether reform is desirable to those arrangements to assist MRCF to manage its obligations to current and future claimants.
5. The James Hardie Special Commission of Inquiry (Special Commission) reported on 21 September 2004.
6. In his Second Reading Speech, the Premier stated that Commissioner Jackson found that James Hardie and its management had breached a number of significant provisions of the Commonwealth Corporations Law.⁷⁸ The Premier stated:

The Commissioner noted that prosecuting the company and its officers for making false and misleading statements was now a matter for ASIC.⁷⁹
7. In his speech the Premier states that one of two principal objectives of the Bill is to transfer the records of the Special Commission of Inquiry to ASIC. The Premier said that:

ASIC has specifically requested that this Parliament enact legislation to transfer the Inquiry's records to it. That is, all material gathered by the Jackson Commission of Inquiry... can, through passage of this legislation, be lifted from the State Government and invested in ASIC. It is estimated that that will shave 6 months to 12 months off the time ASIC would take to go about its prosecutions.⁸⁰
8. The second main objective of the Bill is:

[To] ensure that the Medical Research and Compensation Foundation, the body set up by James Hardie to handle the compensation process, can make full use of the

⁷⁸ The Hon Bob Carr MP, Premier, Second Reading Speech, *Legislative Assembly Hansard*, 20 October 2004.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

Special Commission of Inquiry (James Hardie Records) Act 2004

material it holds in civil litigation against James Hardie where the Attorney General has given his approval.⁸¹

The law that governed the Special Inquiry

9. The Special Commission had the power to compel a witness to provide evidence even if do so would incriminate the witness or disclose privileged communications such as communications subject to professional legal privilege.
10. At the same time, the *Special Commissions of Inquiry Act* provided that evidence that was given unwillingly could not be used against the person who gave the evidence in civil or criminal proceedings.
11. The Act thereby protected the right of a person not to be forced to give evidence that would incriminate them and prevented privileged lawyer-client communications forcibly disclosed being used against them in court proceedings.

The Bill

Part 2: Transfer of records to ASIC

12. The Bill entitles ASIC to control any record or thing made, kept or received by the Special Commission that ASIC requests from a public authority [cl 4].
13. Clause 4 also authorises ASIC to give the record “to any other person” (whether within or outside New South Wales) for any purpose it considers appropriate. According to the Explanatory Note to the Bill, ASIC might, for example, disclose information obtained from such a record to assist a government or agency such as the US Securities Exchange Commission that is investigating potential breaches of the law of a foreign country.
14. Clause 7 prevents a person from objecting to the use of a transferred record by ASIC, or to the disclosure of any matter contained in a transferred record, on certain grounds of privilege, such as legal professional privilege.
15. Clause 8 makes it clear that a transferred record is to be treated for the purposes of a law of the State as if it were a record that ASIC had lawfully obtained in the performance of its functions or the exercise of its powers under Commonwealth law and that, accordingly, if a record would be admissible in a court under Commonwealth law it will be treated as being admissible in a NSW court.
16. The clause expressly excludes the application of sections 23 and 31(2) of the *Special Commissions of Inquiry Act*.
17. As stated above, section 23 of the *Special Commissions of Inquiry Act* limits the admissibility of evidence in any NSW civil or criminal proceedings where it was given unwillingly.

⁸¹ Ibid.

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18. Section 31 (2) of that Act makes it an offence to contravene a direction given by the Commissioner preventing publication of evidence given before the Commissioner or of matters contained in documents lodged with the Special Commission
19. The clause provides that sections 23 and 31(2) of the *Special Commissions of Inquiry Act* do not prevent or restrict the transfer or publication by ASIC of any transferred record.
20. Clause 9 ensures that a person does not contravene section 21 of the *State Records Act 1998* (which, among other things, makes it an offence to take or send a State record out of New South Wales) by taking any action to transfer a record under the proposed Act.

Part 3 Facilitation of certain civil proceedings

21. The Bill gives the Attorney General power to make an order published in the Gazette declaring that Part 3 is to apply to certain court proceedings. The order may only be made in civil proceedings brought by the Medical Research and Compensation Foundation, Amaca Pty Ltd or Amaba Pty Ltd or another body or person prescribed by the regulations in which such a party (a facilitated party) seeks to adduce evidence of an answer made, or record produced, by a witness to or before the Special Commission [cl 11].
22. The effect of an order by the Attorney General under clause 11 is to make evidence given to the Special Commission admissible in evidence in those proceedings that are specified in the order [cl 13].
23. Further, such evidence will be admissible even if, for example, legal professional privilege would ordinarily apply to protect the evidence.
24. Clause 13 also expressly excludes part of the operation of section 23(2) of the *Special Commissions of Inquiry Act*. It allows for the admissibility of an answer made or record produced in evidence against a person in civil proceedings. However, clause 13 *does not* apply to an answer made or record produced that may incriminate or tend to incriminate the person.
25. The Bill passed all stages in the Legislative Assembly and the Legislative Council on 20 October 2004. The *Special Commission of Inquiry (James Hardie Records) Act 2004* (the James Hardie Act) commenced on 21 October 2004.

Issues Considered by the Committee

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

Self-incrimination

26. The Special Commission was able to compel a person to give evidence that might incriminate him or her and the records of the Special Commission may contain evidence unwillingly provided which may, if admissible in court, incriminate the witness.

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27. The right not to incriminate oneself is recognised as a basic human right protecting personal freedom and human dignity.⁸² Article 14(3)(g) of the International Covenant of Civil and Political Rights states a person has the right "[n]ot to be compelled to testify against himself or to confess guilt". Outside the criminal context, the privilege is an attribute of the wider right to a fair trial protected by Art 14(1).
28. To protect that right, the *Special Commissions of Inquiry Act* prevented evidence given against the witness' will being used against that person in any civil or criminal proceedings [s 23(2)].
29. Part 2 of the James Hardie Act removes that protection by:
 - allowing ASIC to use a record despite it being produced under compulsion [s 7(b)];
 - removing any obstruction under NSW law to a record transferred to ASIC being admissible in any court if the record would otherwise be admissible under Commonwealth law [s 8(1)]; and
 - removing the specific statutory protections in ss 23 and 31(2) of the *Special Commissions of Inquiry Act* preventing the use of the material.
30. Whether self-incriminating evidence obtained against a witness' will could consequently be admitted into any proceedings in either a NSW or federal court would be a matter of Commonwealth law.
31. Part 3 of the James Hardie Act allows facilitated parties to adduce at specified civil proceedings evidence of an answer made, or record produced, by a witness to the Special Commission. However, the Act includes certain provisions to preserve the privilege against self-incrimination:
 - civil proceedings for the purposes of the Part do not include proceedings relating to the imposition of a civil penalty [s 10]; and
 - evidence is not admissible under the Part against a natural person if it may incriminate the person [s 13(3)].⁸³

32. The Committee notes that Part 2 of the James Hardie Act removes all privilege under NSW law for self-incriminating evidence given to the Special Commission against the witness' will and transferred to ASIC.
33. The Committee further notes that this evidence was collected under specific statutory provision preventing the evidence being used against that person in any civil or criminal proceeding.
34. The Committee notes that such evidence will be subject to whatever privilege exists at Commonwealth law.

⁸² The historical origins and modern rationale of the privilege are explored in *EPA v Caltex* (1993) 178 CLR 447.

⁸³ Corporate bodies do not have any privilege against self incrimination: *EPA v Caltex Refining* (1993) 178 CLR 477.

Legal professional privilege and other privileged professional communications

35. As with self-incrimination, while the *Special Commissions of Inquiry Act* required a witness to answer any question or produce any document despite any ground of privilege or any other ground, such evidence, if given unwillingly, could not be used against the person in any civil or criminal proceeding.
36. There is a long-standing acceptance in our law that the dealings of a lawyer and client should be protected from compulsory disclosure. The protection of privilege exists for sound policy reasons expressed in the common law, and taken up in the *Evidence Act 1995* (the Evidence Act).
37. Section 119 of the Evidence Act provides that:
- Evidence is not to be adduced if, on objection by a client, the court finds that adducing the evidence would result in disclosure of:
- (a) a confidential communication between the client and another person, or between a lawyer acting for the client and another person, that was made, or
 - (b) the contents of a confidential document (whether delivered or not) that was prepared,
- for the dominant purpose of the client being provided with professional legal services relating to an Australian or overseas proceeding (including the proceeding before the court), or an anticipated or pending Australian or overseas proceeding, in which the client is or may be, or was or might have been, a party.
38. Subsection 125(1) provides exceptions to this rule in four situations. Evidence that would ordinarily be inadmissible because it is protected by legal professional privilege, will be admissible if the client-lawyer communication was *made in furtherance of the commission of*:
- (i) a fraud;
 - (ii) an offence;
 - (iii) an act that renders a person liable to a civil penalty; or
 - (iv) a deliberate abuse of a power (where either the client or lawyer or other party knew or ought reasonably to have known that the document was made in furtherance of an abuse of a power).
39. With the exception of (iv), these same exceptions to inadmissibility of evidence apply in relation to professional confidential relationship privilege under section 126D of the Evidence Act.
40. Part 2 of the James Hardie Act removes the privilege regarding lawyer-client and other confidential communications by:
- allowing ASIC to use a record containing privileged material despite it being produced under compulsion [s 7(b)];
 - removing any obstruction under NSW law to such a record transferred to ASIC being admissible in any court if the record would otherwise be admissible under Commonwealth law [s 8(1)]; and

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- removing the specific statutory protections in ss 23 and 31(2) of the *Special Commissions of Inquiry Act* preventing the use of the material.
41. Part 3 of the James Hardie Act removes the privilege by allowing facilitated parties to adduce at specified civil proceedings evidence of an answer made, or record produced, by a witness to the Special Commission [s 13(1)]. Such material is admissible in the proceedings even if it contains a privileged communication between a lawyer and client or if to do so would disclose a protected confidence within the meaning of Division 1A of Part 3.10 of the Evidence Act [s 13(2)].
42. The Committee considers that the privilege attached to lawyer-client communications is vital to maintain a fair and just legal system and a general erosion of that privilege could significantly trespass on personal rights and liberties.
43. The Committee notes the Premier's statement that the measures in Part 3 of the Bill:
- are justified because of the impact that James Hardie's conduct has had on the ability of victims in the future to recover compensation for their illnesses. The public interest requirement and the application of Part 3 of the bill only to civil proceedings recognise that it is a very serious matter to abrogate legal professional privilege and existing rights to confidentiality.⁸⁴
44. The Committee also notes that the protracted delays in resolving a legal dispute can deny a party to the dispute of the right to have the matter determined. This is particularly relevant with regard to claims for compensation for injuries resulting from asbestos where the injury can result in premature death.
45. The Committee notes that the James Hardie Act only affects the privilege of communications already in the possession of the Special Commission of Inquiry and (except to the extent the it creates uncertainty regarding the possible retrospective application of future laws) the Act does not affect the confidence of any other present or future privileged communications.
46. The Committee refers to Parliament the question as to whether removal of privilege for client-lawyer and other confidential communications as provided in the James Hardie Act unduly trespasses on personal rights and liberties.

Retrospectivity

47. As noted above, at the time of the Special Commission, NSW law provided limits to the use of oral and documentary evidence given to that Special Commission. In particular, evidence given unwillingly to the Inquiry could not be used in subsequent civil or criminal proceedings against the person who gave the evidence.
48. Those who relied on these protections when giving evidence to the Inquiry will, under the James Hardie Act, no longer be so protected. Their client-lawyer or other confidential communications they disclosed will no longer be privileged and they will be open to civil proceedings in which the evidence they gave to the Special Commission may be used against them.

⁸⁴ The Hon Bob Carr MP, Premier, Second Reading Speech, *Legislative Assembly Hansard*, 20 October 2004.

49. Removing these protections from evidence already given infringes the principle that the law should not retrospectively adversely affect any person as, under the rule of law, any person should be able to rely on the law as it is at the time.
 50. In the present case, removing protections in relation to evidence already given may result in a devaluation of the statutory protections to evidence given by compulsion provided in numerous Acts. If a person is concerned that a statutory protection that applies to a self-incriminating answer may be subsequently retrospectively repealed, he or she will be less likely to answer questions frankly and honestly.
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| <ol style="list-style-type: none">51. The Committee notes that to remove privileges that previously protected confidential communications is a significant trespass on personal rights.52. The Committee further notes that to retrospectively remove statutory protections on which a person may have relied not only trespasses on the rights of that person but, if seen to create a precedent, can undermine confidence in the law.53. The Committee considers that such retrospective provision should only be made in the most serious and isolated circumstances.54. The Committee refers to Parliament the question as to whether the retrospective operation of the Act trespasses unduly on personal rights and liberties. |
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The Committee makes no further comment on this Bill.

9. TEACHING SERVICES AMENDMENT BILL 2004

Date Introduced: 26 October 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Dr Andrew Refshauge
Portfolio: Education and Training

Purpose and Description

1. The object of this Bill is to amend the *Teaching Services Act 1980* (the Principal Act) as follows:
 - (a) to provide for merit selection in relation to the appointment of persons to senior positions in the Teaching Service,
 - (b) to provide a statutory framework for managing the performance of government school principals, including annual performance reviews, implementation of performance improvement programs and streamlined procedures for dealing with unsatisfactory performance, and
 - (c) to make a number of amendments that are generally in the nature of statute law revision (such as updating references to reflect administrative changes, removing provisions that relate to the abolished Technical and Further Education Teaching Service and removing provisions that have been superseded by the *Public Sector Employment and Management Act 2002*, in particular provisions relating to the transfer of staff which is now done under Part 3.2 of that Act).

Background

2. The Deputy Premier advised Parliament that:

Two major reforms are encompassed in this bill. The first is to allow for the merit-based appointment of people from outside the New South Wales public education system to executive positions in schools. The second is the introduction of a framework for enhanced accountability for government school principals.

...

Unlike the rest of the public sector in New South Wales, and employment in the rest of the community throughout Australia, there was no capacity for good candidates from outside the system to throw their hats in the ring. In effect we were saying, "We welcome everyone to be a teacher, but if you are outside the system, you will have to start as a classroom teacher, no matter what your previous experience." Now, with this bill, good teachers from public schools interstate, or good teachers from non-government schools who want to make a contribution to public education, will get that chance.⁸⁵

⁸⁵ The Hon Dr A Refshauge, Deputy Premier, Legislative Assembly Hansard, 26 October 2004.

The Bill

Merit appointment to senior positions

3. The Bill provides that appointments to vacant senior positions in the Teaching Service are to be made on the basis of the merit of the applicants for the position concerned. A senior position is any position to which a person employed in the Teaching Service could be promoted.⁸⁶
4. The Bill also provides that legal proceedings cannot be brought in respect of appointments to vacant senior positions.⁸⁷ An officer who unsuccessfully applied for a senior position can appeal the decision to appoint another officer to the Director-General on the ground that the selection process was irregular or improper.

Performance management for school principals

5. The Bill makes new provisions for dealing with unsatisfactory performance on the part of school principals. Under the new performance management regime, school principals will be subject to performance reviews at least annually.
6. If a school principal is not performing in a satisfactory manner, the Director-General of the Department of Education and Training may implement a performance improvement program for the principal. If the principal's performance is still unsatisfactory following that program, the Director-General may decide, after giving the principal 21 days in which to make written submissions on the matter and taking into consideration those submissions, to dismiss the principal from the Teaching Service or demote the principal to a lower position.

Other amendments

7. Other amendments to the Principal Act by the Bill include:
 - removing all provisions relating to the Technical and Further Education Teaching Service (which were made redundant by the formation of the TAFE Commission in 1991);
 - consolidating the functions of the Secretary of the Ministry of Education and Youth Affairs and the Director-General of the Department of Education and Training (the functions of the Secretary having been previously transferred to the Director-General by administrative order);
 - excluding appointments to senior positions from appointments in regard to which the Director-General must give preference to an Aboriginal person;
 - removing provisions relating to promotions lists from which the Director-General is currently required to make appointments to senior positions;

⁸⁶ Proposed section 47A makes it clear that persons who are not already employed in the Teaching Service can be appointed, on merit, to senior positions.

⁸⁷ The exclusion of legal proceedings in this case is consistent with section 22 of the *Public Sector Employment and Management Act 2002* (which applies to appointments to all vacant positions in the Public Service).

- removing provisions relating to the transfer of staff within the Teaching Service and arrangements for the use of staff of other agencies, which have been superseded by Part 3.2 of the *Public Sector Management Act 2002* which provides for staff transfers between and within public sector services and the secondment and temporary assignment of staff; and
- consequential amendments to other Acts and the Education Teaching Service Regulation 2001.

Issues Considered by the Committee

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

Issue: Clause

8. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. While there are often good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to concerns about an inappropriate delegation of legislative power.
9. The Deputy Premier's office has advised the Committee that the Bill is to commence on proclamation to allow time for administrative arrangements that will facilitate external appointments to be put in place.
10. The Deputy Premier's office has further advised that they would like the Bill to commence as soon as possible, and anticipate the Bill to be fully commenced by the start of the 2005 school year.

The Committee makes no further comment on this Bill.

10. UNIVERSITY LEGISLATION AMENDMENT BILL 2004

Date Introduced: 26 October 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Dr Andrew Refshauge MP
Portfolio: Education and Training

Purpose and Description

1. Under section 33-15 of the *Higher Education Support Act 2003* of the Commonwealth, higher education providers are required to meet the requirements of the Commonwealth's National Governance Protocols to qualify for increased Commonwealth funding. The object of this Bill is to amend the Acts that establish universities in New South Wales to the extent necessary to enable the Universities to comply with those requirements.
2. The amended Acts are as follows:
Charles Sturt University Act 1989 No 76
Macquarie University Act 1989 No 126
Southern Cross University Act 1993 No 69
University of New England Act 1993 No 68
University of New South Wales Act 1989 No 125
University of Newcastle Act 1989 No 68
University of Sydney Act 1989 No 124
University of Technology, Sydney, Act 1989 No 69
University of Western Sydney Act 1997 No 116
University of Wollongong Act 1989 No 127

Background

3. According to the Deputy Premier in his second reading speech:

The [Bill] proposes amendments to each of the 10 Acts establishing the State's public universities. The amendments will ensure that New South Wales universities can demonstrate to the Commonwealth Government that they comply with the National Governance Protocols for higher education providers.

The National Governance Protocols are part of the Commonwealth Grant Scheme guidelines issued by the Federal Government under its *Higher Education Support Act 2003*... The *Higher Education Support Act 2003* provides, at section 33.15, that higher education providers who satisfy the Commonwealth Minister that they meet the requirements of the Protocols will have their basic Commonwealth Grant Scheme funding increased.

If the Commonwealth Minister is satisfied that the requirements of the Protocols are met, the universities will receive increases in the basic grant of 2.5 per cent in 2005, 5 per cent in 2006 and 7.5 per cent in 2007. The Commonwealth Minister stated last year in media releases that universities complying with the Protocols will share in an additional \$404 million nationally over the period 2005 to 2007. The Commonwealth Government has not provided the State with a breakdown of how the additional \$404 million will be allocated among the nation's universities. However, it

is estimated that New South Wales universities' share would be in the order of \$104 million over the three years.⁸⁸

4. The Deputy Premier stated that:

Consultation on the draft bill has taken place with chancellors and vice-chancellors of New South Wales public universities. Chancellors and vice-chancellors were responsible for further consultation within their own institutions. The universities generally support the bill as currently drafted. The National Tertiary Education Union and the National Union of Students were also consulted. While they were not supportive of many aspects of the National Governance Protocols, they are supportive of the provisions in the bill relating to student and staff representation.⁸⁹

The Bill

5. According to the Deputy Premier in his second reading speech:

[T]he amendments to each of the State's university Acts, other than the *Australian Catholic University Act 1990*, are set out in 10 separate schedules containing near-identical provisions. The only variations are to take account of minor, local, or pre-existing differences between our public universities.⁹⁰

6. In relation to each University, the amendments:

- (a) alter, and impose requirements in relation to, the composition of the University's governing body (including limiting its membership to no more than 22 members, removing the requirement that it include members of Parliament, allowing the Minister to appoint members of Parliament as members only if on the nomination of the governing body, requiring the majority of its members to be external to the University, requiring its members to possess certain expertise and experience, and requiring procedures for the nomination of appointed members to be set out in the University's by-laws);
- (b) particularise certain of the functions of the University's governing body (including overseeing the University's performance, approving the University's mission, strategic direction, annual budget and business plan, overseeing risk management across the University, approving and monitoring the University's systems of accountability, ensuring that the University's grievance procedures and associated information are published in a form that is readily accessible to the public, regularly reviewing its own performance, adopting a statement of its primary responsibilities, and making available a program of induction and development for its members);
- (c) note generally the governing body's obligations under the *Annual Reports (Statutory Bodies) Act 1984*;
- (d) impose requirements on the governing body relating to the control and monitoring of entities controlled by the University;

⁸⁸ The Hon Dr Andrew Refshauge MP, Deputy Premier, Second Reading Speech, Legislative Assembly Hansard, 26 October 2004.

⁸⁹ Ibid.

⁹⁰ Ibid.

University Legislation Amendment Bill 2004

- (e) provide for the duties of members of the University's governing body (being to act in the best interests of the University, to exercise care and diligence, to not improperly use the position of member or improperly use information, and to disclose material interests to avoid a conflict of interest) and for removal of a member from office for breach of duty if such a motion is supported by a two-thirds majority of members of the governing body;
- (f) require the Minister and the governing body to take into account the need to maintain an appropriate balance of experienced and new members when appointing members and (in the case of the governing body) when making by-laws with respect to the terms of elected members and provide (except where a more stringent limit is already provided for in the University's Act) that the maximum incumbency for a member of the governing body is 12 consecutive years unless the governing body otherwise resolves;
- (g) alter the grounds on which the office of member of the governing body is vacated (most significantly by requiring the office of a member of the governing body to be vacated if the member is or becomes disqualified from managing a corporation under Part 2D.6 of the Corporations Act 2001 of the Commonwealth); and
- (h) enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act, and insert other provisions of a savings or transitional nature (including in relation to the constitution and continuity of the governing body, the application of the proposed provisions dealing with the removal from office of a member of the governing body for breach of duty, and the period to be counted for the purposes of the proposed provision dealing with the maximum incumbency for members of the governing body).

7. The Bill also:

- (a) incorporates certain uncommenced amendments from the University Legislation (Amendment) Act 1994 that replace the provisions in the Macquarie University Act 1989 and the Southern Cross University Act 1993 relating to the making of rules with provisions (parallel to those contained in the other Universities' Acts) that make it clear that the by-laws may authorise the making of rules with respect to matters for which by-laws may be made (except with respect to matters such as the constitution of, and the election of members to, the University's governing body, the offices of Chancellor and Deputy Chancellor, and the making, publication and inspection of rules);
- (b) repeals the University Legislation (Amendment) Act 1994 and the Statute Law (Miscellaneous Provisions) Act (No 2) 1999; and
- (c) makes a number of ancillary and consequential amendments to the Universities' Acts.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

11. STATE RECORDS AMENDMENT BILL 2004

Date Introduced: 24 September 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Carr MP
Portfolio: The Arts

Background

1. The Committee reported on the *State Records Amendment Bill 2004* in Legislation Review *Digest* No. 13 of 19 October 2004.
2. By letter dated 19 October 2004, the Committee requested the Premier's advice on two issues raised by the Bill, namely:
 - early public access to records held by public offices; and
 - the application of the *State Record Act 1998* to records provided by private individuals or organisations.

Premier's Reply

3. By letter dated 28 October 2004 the Premier responded to the Committee's request for advice.

Early public access: s 57

4. The Premier advised that the proposed amendment to s 57 does not permit public offices to do anything new:

Public offices have always had the ability to authorise early public access under the existing section 57(1) of the *State Records Act 1998*. I enclose, for your information, a summary of registered early public access directions made to date.

The Bill proposes amending section 57(1) to make explicit that public offices are protected by the same liability protections of the Act as are afforded to the State Records Authority where early public access is authorised. This is because the existing section 57(1) presumes that the record in question is in the custody of the State Records Authority. In fact the records can be in the custody of a public office or 'some other person' such as a regional repository. Under the current Act it is not clear whether the public office would be protected by the liability protections of the Act if it provides early access to records in its custody or in the custody of 'some other person'.

In relation to your concerns regarding privacy, section 57(4) provides a safeguard whereby public offices may not authorise early public access to a State record in breach of any duty or obligation that the public office may have with respect to the

record. Prior to the expiration of the 30 year period, public offices would be subject to the non-disclosure provisions in the *Privacy and Personal Information Protection Act 1998*, the *Health Records and Information Privacy Act 2002*, and other statutory confidentiality provisions.

It is only where the record is over 30 years old and the subject of an open to public access direction that such provisions no longer apply.

In such cases, public offices are required to have regard to the Attorney General's Guidelines in assessing whether to authorise public access (including early public access). The Attorney General's Guidelines make specific reference to the *Privacy and Personal Information Protection Act 1998* along with numerous other matters, and may be updated in the future to incorporate reference to the recently commenced *Health Records and Information Privacy Act 2002*.

Records from a private individual or non-State body

5. The Premier noted that the focus of the Act is on official records:

Private records given to a State collecting institution are excluded from the operation of the Act, provided the record forms part of that institution's collection. An example would be a collection of letters written by a private individual which have been donated or purchased for the library of the State collecting institution.

General correspondence from a private individual or non-State body to a public office, whether a State collecting institution or not, would, of course, be incorporated into the public offices records and would become State records for the purposes of the Act. Such correspondence would be dealt with under the general regime for State records outlined above.

Committee's Response

6. The Committee thanks the Premier for his reply.
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The Committee makes no further comment on this Bill.

State Records Amendment Bill 2004



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

19 October 2004

File ref: LRC983

The Hon R J Carr MP
Premier and Minister for the Arts and Citizenship
Level 40 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Premier

State Records Amendment Bill 2004

The Committee has considered this Bill under s 8A of the *Legislation Review Act 1987*.

The Committee notes that the Bill provides public offices with an absolute discretion to authorise public access to records less than 30 years old.

In exercising this discretion, a public office is to apply the Attorney General's Guidelines under s 52 of the *State Records Act 1998*.

The Committee notes that the Attorney General may amend the Guidelines from time to time, and that such Guidelines are not disallowable by Parliament.

The Committee seeks your clarification as to whether the duties and obligations which, under s 57(4) of the *State Records Act 1998*, a public office is not authorised to breach in the exercise of its absolute discretion to authorise early public access to a record include the observance of the information protection principles or the health privacy principles.

The Committee also seeks your advice as to whether there are any circumstances in which records given to a State collecting institution by a private individual or non-State body may become subject to the Act.

Yours sincerely

A handwritten signature in cursive script that reads "Marianne Saliba".

Marianne Saliba MP
Vice Chair



Premier of New South Wales
Australia

28 OCT 2004

Chairperson
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Sir/Madam

Thank you for the Committee's letter of 19 October 2004 regarding the *State Records Amendment Bill 2004* (the Bill).

The issues raised by the Committee relate to early public access and coverage of records provided by private individuals. I have addressed these two issues below.

Public office may authorise earlier public access: section 57

I would like to clarify an apparent misconception regarding the Bill's provisions relating to early access by public offices. The proposed amendment to section 57 does not permit public offices to do anything new.

Public offices have always had the ability to authorise early public access under the existing section 57(1) of the *State Records Act 1998*. I enclose, for your information, a summary of registered early public access directions made to date.

The Bill proposes amending section 57(1) to make explicit that public offices are protected by the same liability protections of the Act as are afforded to the State Records Authority where early public access is authorised. This is because the existing section 57(1) presumes that the record in question is in the custody of the State Records Authority. In fact the records can be in the custody of a public office or 'some other person' such as a regional repository. Under the current Act it is not clear whether the public office would be protected by the liability protections of the Act if it provides early access to records in its custody or in the custody of 'some other person'.

In relation to your concerns regarding privacy, section 57(4) provides a safeguard whereby public offices may not authorise early public access to a

State Records Amendment Bill 2004

State record in breach of any duty or obligation that the public office may have with respect to the record. Prior to the expiration of the 30 year period, public offices would be subject to the non-disclosure provisions in the *Privacy and Personal Information Protection Act 1998*, the *Health Records and Information Privacy Act 2002*, and other statutory confidentiality provisions.

It is only where the record is over 30 years old and the subject of an open to public access direction that such provisions no longer apply.

In such cases, public offices are required to have regard to the Attorney General's Guidelines in assessing whether to authorise public access (including early public access). The Attorney General's Guidelines make specific reference to the *Privacy and Personal Information Protection Act 1998* along with numerous other matters, and may be updated in the future to incorporate reference to the recently commenced *Health Records and Information Privacy Act 2002*.

Records from a private individual or non-State body

The focus of the Act is on official records. Private records given to a State collecting institution are excluded from the operation of the Act, provided the record forms part of that institution's collection. An example would be a collection of letters written by a private individual which have been donated or purchased for the library of the State collecting institution.

General correspondence from a private individual or non-State body to a public office, whether a State collecting institution or not, would, of course, be incorporated into the public office's records and would become State records for the purposes of the Act. Such correspondence would be dealt with under the general regime for State records outlined above.

Yours sincerely



Bob Carr
Premier

SUMMARY OF EARLY ACCESS DIRECTIONS

There have been 47 registered early access authorisations (1 revoked).

A majority of authorisations have been made as part of the model set of directions the State Records Authority provides to public offices. These authorisations cover publications, reports, publicity material, media releases and records already in the public domain such as transcripts of public hearings.

Specifically:

- * 31 authorisations cover material already publicly available such as publications, or transcripts of public hearings.
- * 4 authorisations were made by the former Financial Institutions Commission (FINCOM). The authorisations cover Board meeting papers, monitoring papers, and representations.
- * 2 authorisations cover all records transferred as State archives from the NSW Centenary of Federation Committee and Leichhardt Council.
- * 2 authorisations cover oral history interviews from the Sydney Opera House Trust.
- * 2 authorisations were made by Planning NSW to cover all maps and photographs transferred as State archives (one of the authorisations was revoked by the other to make it ongoing and to increase the scope to all formats).
- * 1 authorisation was made by agreement with the Office the Governor to official diaries, photographs and publications.
- * 1 authorisation relates to the construction records of the Sydney Opera House and continues a previous authorisation by the Minister for accelerated access.
- * 1 authorisation was made to records at an item level by the Environment Protection Agency in response to a request to access closed period records by a researcher.
- * 1 authorisation was made to the Pacific Power Heritage collection transferred as State archives.
- * 1 authorisation was made by Supreme Court to the index to probate records.
- * 1 authorisation was made by the Attorney General's Department to cover the index cards to Indecent Articles and Publications.

12. STOCK MEDICINES AMENDMENT BILL 2004

Date Introduced: 16 September 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Ian Macdonald MLC
Portfolio: Primary Industries

Background

1. The Committee reported on the *Stock Medicines Amendment Bill 2004* in Legislation Review Digest No 12 of 21 September 2004.
2. The Committee noted that proposed s 60A enables an authorised officer to issue penalty notices for prescribed offences under the Act or its Regulations.
3. The Committee was concerned that such responsibility should only be given to persons of appropriate responsibility and therefore resolved to seek the Minister's advice as to why there were no requirements regarding the qualifications or attributes of persons who may be authorised to issue penalty notices under s 60A.

Minister's Reply

4. In a letter dated 27 October 2004, the Minister for Primary Industries advised the Committee that:

"There are no specific requirements in the amendment bill regarding the qualifications or attributes of persons who may be authorised to issue penalty notices because only officers who have been properly trained (including specific training in the use of Penalty Infringement notices), have experience and understanding of stock medicines, and have knowledge and understanding of departmental policies will be considered for appointment.

To appoint and authorised officer the Director-General will need to be satisfied that the person seeking appointment has been trained and that they are a responsible person capable of accounting for their actions."

Committee's Response

- | |
|---|
| 5. The Committee thanks the Minister for his reply. |
|---|

The Committee makes no further comment on this Bill.



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

Our Ref: LRC971

The Hon. I. M. Macdonald MLC
Minister for Primary Industries
Level 30 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

21 September 2004

Dear Minister

Stock Medicines Amendment Bill 2004

The Committee has considered the above Bill under s 8A of the *Legislation Review Act 1987*.

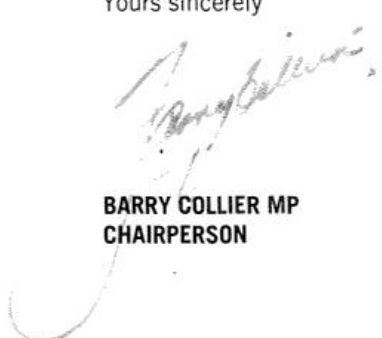
The Bill provides that the Director-General may authorise any person as an authorised officer for the purposes of s 60A of the *Stock Medicines Act 1989*.

Such authorisation empowers the person to issue penalty notices under the Act.

The Committee is of the view that such power should only be given to persons of appropriate responsibility and with sufficient accountability for their actions.

The Committee seeks your advice as to why there are no requirements regarding the qualifications or attributes of persons who may be authorised to issue penalty notices under proposed s 60A.

Yours sincerely



BARRY COLLIER MP
CHAIRPERSON



NEW SOUTH WALES

MINISTER FOR PRIMARY INDUSTRIES

27 OCT 2004

MA04/765

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



Dear Mr Collier *Barry*

Thank you for your letter dated 21 September 2004 in which you raise an issue about the proposed *Stock Medicines Amendment Bill 2004* and the appointment of authorised officers under section 60A.

Section 60A provides that the Director-General may appoint authorised officers to issue penalty notices. There are no specific requirements in the amendment bill regarding the qualifications or attributes of persons who may be authorised to issue penalty notices because only officers who have been properly trained (including specific training in the use of Penalty Infringement Notices), have experience and understanding of stock medicines, and have knowledge and understanding of departmental policies will be considered for appointment.

To appoint an authorised officer the Director-General will need to be satisfied that the person seeking appointment has been trained and that they are a responsible person capable of accounting for their actions. Within the Department only nine senior/specialist regulatory officers and two supervising staff, each of whom has undergone specialised training in the use of penalty notices, are currently permitted to issue such notices.

I am confident that the Director-General will ensure that only the most suitably qualified persons are appointed as authorised officers.

Yours sincerely

IAN MACDONALD MLC
NSW MINISTER FOR PRIMARY INDUSTRIES

LEVEL 30 GOVERNOR MACQUARIE TOWER 1 FARRER PLACE SYDNEY NSW 2000 AUSTRALIA
TELEPHONE: (02) 9228 3344 FACSIMILE: (02) 9228 3452
E-MAIL: office@macdonald.minister.nsw.gov.au

Part Two – Regulations

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

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

Appendix 1: Index of Bills Reported on in 2004

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

	Digest Number
Cross-Border Commission Bill 2004	3
Crown Lands Legislation Amendment (Budget) Bill 2004	10
Crown Lands (Prevention of Sales) Bill 2004*	10
Education Amendment (Non-Government Schools Registration) Bill 2004	2
Electricity (Consumer Safety) Bill 2003	1,2
Fair Trading Amendment Bill 2004	4
Filming Approval Bill 2004	7,8
Fines Amendment Bill 2004	9
Fisheries Management Amendment Bill 2004	6
Food Legislation Amendment Bill 2004	3
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	2
Gene Technology (GM Crop Moratorium) Amendment Bill 2004	15
Greyhound and Harness Racing Administration Bill 2004	7,9
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	6
Health Legislation Amendment Bill 2004	6
Health Legislation Amendment (Complaints) Bill 2004	15
Health Legislation Further Amendment Bill 2004	13
Health Registration Legislation Amendment Bill 2004	15
Health Services Amendment Bill 2004	15
Historic Houses Amendment Bill 2004	14
Institute of Teachers Bill 2004	8
Jury Amendment Bill 2004	15
Jury Amendment (Majority Verdicts) Bill 2004*	14
Legal Profession Amendment Bill 2004	9
Legal Profession Legislation Amendment (Advertising) Bill 2003	1
Liquor Amendment (Parliament House) Bill 2004	6
Liquor Amendment (Parliamentary Precincts) Bill 2004	8
Liquor Amendment (Racing Clubs) Bill 2004	9
Local Government Amendment (Council and Employee Security) Bill 2004	5
Local Government Amendment (Discipline) Bill 2004	9
Local Government Amendment (Mayoral Elections) Bill 2004	9
Lord Howe Island Amendment Bill 2003	10
Mine Health and Safety Bill 2004	8,9
Mining Amendment (Cyanide Leaching) Bill 2004*	14

	Digest Number
Mining Amendment (Miscellaneous Provisions) Bill 2004	6,8
National Competition Policy Amendment (Commonwealth Financial Penalties) Bill 2004	2
National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004	7
National Competition Policy Liquor Amendment (Commonwealth Financial Penalties) Bill 2004	7
National Parks and Wildlife Amendment (Jenolan Caves Reserve Trust) Bill 2004	9
Nurses and Midwives Amendment (Performance Assessment) Bill 2004	15
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	1
Parliamentary Electorates and Elections Amendment (Prohibition on Voting by Criminals) Bill 2004*	5
Partnership Amendment (Venture Capital Funds) Bill 2004	3
Passenger Transport Amendment (Bus Reform) Bill 2004	8,9
Police Amendment (Crime Reduction and Reporting) Bill 2004	3
Police Amendment (Senior Executive Transfers) Bill 2004	9,10
Police Integrity Commission Amendment Bill 2004	12
Prevention of Cruelty to Animals (Tail Docking) Bill 2004	4,6
Professional Standards Amendment Bill 2004	11
Protected Estates Amendment (Missing Persons) Bill 2004	14
Public Lands Protection Bill 2004*	13
Public Lotteries Legislation Amendment Bill 2004	2
Regional Development Bill 2004	7
Registered Clubs Legislation Amendment Bill 2004	11
Residential Tenancies (Public Housing) Bill 2004	9
Retail Leases Amendment Bill 2004	10
Retirement Villages Amendment Bill 2004	3
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	1
Road Transport (General) Amendment (Licence Suspension) Bill 2004	9
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	1,7
Rural Communities Impacts Bill 2004*	11
Save Orange Grove Bill 2004*	11
Smoke-free Environment Amendment Bill 2004	15
Snowy Mountains Cloud Seeding Trial Bill 2004	5
Special Commission of Inquiry (James Hardie Records) Bill 2004	15
State Records Amendment Bill 2004	13,15

	Digest Number
State Revenue Legislation Amendment Bill 2004	7
State Revenue Legislation Further Amendment Bill 2004	10
State Water Corporation Bill 2004	8
Statute Law (Miscellaneous Provisions) Bill 2004	9
Stock Diseases Amendment (Artificial Breeding) Bill 2004	6,8
Stock Diseases Amendment (False Information) Bill 2004	4,9
Stock Medicines Amendment Bill 2004	12,15
Strata Schemes Management Amendment Bill 2003	1,3
Superannuation Administration Amendment Bill 2003	1
Sustainable Energy Development Repeal Bill 2004	10
Sydney Opera House Trust Amendment Bill 2004	10
Teaching Services Amendment Bill 2004	15
The Synod of Eastern Australia Property Amendment Bill 2004	2
Thoroughbred Racing Legislation Amendment Bill 2004	4,6
Threatened Species Legislation Amendment Bill 2004	11,13
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	6
University Legislation Amendment Bill 2004	15
Water Management Amendment Bill 2004	8,14
Wool, Hide and Skin Dealers Bill 2004	2
Workers Compensation Legislation Amendment Bill 2004	9

Appendix 2: Index of Ministerial Correspondence on Bills in 2004

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Child Protection (Offender Registration) Bill 2004	Minister for Police	27/08/04	20/09/04		10,13
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004	Attorney General	21/09/04	28/09/04		12,13
Civil Liability Amendment Bill 2003	Minister for Health	28/11/03	22/12/03	7	1
Civil Liability Amendment (Offender Damages) Bill 2004	Minister for Justice	26/03/04	13/04/04		5,7
Commercial Agents and Private Inquiry Agents Bill 2004	Minister for Police	18/06/04	29/07/04		9,10
Crimes (Administration of Sentences) Amendment (Parole) Bill 2004	Minister for Justice	05/11/04			15
Crimes Legislation Further Amendment Bill 2003	Attorney General	28/11/03	16/12/03	7	1
Electricity (Consumer Safety) Bill 2003	Minister for Fair Trading	13/02/04	18/02/04		1,2
Environmental Planning and Assessment (Development Consents) Bill 2003	Minister for Infrastructure and Planning	24/10/03	19/03/04	4	5
Environmental Planning and Assessment Amendment (Planning Agreements) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	28/11/03	19/03/04	7	5
Environmental Planning and Assessment (Quality of Construction) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	18/11/03	19/03/04	6	5
Filming Approval Bill 2004	Minister for the Environment	11/05/04	12/05/04		7,8
Greyhound and Harness Racing Administration Bill 2004	Minister for Gaming and Racing	11/05/04	31/05/04		7,9
Lord Howe Island Amendment Bill 2003	Attorney General/ Premier	13/02/04	Premier 13/07/04		1,10 ⁹¹
Legal Profession Legislation Amendment (Advertising) Bill 2003	Attorney General	13/02/04	23/03/04		1,5
Mine Health and Safety Bill 2004	Minister for Mineral Resources	28/05/04	09/06/04		8,9
Mining Amendment (Miscellaneous Provisions) Bill 2004	Minister for Mineral Resources	30/04/04	17/05/04		6,8

⁹¹ Published under the title "Commencement of Acts."

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

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

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

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

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Crimes Amendment (Child Neglect) Bill 2004				N	
Crimes Legislation Amendment (Terrorism) Bill 2004	N				
Crimes (Administration of Sentences) Bill 2004	N			N	
Crimes (Administration of Sentences) Amendment (Parole) Bill 2004	N,C,R			N	
Crimes (Interstate Transfer of Community Based Sentences) Bill 2004				N	
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003				N	
Criminal Procedure (Sexual Offence Evidence) Bill 2004	N				
Crown Lands (Prevention of Sales) Bill 2004*	N, R				
Education Amendment (Non-Government Schools Registration) Bill 2004				N	
Electricity (Consumer Safety) Bill 2003	N, R				C
Fair Trading Amendment Bill 2004				N	
Filming Approval Bill 2004				C	
Fines Amendment Bill 2004				N	
Fisheries Management Amendment Bill 2004				N	
Food Legislation Amendment Bill 2004				N	
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	N			N	
Greyhound and Harness Racing Administration Bill 2004			R, C	N	
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	N		R		

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Health Legislation Amendment Bill 2004	N			N	
Health Legislation Amendment (Complaints) Bill 2004	N,R			N	
Health Legislation Further Amendment Bill 2004				N	
Health Services Amendment Bill 2004				N	
Historic Houses Amendment Bill 2004				N	
Health Registration Legislation Amendment Bill 2004	N,R			N	
Institute of Teachers Bill 2004				N	
Jury Amendment Bill 2004	N				
Jury Amendment (Majority Verdicts) Bill 2004*	N, R				
Legal Profession Legislation Amendment (Advertising) Bill 2003	C, R		C, R	N	
Liquor Amendment (Parliamentary Precincts) Bill 2004				N	
Local Government Amendment (Council and Employee Security) Bill 2004	N			N	
Local Government Amendment (Discipline) Bill 2004				N	
Mine Health and Safety Bill 2004	N, R	N	C	N, R	
Mining Amendment (Cyanide Leaching) Bill 2004*	N, R				
Mining Amendment (Miscellaneous Provisions) Bill 2004	C, R			N	
National Parks and Wildlife Amendment (Jenolan Caves Reserve Trust) Bill 2004	N				
Nurses and Midwives Amendment (Performance Assessment) Bill 2004	N, R			N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	N				
Parliamentary Electorates and Elections Amendment (Prohibition on Voting Rights by Criminals) Bill 2004*	R				
Partnership Amendment (Venture Capital Funds) Bill 2004	C			C	
Passenger Transport Amendment (Bus Reform) Bill 2004	N, R		N, C, R	N	
Police Amendment (Senior Executive Transfers) Bill 2004				C	
Police Integrity Commission Amendment Bill 2004				N	
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004				C	
Professional Standards Amendment Bill 2004				N	
Protected Estates Amendment (Missing Persons) Bill 2004				N	
Public Lotteries Legislation Amendment Bill 2004				N	
Regional Development Bill 2004				N	
Registered Clubs Legislation Amendment Bill 2004	N				
Residential Tenancies (Public Housing) Bill 2004	N			N	
Retail Leases Amendment Bill 2004				N	
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	N, C				
Road Transport (General) Amendment (Licence Suspension) Bill 2004	N	C	R		
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003				C	
Save Orange Grove Bill 2004*	R				

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Smoke-free Environment Amendment Bill 2004	N,R,C				
Snowy Mountains Cloud Seeding Trial Bill 2004				N	
Special Commission of Inquiry (James Hardie Records) Act 2004	N, R				
State Records Amendment Bill 2004	N,R,C			N	
State Revenue Legislation Further Amendment Bill 2004	N				
State Water Corporation Bill 2004				N	
Stock Diseases Amendment (Artificial Breeding) Bill 2004	C, R			N	N
Stock Diseases Amendment (False Information) Bill 2004	C			C	
Stock Medicines Amendment Bill 2004	N	R, C		N	
Strata Schemes Management Amendment Bill 2003				N,C	
Superannuation Administration Amendment Bill 2003	N			C	
Sydney Opera House Trust Amendment Bill 2004	N				
Teaching Services Amendment Bill 2004				N	
Thoroughbred Racing Legislation Amendment Bill 2004				C	
Threatened Species Legislation Amendment Bill 2004	N,R		N	N	R,C
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	R			N	
Water Management Amendment Bill 2004	C, R		N	N	
Wool, Hide and Skin Dealers Bill 2004				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Workers Compensation Legislation Amendment Bill 2004	N			N	

Key

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

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

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