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Legislation Review Committee

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No 9 of 2008

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

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

9 Functions with respect to Regulations:

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

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

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

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

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

Section B: Ministerial correspondence – Bills previously considered

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

Part Two – Regulations

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

This part of the *Digest* contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought

information. The Committee's letter to the Minister is published together with the Minister's reply.

Appendix 1: Index of Bills Reported on in 2008

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

Appendix 2: Index of Ministerial Correspondence on Bills for 2008

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

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

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

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

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

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Auditor-General (Supplementary Powers) Bill 2008

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

2. Crimes (Forensic Procedures) Amendment bill 2008

Issue: Right to Personal Physical Integrity – Schedule 1 [1] – proposed section 93 – permissible matching of DNA profiles:

23. However, the Committee is unclear on the reasons or benefits of the amendments to allow the DNA profile that is on the volunteers unlimited purposes index to be matched with a DNA profile on the offenders index (currently this is not permitted); a DNA profile that has been placed on the volunteers limited purpose index to be permitted to be matched with a DNA profile in the crime scene index if it is only within the purpose, and to be permitted to be matched with the offenders index if it is only within the purpose given. Currently, neither is permitted.

24. The Committee is concerned that the above specific amendments to the current table under section 93, may trespass unduly on a person's right to personal physical integrity when expanding the circumstances in which certain DNA profiles can be matched on the DNA database, without the person's consent to such a non-intimate forensic procedure involving the matching of DNA profiles on the DNA database.

25. Therefore, the Committee has resolved to write to the Minister to seek clarification regarding the Committee's concerns as well as any benefits of those specific changes to permit the matching of the DNA profile that is on the volunteers unlimited purposes index with a DNA profile on the offenders index; and changes to permit the matching of the DNA profile on the volunteers limited purpose index with a DNA profile in the crime scene index and the offenders index.

3. Crimes (Sentencing Procedure) Amendment (Life Sentences) Bill 2008

Issue: Retrospectivity – Schedule 1 [2] inserts proposed clause 2A – restriction on number of further applications by offender for determination of non-parole periods; and Schedule 1 [3] inserts proposed clause 6 (1A); and Schedule 1 [5] inserts proposed clause 7 (5):

23. The Committee will always be concerned where provisions (proposed clause 2A (1) of Schedule 1; proposed clause 6 (1A) of Schedule 1; and proposed clause 7 (5) of Schedule 1), are taken to have effect on the date of 17 June 2008 when the Minister made the announcement of the proposals but before the actual date of commencement of the proposed Act (that is, before the date of assent to the proposed Act). The effect of such significant changes to take effect on 17 June 2008 when the Minister made the announcement rather than on the actual date of assent to the proposed Act means that these provisions will apply retrospectively before the commencement of the amended legislation.

24. As the above amendments will affect an inmate's opportunity to redetermine his or her original life sentence and may impact on serving the existing life sentence for the term of his or her natural life, the Committee will always be concerned about the retrospective impact of such provisions.

25. Given that the retrospective application of the above provisions before the commencement of the proposed Act, may adversely impact and unduly trespass on personal rights and liberties, the Committee refers this matter to Parliament.

Issue: Exclude judicial review – Schedule 1 [4] inserts clause 6A (5) – Leave required for withdrawal of application and re-application:

27. The Committee notes that the intent of these proposals relating to withdrawals is to prevent judge shopping and to make offenders reconsider withdrawing without any real grounds or repeatedly withdrawing their application.

28. Given the Bill deals with the offender's application for redetermination of his or her original life sentence and the impact of serving the existing life sentence for the term of his or her natural life, the Committee considers that the restriction on appeal from the decision of the Supreme Court proposed by clause 6A (5) on an application for leave under subclause (1) with regard to the withdrawal of the offender's application, may make rights and liberties unduly dependent on non-reviewable decisions, and refers this to Parliament.

4. Election Funding Amendment (Political Donations and Expenditure) Bill 2008

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

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

5. Health Services Amendment (Mandatory Background Checks of Medical Practitioners) Bill 2008*

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

6. Local Government and Planning Legislation Amendment (Political Donations) Bill 2008

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

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

7. Police Integrity Commission Amendment (Crime Commission) Bill 2008

Issue: Self incrimination – Schedule 1 [10] – Proposed section 40 (3) – Privilege as regards answers, documents etc:

19. The Committee notes the right against self incrimination or the right to silence is a fundamental right. However, the Committee also notes that under section 40 (3) of the current legislation, an answer made, or document or other thing produced by a witness at a hearing before the PIC will remain inadmissible in evidence against the person in any civil or criminal proceedings (except as otherwise provided in this section such as certain proceedings under the *Police Act 1990;* any disciplinary proceedings; and the proposed disciplinary action under Part 2.7 of the *Public Sector Employment and Management Act 2002*).

20. Therefore, the Committee is of the view that the proposed amendment does not trespass unduly on personal rights and liberties.

Issue: Retrospectivity – Schedule 1 [34] – proposed insertion of application of amendments to previous conduct of Crime Commission officers:

22. However, the Committee notes that the Bill does not appear to affect the integrity of the investigation process, and accordingly, does not consider that the retrospective effect of covering conduct occurring before the commencement of the proposed Act, as unduly trespassing on personal rights.

Issue: Exclude judicial and merit review – Schedule 1 [3] – Proposed section 13B (5) (b) - Other functions of PIC in relation to Crime Commission officers:

26. The Committee will always be concerned when legislation seeks to exclude an appeal or review of a decision. However, the Committee notes that in some instances, a strong public interest may determine that an appeal or review is not necessary.

27. The Committee considers that in the context of the functions of the Police Integrity Commission (PIC) in relation to Crime Commission officers as set out in the proposed section 13B (similar to the section in relation to PIC functions with regard to administrative officers under the current Act), there appears to be a strong public interest in excluding an appeal or review with respect to the exercise by PIC of any of those functions proposed in subsection (2), (3) or (4).

8. Road Transport Legislation Amendment Bill 2008

Issue: Retrospectivity – Schedule 5 [2], [3] and [8]

14. The Committee considers that, as no person is detrimentally affected by the retrospective operation of this amendment, this provision does not trespass on personal rights or liberties.

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

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

9. Thoroughbred Racing Amendment Bill 2008

Issue: Exclude merits review – Schedule 1 [28] inserts a new Part 2A – proposed Division 4 Appeal and Review:

23. The Committee notes the importance of merits review in protecting rights against oppressive administrative decisions. The Committee considers that given the impact of sanctions or the impact of decisions on race broadcasting arrangements or totalizator distribution arrangements, the limitation of appeal or review to be only on procedural grounds rather than a broader merits review by the relevant tribunal body (Racing Appeals Tribunal or the ADT) under the proposed Division 4, may trespass unduly on personal rights.

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

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

10. Threatened Species Conservation Amendment (Special Provisions) Bill 2008

Issue: Retrospectivity – Schedule 1 [2] - inserts proposed Part 6 into Schedule 7 to the *Threatened Species Conservation Act 1995*:

11. The Committee will always be concerned where provisions have retrospective effect that may adversely impact on personal rights. However, the Committee notes that the biodiversity certification only applies to certain land within the Growth Centres SEPP, namely, the land to which the original order applied. The Committee also notes that the Bill ensures that the Minister, may, by order published in the Gazette, suspend or revoke the biodiversity certification of the Growth Centres SEPP if any relevant biodiversity measure has not been complied with.

12. The Committee further notes that on 14 December 2007, the original order was made by the Minister Assisting the Minister for Climate Change, Environment and Water (Environment) and which was published in the Gazette conferring biodiversity certification on the Grown Centres SEPP. Therefore, the Committee is of the view that the proposed Part 6 of Schedule 7, taken to have had effect on and from 14 December 2007, does not appear to trespass unduly on personal rights.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. AUDITOR-GENERAL (SUPPLEMENTARY POWERS) BILL 2008

Date Introduced:	19 June 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Morris Iemma MP
Portfolio:	Premier

Purpose and Description

1. This Bill amends the *Public Finance and Audit Act 1983* to provide for review by the Auditor-General in connection with the restructuring of the State's electricity industry.

2. It provides for the Auditor-General to undertake a review of the Government's overall strategy for the electricity industry restructuring. This review must be completed and a report presented to Parliament before any assets can be sold or leased to the private sector.

3. Schedule 1 [1] inserts proposed section 63G and Schedule 1A to have effect where expressions used in Schedule 1A have the same meanings as in the Bill for the *Electricity Industry Restructuring Act 2008* as introduced in the Legislative Assembly on 4 June 2008.

4. Schedule 1 [2] inserts proposed Schedule 1A on the oversight of electricity industry restructuring. Proposed clause 1 sets out the review of Government's overall program for restructuring under proposed section 63G. The Auditor-General is to review the appropriateness of the Government's strategy for the transfer of assets to the private sector for maximising financial value for taxpayers by taking into account the following: proposed method of effecting transactions, the proposed timing of transactions, including the impact of external factors, any contingent liabilities that will accrue to the State, the impact of the proposed national emissions trading scheme including current hedging and coal contracts of State electricity corporations, the sale price of the assets that is reasonably expected having regard to professional advice and the Government's preliminary estimates, the impact of increased debt over the past 5 years in relation to assets, any relevant Commonwealth legislation regarding competition or foreign ownership, any other factors that may impact on the potential sale price of the assets.

5. The financial impact of the proposed community safety net such as the protections for workers, pensioners and low income earners including an assessment of the consistency of those benefits with previous transactions involving the transfer of assets to the private sector will be reviewed.

6. The Auditor-General is to report to each House of Parliament on the results of the review as soon as practicable.

7. The Treasurer is to ensure that the Auditor-General has access to such information and resources as may be necessary to enable the Auditor-General to exercise the functions conferred by the proposed Schedule. For such purposes, the Auditor-General may exercise investigatory powers conferred on the Auditor-General under the Act and engage any person or body with financial expertise to examine arrangements proposed for the authorised restructuring.

8. The functions conferred by the proposed Schedule are in addition to and do not derogate from any other function of the Auditor-General.

Background

9. This is the third Bill in a package of legislation concerning the proposed electricity restructuring. The Electricity Industry Restructuring Bill and the Community Infrastructure (Intergenerational) Fund Bill are already before the House.

10. With this legislation, the Government will provide additional authority for the Auditor-General to report to the Parliament on the Government's proposed strategy.

11. According to the Agreement in Principle speech, after recent discussions between the Government and the Opposition, the following has been agreed:

> In developing his report, the Government expects the Auditor-General will take into consideration the proposed emissions trading scheme together with the current electricity hedging and coal contracts. Having regard to foreign ownership issues, the Government expects the Auditor-General will also consider the strategy's approach to foreign ownership. The Commonwealth's Foreign Investment Review Board has jurisdiction in this area…The competition effects of the Government's proposals will be initially assessed by the Australian Competition and Consumer Commission with the benefit of an information memorandum prepared by the Government. This submission will be made available to the Auditor-General.

12. The Agreement in Principle speech also referred to a rural communities impact statement being prepared by independent experts, which will be available in the next few weeks.

The Bill

13. The object of this Bill is to amend the *Public Finance and Audit Act 1983* to provide for the Auditor-General to review and report to Parliament on the Government's overall program for the restructuring of the State's electricity industry that will be authorised by the proposed *Electricity Industry Restructuring Act 2008*.

14. Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
Clause 3 is a formal provision that gives effect to the amendments to the *Public Finance and Audit Act 1983* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.
Schedule 1 makes the amendments to the *Public Finance and Audit Act 1983* referred to in the Overview.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

2. CRIMES (FORENSIC PROCEDURES) AMENDMENT BILL 2008

Date Introduced:	18 June 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Police

Purpose and Description

1. This Bill amends the *Crimes (Forensic Procedures) Act 2000* with respect to the matching of DNA profiles and the sharing of DNA information with other jurisdictions; and for other purposes.

2. The purpose of this Bill is to expand the circumstances in which DNA profiles can be matched on the DNA database.

3. There are currently seven indexes on the DNA database. They contain DNA information taken from different sources. They comprise a crime scene index, suspects index, volunteers limited purpose index, volunteers unlimited purpose index, offenders index, missing persons index and unknown deceased person index. Matching between these indexes is only permitted in certain circumstances as outlined in current section 93 of the *Crimes (Forensic Procedures) Act 2000.*

4. The proposed amendment ensures that the matching table can be read both horizontally and vertically. The table to schedule 1 [1] amends the table in the current section 93 of the Act in the following ways. First, it allows a DNA profile on the suspects index of the DNA database to be matched with another DNA profile on the suspects index. As the law currently stands, no such matching is allowed. This is an invaluable tool for police as it ensures that any suspects who may have fraudulent or multiple identities cannot escape detection.

5. It will enable the regulations to prescribe a person or body as a responsible authority of a participating jurisdiction for the purposes of part 12—intestate enforcement—of the Principal Act and also permits the Attorney General to enter into wider arrangements with the responsible authorities of one or more of the participating jurisdictions to permit the matching of DNA information and the transfer of other information following any positive match.

6. Second, it will ensure that a DNA profile that has been placed on the volunteers limited purpose index is permitted to be matched with a DNA profile in the crime scene index, offenders index, missing persons index or unknown deceased persons index. However, such matching is only allowed if it is carried out for a purpose for which the DNA profile was placed on the volunteers limited purpose index. The volunteers limited purpose index contains DNA profiles from victims and others who volunteer their DNA profiles to help solve crime or find loved ones. It cannot be stored or matched against any other database, except for the purpose as specified at the time of collection.

7. Third, it ensures that a DNA profile that is on the volunteers unlimited purposes index is permitted to be matched with a DNA profile on the offenders index.

8. Fourth, the table to schedule 1 [1] to the Bill permits matching of a DNA profile of an unknown deceased person to be matched to the DNA profile of another unknown deceased person on that index. No such matching is currently permitted. This amendment will assist police in an event such as an explosion or a terrorist attack where it may be difficult to identify body parts and where it might be necessary to match unknown deceased DNA to other unknown deceased DNA.

9. CrimTrac Agency, a Commonwealth body that controls the National DNA Database, will be named in the proposed Act as the body that does so.

10. Schedule 1 [2] through to 1 [6] to the Bill relate to the sharing of DNA information with other jurisdictions. The saving provisions in schedule 1 [7] to the Bill ensure the validity of current arrangements.

11. Proposed section 97 provides that the arrangements with other jurisdictions may be entered into only for the purposes of investigating, or conducting proceedings for an offence against the law of this State or those jurisdictions, or identifying missing or deceased persons. For example, if CrimTrac is a party to an arrangement or an arrangement is made bilaterally with CrimTrac, like the one New South Wales has now, CrimTrac can be authorised to compare New South Wales DNA data with DNA data from another jurisdiction. CrimTrac can also be authorised to inform New South Wales agencies and other jurisdiction's agencies of any matches that it finds. Information transmitted under any such arrangements may not be used except for one of those purposes.

12. The proposed amended section 97 provides that DNA data can be used only for limited purposes once it is transmitted.

Background

13. According to the Agreement in Principle speech, DNA identification has become one of the most valuable tools for police in investigating crime and identifying people. The amendments will further assist law enforcement officers in using DNA evidence to catch criminals and solve crimes.

14. By allowing a DNA profile on the suspects index of the DNA database to be matched with another DNA profile on the suspects index (which cannot be currently done under the present legislation), this becomes a tool for police as it ensures that any suspects who may have fraudulent or multiple identities cannot escape detection.

15. The Agreement in Principle speech also explained that:

> As required under section 121 of the Act, the Ombudsman has conducted a thorough review of the forensics legislation. In the review the Ombudsman has recommended that matching between profiles within the suspect index be permitted. The Ombudsman has outlined two main benefits of such matching. First, the management of the DNA database will be improved by knowing exactly how many individuals are on the suspects index. The change allows duplicates to be identified and removed from the database. It will also improve the efficiency of the database by streamlining the data kept on it. Second, any inconsistencies in the data on the

database—for example, where suspects provide a false name—can be detected and dealt with. Criminals will no longer be able to use false identities in an attempt to avoid being matched through their DNA.

16. The proposed table to schedule 1 [1] to the Bill permits matching of a DNA profile of an unknown deceased person to be matched to the DNA profile of another unknown deceased person on that index, where no such matching is permitted at present. This amendment aims to assist police in an event such as an explosion or a terrorist attack where it may be difficult to identify body parts and where it might be necessary to match unknown deceased DNA to other unknown deceased DNA.

17. The amendments will also provide the Attorney General with the flexibility to enter into a greater variety of arrangements to share DNA information with other jurisdictions. New South Wales is currently matching and sharing DNA information with the Commonwealth, the Australian Capital Territory, South Australia, Western Australia, Tasmania and Victoria. Matching is conducted by the CrimTrac Agency, a Commonwealth body that controls the National DNA Database.

The Bill

18. The object of this Bill is to amend the Crimes (Forensic Procedures) Act 2000 (**the Principal Act**) to:

(a) clarify the circumstances in which it is permissible to match DNA profiles, and
(b) permit a DNA profile on the suspects index of the DNA database to be matched with another DNA profile on that index, and
(c) permit a DNA profile on the unknown deceased persons index of the DNA database to be matched with another DNA profile on that index, and
(d) enable the regulations to prescribe a person or body as a responsible authority of a participating jurisdiction for the purposes of Part 12 (Interstate enforcement) of the Principal Act and to include CrimTrac as a responsible authority in relation to the Commonwealth, and
(e) set out the circumstances in which the Attorney General may enter into arrangements with participating jurisdictions for the transfer of information from the DNA database of this State to those jurisdictions and the transfer of information to this State from those jurisdictions, and
(f) set out the purposes for which any transferred information may be used.

Schedule 1 Amendments
Under the Principal Act, DNA profiles are held on a number of indexes on the DNA database. Matching between any 2 DNA profiles is permitted only in the circumstances set out in section 93 of that Act.
Schedule 1 [1] amends section 93 of the Principal Act to clarify that a DNA profile that has been placed on the volunteers (limited purposes) index is permitted to be matched with a DNA profile in the crime scene index, offenders index, missing persons index or unknown deceased persons index but only if the matching is carried out for a purpose for which the DNA profile was placed on the volunteers (limited purposes) index. A DNA profile that has been placed on the volunteers (limited purposes) index is not permitted to be matched with a DNA profile on the suspects index, the volunteers (limited purposes) index or the volunteers (unlimited purposes) index. It also clarifies that a DNA profile on the volunteers (unlimited purposes) index is permitted to be matched with a DNA profile on the offenders index and that a DNA profile on the missing persons index is permitted to be matched with a DNA profile on

the suspects index. The amendment also permits a matching of a DNA profile on the suspects index with another DNA profile on that index and a matching of a DNA profile on the unknown deceased persons index with another DNA profile on that index. Currently matching is not permitted in either case.

Schedule 1 [2] provides that the regulations may prescribe a person or body as a responsible authority in relation to a participating jurisdiction for the purposes of the Principal Act and provides that CrimTrac is a responsible authority in relation to the Commonwealth. The Attorney General may enter into arrangements with a responsible authority for the sharing of DNA information or for the establishment and maintenance of a register of orders for the carrying out of forensic procedures.

Schedule 1 [3] provides that the Attorney General may enter into arrangements with the responsible authority of any one or more participating jurisdictions under which information from the DNA database of this State may be transmitted to those jurisdictions and information from those jurisdictions may be transmitted to this State. The arrangements may be entered into only for the purposes of investigating, or conducting proceedings for, an offence against the law of this State or those jurisdictions, the identification of missing or deceased persons or, if CrimTrac is a party to the arrangements, CrimTrac comparing the transmitted information with information transmitted from a participating jurisdiction and then notifying this State and that jurisdiction of any matches that it finds. Information transmitted under any such arrangements may not be used except for one of these purposes.

Schedule 1 [4] and [5] make consequential amendments.

Schedule 1 [6] enables the regulations to make provision for matters of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [7] inserts savings provisions into Schedule 2 to the Principal Act that provide for a number of existing bilateral arrangements to be taken to be made under section 97 (1) of that Act from the date the particular arrangement was entered into.

Issues Considered by the Committee

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

Issue: Right to Personal Physical Integrity – Schedule 1 [1] – proposed section 93 – permissible matching of DNA profiles:

19. Schedule 1 [1] amends section 93 of the Principal Act so that a DNA profile that has been placed on the volunteers (limited purposes) index is permitted to be matched with a DNA profile in the crime scene index, offenders index, missing persons index or unknown deceased persons index but only if the matching is carried out for a purpose for which the DNA profile was placed on the volunteers (limited purposes) index. A DNA profile that has been placed on the volunteers (limited purposes) index is not permitted to be matched with a DNA profile on the suspects index, the volunteers (limited purposes) index or the volunteers (unlimited purposes) index.

20. It also amends that a DNA profile on the volunteers (unlimited purposes) index is permitted to be matched with a DNA profile on the offenders index and that a DNA profile on the missing persons index is permitted to be matched with a DNA profile on the suspects index.

21. The amendment also permits a matching of a DNA profile on the suspects index with another DNA profile on that index and a matching of a DNA profile on the unknown deceased persons index with another DNA profile on that index.

22. The Committee notes that the Agreement in Principle speech has referred to the review of the forensics legislation conducted by the Ombudsman. In that review, the Ombudsman has recommended the matching between profiles within the suspect index be permitted. The Ombudsman has provided two main benefits of such matching. First, the management of the DNA database will be improved by knowing how many individuals are on the suspects index. The change allows duplicates to be identified and removed from the database so as to improve the efficiency of the database by streamlining the data kept on it. Second, any inconsistencies in the data on the database, such as, where suspects provide a false name, can also be detected.

23. However, the Committee is unclear on the reasons or benefits of the amendments to allow the DNA profile that is on the volunteers unlimited purposes index to be matched with a DNA profile on the offenders index (currently this is not permitted); a DNA profile that has been placed on the volunteers limited purpose index to be permitted to be matched with a DNA profile in the crime scene index if it is only within the purpose, and to be permitted to be matched with the offenders index if it is only within the purpose given. Currently, neither is permitted.

24. The Committee is concerned that the above specific amendments to the current table under section 93, may trespass unduly on a person's right to personal physical integrity when expanding the circumstances in which certain DNA profiles can be matched on the DNA database, without the person's consent to such a non-intimate forensic procedure involving the matching of DNA profiles on the DNA database.

25. Therefore, the Committee has resolved to write to the Minister to seek clarification regarding the Committee's concerns as well as any benefits of those specific changes to permit the matching of the DNA profile that is on the volunteers unlimited purposes index with a DNA profile on the offenders index; and changes to permit the matching of the DNA profile on the volunteers limited purpose index with a DNA profile in the crime scene index and the offenders index.

The Committee makes no further comment on this Bill.

3. CRIMES (SENTENCING PROCEDURE) AMENDMENT (LIFE SENTENCES) BILL 2008

Date Introduced:	18 June 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Police

Purpose and Description

1. This Bill amends the *Crimes (Sentencing Procedure) Act 1999* with respect to applications for redeterminations of existing life sentences.

2. This Bill aims to ensure that old life sentence inmates will not be able to repeatedly seek sentence redeterminations. The purpose is that offenders should have only one opportunity for a redetermination. The Bill continues to allow offenders to apply to the Supreme Court to have their life sentence redetermined, but aims to stop multiple applications. Offenders will only have one opportunity to apply to have their sentences redetermined.

3. Schedule 1 [2] restricts to one the number of further applications that an existing offender may make to the Supreme Court for a redetermination of his or her original life sentence. Applications made on or after 17 June 2008 (the date of announcement of the proposal), are to be covered by the restriction. Applications made before that date, and applications that are withdrawn before that date, are not to be counted. The new clause also provides that if, in disposing of an application made on or after 17 June 2008 by an existing offender for a redetermination of his or her original life sentence, the Supreme Court declines to set a specified term or a non-parole period for the sentence, the offender is to serve the existing life sentence for the term of his or her natural life.

4. Schedule 1 [4] allows an existing offender to withdraw an application to the Supreme Court for a redetermination of his or her original life sentence only with leave of the Court. The Court's decision on an application for leave to withdraw such an application is not appealable.

5. If the Supreme Court grants leave to withdraw an application, the offender who made the application may only make a further application for a redetermination of life sentence with the leave of the Court and, if the Court so directs, may not make the further application for a specified period of time. In considering whether to grant leave to withdraw an application or to make a further application, the Supreme Court must have regard to, and give substantial weight to, the number of times the offender has previously withdrawn an application for a redetermination of the life sentence. If the Supreme Court refuses to grant leave to an existing offender to make a further application for a redetermination of his or her original life sentence, new clause 6A provides that the offender is to serve the existing life sentence for the term of his or her natural life.

6. Schedule 1 [3] amends clause 6 of schedule 1. It applies only to applications lodged before the announcement date of 17 June 2008. It will allow the Supreme Court, if it declines to set a specified term or a non-parole period in determining an application by an existing offender for a redetermination of his or her original life sentence, to direct that the offender may never re-apply to the Court or may not re-apply for a specified period. If the Court makes no such direction, the clause precludes the offender from re-applying for a period of 3 years. Clause 6 will not apply to any applications made on or after the date of announcement (17 June 2008).

7. The Crown can oppose any application by the offender to withdraw and seek to have the redetermination application heard. Where an application is withdrawn, the Crown will be able to ask the Court to prevent the inmate from reapplying within a specified period of time.

8. Schedule 1 [6] allows an appeal to the Court of Criminal Appeal in relation to an application for leave to make a further application for a redetermination and a direction that an offender may not make a further application for a specified period of time. Schedule 1 [7] allows the Court of Criminal Appeal, in allowing an appeal against a decision of the Supreme Court to refuse an application for leave to make a further application following the withdrawal of such an application, to determine the further application.

9. Schedule 1 [5] requires the Supreme Court, when considering an application by an existing offender for a redetermination of his or her original life sentence, to have regard to and give substantial weight to the level of culpability of the offender in the commission of the offence for which the sentence was imposed and the heinous nature of the offence.

Background

10. From the Agreement in Principle speech:

> In New South Wales 17 inmates remain of those who were sentenced to imprisonment for life prior to the truth-in-sentencing reforms of the late 1980s and early 1990s. Of those, nine are inmates serving life with non-release recommendations. The remaining inmates are those who have either applied for redetermination and been refused or who have not yet applied. At the time when they were sentenced, those inmates were subject to the release on licence scheme, which meant that they could be released on licence after serving around 8 to 12 years. The truth-in-sentencing reforms meant that from 1990 onwards, offenders sentenced to life imprisonment served the rest of their life in prison. However to avoid the life means life provisions from having retrospective effect, the Greiner Government's reforms provided that offenders who had been sentenced to life before the truth-in-sentencing regime could have their sentences redetermined…Therefore, inmates serving a life sentence could apply to the Supreme Court to have their sentences redetermined. Unfortunately, there was no limit on the number of times an offender could seek a redetermination. Every time an offender made an application, the families of the victims had to go through the stress and trauma of preparing themselves mentally, writing victim impact statements, and appearing in court. And often after enduring that stress the offender would withdraw his or her application at the last minute.

11. The proposals relating to withdrawals will prevent judge shopping and will make offenders reconsider withdrawing without any real grounds or repeatedly withdrawing their application.

12. The Agreement in Principle speech also referred to consultations with, as well as the support of Homicide Victims' Support Group, Victims Of Crime Assistance League [VOCAL], and Enough is Enough with regard to the proposed changes. The Attorney General also met with Gary Connell and his sisters with respect to the amendments.

The Bill

13. The "truth in sentencing" regime established by the now repealed *Sentencing Act 1989* (and continued in the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999*) abolished the former "Governor's licence" provisions of the *Crimes Act 1900* under which an offender could be released from custody before his or her sentence had expired without the need for a parole order.

14. For those offenders who were sentenced to life imprisonment before the present regime was established (***existing offenders***), the regime replaces the former Governor's licence provisions with a procedure by which an offender can apply to the Supreme Court for redetermination of his or her original sentence. The procedure allows the Supreme Court to replace the life sentence with a sentence for a fixed term and, in particular, to set a non-parole period after the expiry of which the State Parole Authority can (but need not) release the offender on parole.

15. If the Supreme Court determines an application by an existing offender for a redetermination of his or her original life sentence by declining to set a specified term or a non-parole period for the sentence, the Court may direct that the offender who made the application may never re-apply to the Court or may not re-apply for a specified period of time. (If the Court makes no such direction, the offender is precluded from re-applying for a period of 3 years.) There is currently no other restriction on the number of applications an offender may make for a redetermination of an existing life sentence.

16. The object of this Bill is to amend the *Crimes (Sentencing Procedure) Act 1999* (**the Principal Act**):

    (a) to restrict to one the number of further applications that an existing offender may make to the Supreme Court for a redetermination of his or her original life sentence, and
    (b) to require the Supreme Court, when considering such an application, to have regard to and give substantial weight to the level of culpability of the offender in the commission of the offence for which the sentence was imposed and the heinousness of the offence, and
    (c) to allow an existing offender to withdraw such an application, and make a further such application, only with leave of the Supreme Court.

Schedule 1 Amendments

Schedule 1 [2] inserts new clause 2A into Schedule 1 to the Principal Act to restrict to one the number of further applications that an existing offender may make to the Supreme Court for a redetermination of his or her original life sentence. Applications made on or after 17 June 2008 (being the date of the Minister's announcement of the proposal to enact the

amendments made by the proposed Act) are to be counted for the purposes of the restriction. Applications made before that date, and applications that are duly withdrawn, are not to be counted.

The new clause also provides that if, in disposing of an application made on or after 17 June 2008 by an existing offender for a redetermination of his or her original life sentence, the Supreme Court declines to set a specified term or a non-parole period for the sentence, the offender is to serve the existing life sentence for the term of his or her natural life.

Clause 6 of Schedule 1 to the Principal Act allows the Supreme Court, if it declines to set a specified term or a non-parole period in determining an application by an existing offender for a redetermination of his or her original life sentence, to direct that the offender may never re-apply to the Court, or may not re-apply for a specified period. If the Court makes no such direction, the clause precludes the offender from re-applying for a period of 3 years.

Schedule 1 [3] amends clause 6 to make it clear that the clause applies only in relation to an application referred to in clause 2 (1) that was made but not finally disposed of before 17 June 2008 and that it does not apply in relation to an application made on or after that date.

Schedule 1 [4] inserts new clause 6A into Schedule 1 to the Principal Act to allow an existing offender to withdraw an application to the Supreme Court for a redetermination of his or her original life sentence only with leave of the Court. Them Court's decision on an application for leave to withdraw such an application is not appealable. If the Supreme Court grants leave to withdraw an application, the offender who made the application may make a further application for a redetermination of life sentence only with leave of the Court and, if the Court so directs, may not make the further application for a specified period of time. In considering whether to grant leave to withdraw an application or to make a further application, the Supreme Court must have regard to and give substantial weight to the number of times the offender has previously withdrawn an application for a redetermination of the life sentence.

If the Supreme Court refuses to grant leave to an existing offender to make a further application for a redetermination of his or her original life sentence, new clause 6A provides that the offender is to serve the existing life sentence for the term of his or her natural life.

Schedule 1 [1] makes an amendment consequential on that made by Schedule 1 [4].

Schedule 1 [6] amends clause 8 of Schedule 1 to the Principal Act to allow an appeal to the Court of Criminal Appeal in relation to a decision of the Supreme Court on an application for leave to make a further application for a redetermination of a life sentence following the withdrawal of such an application, and a direction by the Supreme Court that an offender may not make a further application for a specified period of time (being a decision and a direction under new clause 6A).

Schedule 1 [7] amends clause 8 of Schedule 1 to the Principal Act to allow the Court of Criminal Appeal, in allowing an appeal against a decision of the Supreme Court to refuse an application for leave to make a further application for a redetermination of a life sentence following the withdrawal of such an application, to exercise the jurisdiction of the Supreme Court to determine the further application. The amendment also makes a consequential change in relation to the application of the *Criminal Appeal Act 1912*.

Schedule 1 [5] amends clause 7 of Schedule 1 to the Principal Act to require the Supreme Court, when considering an application by an existing offender for a redetermination of his or her original life sentence, to have regard to and give substantial weight to the level of culpability of the offender in the commission of the offence for which the sentence was imposed and the heinousness of the offence.

Schedule 1 [8] inserts a provision that enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Issues Considered by the Committee

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

Issue: Retrospectivity – Schedule 1 [2] inserts proposed clause 2A – restriction on number of further applications by offender for determination of non-parole periods; and Schedule 1 [3] inserts proposed clause 6 (1A); and Schedule 1 [5] inserts proposed clause 7 (5):

17. Schedule 1 [2] inserts new clause 2A into Schedule 1 of the Act to restrict to one the number of further applications that an existing offender may make to the Supreme Court for a redetermination of his or her original life sentence. Applications made on or after 17 June 2008 (being the date of the Minister's announcement of the proposal) are to be counted for the purposes of the restriction. The new clause also provides that if in disposing of an application made on or after 17 June 2008 by an existing offender for a redetermination of his or her original life sentence, the Supreme Court declines to set a specified term or a non-parole period for the sentence, the offender will serve the existing life sentence for the term of his or her natural life.

18. The Committee notes that the above amendment will have effect before the actual commencement of the proposed Act or before the date of assent to the proposed Act by taking effect in respect of applications made on or after 17 June 2008.

19. Currently, clause 6 of Schedule 1 to the Principal Act allows the Supreme Court, if it declines to set a specified term or a non-parole period in determining an application by an existing offender for a redetermination of his or her original life sentence, to direct that offender may never re-apply to the Court or may not re-apply for a specified period. If the Court makes no such direction, the clause precludes the offender from re-applying for a period of 3 years.

20. The Committee notes that Schedule 1 [3] amends clause 6 by inserting clause 6 (1A) to make it that the clause 6 applies only in relation to an application referred to in clause 2 (1) that was made but not disposed of before 17 June 2008 and that it no longer applies in relation to an application made on or after 17 June 2008.

21. Schedule 1 [5] amends clause 7 of Schedule 1 to the Principal Act by inserting clause 7 (5) to require the Supreme Court, when considering an application by an existing offender for redetermination of his or her original life sentence, to have regard to and give substantial weight to the level of culpability of the offender in the commission of the offence for which the sentence was imposed and the heinousness of the offence.

22. The Committee notes that this applies to an application made on or after 17 June 2008 or that was made before that date but not finally disposed of before the commencement of the proposed Act.

23. The Committee will always be concerned where provisions (proposed clause 2A (1) of Schedule 1; proposed clause 6 (1A) of Schedule 1; and proposed clause 7 (5) of Schedule 1), are taken to have effect on the date of 17 June 2008 when the Minister made the announcement of the proposals but before the actual date of commencement of the proposed Act (that is, before the date of assent to the proposed Act). The effect of such significant changes to take effect on 17 June 2008 when the Minister made the announcement rather than on the actual date of assent to the proposed Act means that these provisions will apply retrospectively before the commencement of the amended legislation.

24. **As the above amendments will affect an inmate's opportunity to redetermine his or her original life sentence and may impact on serving the existing life sentence for the term of his or her natural life, the Committee will always be concerned about the retrospective impact of such provisions.**

25. **Given that the retrospective application of the above provisions before the commencement of the proposed Act, may adversely impact and unduly trespass on personal rights and liberties, the Committee refers this matter to Parliament.**

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

Issue: Exclude judicial review – Schedule 1 [4] inserts clause 6A (5) – Leave required for withdrawal of application and re-application:

26. Proposed clause 6A (5) reads: No appeal lies against the decision of the Supreme Court on an application for leave under subclause (1). Proposed subclause (1) provides that an application referred to in clause 2 (1) may be withdrawn by the offender who made the application, but only with the leave of the Supreme Court.

27. The Committee notes that the intent of these proposals relating to withdrawals is to prevent judge shopping and to make offenders reconsider withdrawing without any real grounds or repeatedly withdrawing their application.

28. Given the Bill deals with the offender's application for redetermination of his or her original life sentence and the impact of serving the existing life sentence for the term of his or her natural life, the Committee considers that the restriction on appeal from the decision of the Supreme Court proposed by clause 6A (5) on an application for leave under subclause (1) with regard to the withdrawal of the offender's application, may make rights and liberties unduly dependent on non-reviewable decisions, and refers this to Parliament.

The Committee makes no further comment on this Bill.

4. ELECTION FUNDING AMENDMENT (POLITICAL DONATIONS AND EXPENDITURE) BILL 2008

Date Introduced:	18 June 2008
House Introduced:	Legislative Council
Minister Responsible:	Hon. John Hatzistergos MLC
Portfolio:	Attorney-General

Purpose and Description

1. The object of this Bill is to amend the *Election Funding Act 1981* to strengthen the laws regulating political donations and electoral expenditure in relation to State and local government elections and elected members.

2. The *Local Government and Planning Legislation Amendment (Political Donations) Bill* is cognate with this Bill.

Background

3. The *Local Government and Planning Legislation Amendment (Political Donations) Bill* gives effect to the Government's commitment to improving transparency and accountability in election funding and campaign finance. The Bill aims to promote more thorough, accurate and timely disclosure of donations and expenditure by establishing new rules for the management of campaign finances.

4. The Bill provides that information about donations to political parties and candidates will be made more available to the public, reducing the mandatory reporting of election funding from once every four years, to once every six months.

5. As a result, parties, groups, members of Parliament, councillors and donors will be required to lodge declarations of all donations made or received and all electoral expenditure incurred in each six-month period within eight weeks of the end of the defined 'relevant disclosure period'.

6. The Bill provides that all declarations will be lodged with the Election Funding Authority. The authority will publish the information that it receives on its website.

7. The Bill reduces the New South Wales disclosure limit for parties to $1,000, down from the current $1,500. The decrease in the disclosure limit is in line with current efforts to introduce a nationally consistent disclosure limit. Disclosure requirements also apply to in—kind donations, such as the provision of vehicles and offices for no or little consideration, but exclude the provision of volunteer labour and the incidental use of vehicles.

8. The Bill confers additional enforcement powers on the Election Authority to conduct random audits for the purposes of monitoring compliance with the Election Funding Act. The audit powers also enable the Election Authority to compel individuals to provide relevant information to the Election Authority in the course of its audit functions.

9. The Bill requires that loans over $1,000 that have not been provided by a recognised financial institution, must also be recorded by the person receiving the loan and disclosed to the authority as part of the six-monthly declaration.

10. The Bill provides that all groups, candidates, members of Parliament and councillors must have an 'official agent'. The official agent is to have control of a 'campaign account' and has responsibilities for administering campaign finances. For political parties and their State election candidates and members of Parliament, the 'party agents' will be designated as the official agent.

11. The Bill requires the opening of a separate account with a bank, credit union or building society to be controlled by the official agent. The official agent will be able to authorise others to assist with the handling of donations.

12. Payments for electoral expenditure will be required to be paid from the campaign account, and funds from the campaign account can only be used for prescribed purposes. Election funding will also be paid into the campaign account.

13. The Bill includes a raft of new offences and provides for their penalties. These offences include non-disclosure offences, offences relating to the failure to keep records and offences relating to the failure to provide receipts.

14. The Bill also retains the current provisions which require the return of a donation, loan or indirect campaign contribution that is unlawfully accepted and, in situations where a donation, loan or campaign contribution is knowingly, unlawfully accepted, a penalty of equal to double the value of the contribution is payable to the State.

The Bill

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
Clause 3 is a formal provision that gives effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.
Clause 4 is a formal provision that gives effect to the amendment to the *Environmental Planning and Assessment Act 1979* set out in Schedule 2.
Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Local Government Act 1993

Schedule 1 [2] inserts proposed Part 8A into Chapter 10 of the *Local Government*

Act 1993. Proposed Part 8A contains provisions that require the general manager of a council to keep a register of current declarations of disclosed political donations to councillors (proposed section 328A) and provisions that require suspected breaches of the code of conduct relating to donations to be reported to the Director-General by the general manager, and enables the direct referral of the matter to the Pecuniary
Interest and Disciplinary Tribunal for hearing and any disciplinary action against the councillor concerned (proposed section 328B).
Schedule 1 [3] inserts proposed section 375A into the Act to require the general manager of a local council to maintain a register that records which councillors voted for, and which councillors voted against, each planning decision made at a meeting of councillors.
Schedule 1 [1] provides that registers kept under proposed sections 328A and 375A are to be made available, free of charge, for public inspection.

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

Schedule 2 inserts proposed section 147 into the *Environmental Planning and Assessment Act 1979* to require, in connection with a relevant planning application or public submission objecting to or supporting the application, the disclosure of political donations and gifts made by the applicant or persons with a financial interest in the application (or by the person making the submission or any associate of that person) to the Minister for Planning or a local council (or council staff) within 2 years of the making of the application or submission.

The proposed section declares that its object is to minimise any perception of undue influence, but makes it clear that political donations or gifts are not relevant to the determination of the planning application and are not grounds for challenging the decision on a planning application.

The proposed section will apply to a range of planning applications to the Minister or to a council (including applications to the Minister for approval of Part 3A projects, applications to a council for Part 4 development consent and formal requests to the Minister to make environmental planning instruments).

The information about political donations that is required to be disclosed in connection with a planning application or submission will be the same information that will be required to be disclosed every 6 months to the Election Funding Authority (and posted on the website of the Authority) under the *Election Funding Act 1981* (as proposed to be amended by the *Election Funding Amendment (Political Donations and Expenditure) Bill 2008*).

The information disclosed will be required to be posted on the website of the Department of Planning (in connection with planning applications or submissions to the Minister) and on the website of the council (in connection with other planning applications or submissions).

Issues Considered by the Committee

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

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

15. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to

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

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

The Committee makes no further comment on this Bill.

5. HEALTH SERVICES AMENDMENT (MANDATORY BACKGROUND CHECKS OF MEDICAL PRACTITIONERS) BILL 2008*

Date Introduced:	20 June 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Jillian Skinner MLA
Portfolio:	Shadow Minister for Health

Purpose and Description

1. The Bill amends the *Health Services Act 1997* to require background checks for misconduct findings before the employment or appointment of medical practitioners.

Background

2. The Bill provides for the chief executive of a public health organisation to carry out the background check of a medical practitioner with the New South Wales Medical Board before the medical practitioner is either employed or appointed as a visiting practitioner.

3. The Bill requires the Medical Board to provide to the chief executive, information within its knowledge concerning any medical services restriction affecting the carrying out of medical services by the concerned medical practitioner.

4. If any restriction is placed on a medical practitioner as a result of professional misconduct or unsatisfactory professional conduct, the Bill prevents the chief executive from either appointing or employing the concerned practitioner. The Bill provides for penalties if the chief executive fails to comply with his or her requirements under the relevant sections.

The Bill

Outline of Provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on the date that is one month after the date of assent to the proposed Act.
Clause 3 is a formal provision that gives effect to the amendments to the *Health Services Act 1997* set out in Schedule 1.
Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 inserts proposed Chapter 10A (sections 132A–132C) into the Principal

Act to achieve the object described in the Overview and amends Schedule 7 of the Principal Act to insert savings and transitional provisions.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

6. LOCAL GOVERNMENT AND PLANNING LEGISLATION AMENDMENT (POLITICAL DONATIONS) BILL 2008

Date Introduced:	18 June 2008
House Introduced:	Legislative Council
Minister Responsible:	Hon. John Hatzistergos MLC
Portfolio:	Attorney-General

Purpose and Description

1. The object of this Bill is to amend the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979* with respect to political donations and electoral expenditure for local government elections and elected members.

2. The Bill is cognate with the *Election Funding Amendment (Political Donations and Expenditure) Bill 2008.*

Background

3. The Bill is specifically designed to make the planning and development approval process at the local government level more transparent and accountable to the public. According to the agreement in principle speech, the Bill has been designed with the view that the integrity of the electoral system can be preserved if the voting public is made aware of the sources of private donations and therefore strengthen public confidence in the process.

4. Specifically, the Bill requires the general manager of a council to record which local councillors voted for, and which local councillors voted against, each planning decision of the council. The general manager is required to make this information publicly available. The general manager is also required to keep a public register of all current donations and expenditure declarations lodged by local councillors with the authority under the Election Funding Act.

5. The Bill prevents councillors who have received a political donation of $1,000 or more from voting on or discussing matters before council involving that political donor. If the general manager reasonably suspects that a councillor has failed to comply with his or her obligation to disclose and manage a conflict arising from a political donation, the general manager must refer the matter to the Director General of the Department of Local Government who in turn may refer the matter to the Pecuniary Interest and Disciplinary Tribunal.

6. When any relevant planning application is made to the Planning Minister, Department or local council, the Bill requires the applicant or any person making a public submission that either supports or opposes the application to disclose political donations and gifts made within 2 years before the application or submission is made.

7. The Bill makes similar changes with respect to planning applications at the local council level. A person who makes a relevant planning application to a council, including an application for development consent, will be required to disclose all donations of $1,000 or more to a local councillor of the council in the past two years by anyone with a financial interest in the application. This provision also catches any gifts made to a local councillor or council employee and also applies to any individual who makes a submission to council supporting or opposing a development application.

The Bill

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
Clause 3 is a formal provision that gives effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.
Clause 4 is a formal provision that gives effect to the amendment to the *Environmental Planning and Assessment Act 1979* set out in Schedule 2.
Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Local Government Act 1993

Schedule 1 [2] inserts proposed Part 8A into Chapter 10 of the *Local Government Act 1993*. Proposed Part 8A contains provisions that require the general manager of a council to keep a register of current declarations of disclosed political donations to councillors (proposed section 328A) and provisions that require suspected breaches of the code of conduct relating to donations to be reported to the Director-General by the general manager, and enables the direct referral of the matter to the Pecuniary Interest and Disciplinary Tribunal for hearing and any disciplinary action against the councillor concerned (proposed section 328B).
Schedule 1 [3] inserts proposed section 375A into the Act to require the general manager of a local council to maintain a register that records which councillors voted for, and which councillors voted against, each planning decision made at a meeting of councillors.
Schedule 1 [1] provides that registers kept under proposed sections 328A and 375A are to be made available, free of charge, for public inspection.

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

Schedule 2 inserts proposed section 147 into the *Environmental Planning and Assessment Act 1979* to require, in connection with a relevant planning application or public submission objecting to or supporting the application, the disclosure of political donations and gifts made by the applicant or persons with a financial interest in the application (or by the person making the submission or any associate of that person) to the Minister for Planning or a local council (or council staff) within 2 years of the making of the application or submission.

The proposed section declares that its object is to minimise any perception of undue influence, but makes it clear that political donations or gifts are not relevant to the determination of the planning application and are not grounds for challenging the decision on a planning application.

The proposed section will apply to a range of planning applications to the Minister or to a council (including applications to the Minister for approval of Part 3A projects, applications to a council for Part 4 development consent and formal requests to the Minister to make environmental planning instruments).

The information about political donations that is required to be disclosed in connection with a planning application or submission will be the same information that will be required to be disclosed every 6 months to the Election Funding
Authority (and posted on the website of the Authority) under the *Election Funding Act 1981* (as proposed to be amended by the *Election Funding Amendment (Political Donations and Expenditure) Bill 2008*).

The information disclosed will be required to be posted on the website of the Department of Planning (in connection with planning applications or submissions to the Minister) and on the website of the council (in connection with other planning applications or submissions).

Issues Considered by the Committee

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

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

8. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses, or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

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

The Committee makes no further comment on this Bill.

7. POLICE INTEGRITY COMMISSION AMENDMENT (CRIME COMMISSION) BILL 2008

Date Introduced:	18 June 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Police

Purpose and Description

1. This Bill amends the *Police Integrity Commission Act 1996* to provide for the investigation, referral and oversight of matters relating to misconduct of New South Wales Crime Commission officers; to make consequential amendments to the *Independent Commission Against Corruption Act 1988*; and for other purposes.

2. It will give the Police Integrity Commission (PIC) powers to detect, investigate and prevent serious misconduct within the New South Wales Crime Commission. These powers will be equal to the level of oversight the PIC has for New South Wales police officers.

3. It expands the scope of oversight that the New South Wales Crime Commission currently exercises. The New South Wales Crime Commission currently is oversighted by the Independent Commission Against Corruption (ICAC). ICAC currently has a mandate to investigate possible corruption within the Crime Commission. This Bill will give the PIC power to investigate not only possible corruption but also any misconduct, with referral to focus on serious misconduct.

4. PIC will be given power to investigate any misconduct of Crime Commission officers, including misconduct that occurs off duty. PIC will be given the power to investigate not just current officers and activities of the Crime Commission, as well as past officers and past activities of the commission. This level of oversight brings the New South Wales Crime Commission into line with oversight already in place for New South Wales police officers.

5. This Bill will not affect current references to the ICAC that relate to the NSW Crime Commission. However, ICAC will have the power to refer any matters arising from its current reviews to the PIC in the future.

6. Schedule 1 sets out the proposed amendments to the *Police Integrity Commission Act 1996*. These include amending the definitions of the Act to include officers of the NSW Crime Commission and a definition of misconduct of a NSW Crime Commission officer. The definitions include the activities of former NSW Crime Commission officers.

7. The Bill inserts sections 13B and 13C to give the PIC the power to oversight the NSW Crime Commission and the authority to allocate dedicated staff, including an assistant commissioner to work on NSW Crime Commission matters.

8. Section 19 of the Police Integrity Commission Act is to be amended to allow the PIC not to be required to consult with the NSW Crime Commission if it intends to use the provisions of the *Criminal Assets Recovery Act 1990* in relation to an investigation affecting the NSW Crime Commission.

9. Amendments to section 61 will be made to ensure that the current secrecy provisions of the NSW Crime Commission Act do not impede a PIC investigation into the NSW Crime Commission.

10. A new Part 4B will be inserted into the Police Integrity Commission Act to provide for complaints to be made against NSW Crime Commission officers. This will allow the PIC to refer complaints about the NSW Crime Commission back to the commission itself for resolution if the complaints are minor. This new part will also allow the PIC to take action and report to the Minister and Parliament if it is dissatisfied with the manner in which the NSW Crime Commission has dealt with a complaint.

11. Section 99 of the Police Integrity Commission Act is to be amended to ensure that the PIC reports separately on its activities in oversighting the NSW Crime Commission. A new note will be inserted after section 130 to make it clear that the PIC can investigate the management committee of the NSW Crime Commission.

12. Other proposed provisions provide for arrangements to be made between the PIC and the ICAC about investigation of matters where there may be overlap in jurisdictions, such as, transitional provisions are made to ensure that existing matters about the NSW Crime Commission that are being dealt with by ICAC will continue so.

13. Provision has been made to ensure that any matter arising out of the existing investigations may also be referred in future to the PIC by ICAC if it thinks that is necessary.

Background

14. From the Agreement in Principle speech:

> The public deserves to have full confidence in the integrity of the Crime Commission and its officers. The recent arrest of a senior Crime Commission officer has shaken that confidence. The public should be aware that the operation and subsequent arrest were carried out with the full cooperation and assistance of the New South Wales Crime Commission. Today I introduce a bill that should engender further confidence in the integrity and corruption resistance of the New South Wales Crime Commission. The bill will give the Police Integrity Commission [PIC] power to oversight the New South Wales Crime Commission. This will mean that all major New South Wales law enforcement agencies will be overseen by one body.

15. This Bill will match the oversight measures of the New South Wales Crime Commissions to those of its federal counterpart. Currently, the Australian Crime Commission is oversighted by the Australian Law Enforcement Integrity Commission, and this Bill aims for the New South Wales Crime Commission to be oversighted by the Police Integrity Commission.

16. The Agreement in Principle speech also mentioned that:

> Further, the Police Integrity Commission is the appropriate body to carry out this oversight function. This view is also one shared by the Law Society of New South Wales. When the Government first outlined its intention to have the Police Integrity Commission oversight the NSW Crime Commission, the President of the Law Society of New South Wales, Mr Hugh Macken, released a statement welcoming the news. He stated:
>
> > We are pleased that the Minister has taken the time to consider our concerns and is making arrangements for the Police Integrity Commission to be overseeing the management, operations and conduct of the NSW Crime Commission.
> >
> > This will bring the NSW Crime Commission in line with the NSW Police Service, thereby saving on the additional costs that would be incurred by the creation of an alternative body.
> >
> > This will also enhance the public's confidence in the NSW Crime Commission and in the integrity of its staff.
>
> Mr Macken went on to state that he thought this move reached a balance between maintaining the important role of the NSW Crime Commission and appropriate oversight.

The Bill

17. The object of this Bill is to amend the Police Integrity Commission Act 1996 to enable the Police Integrity Commission (the PIC) to investigate and otherwise deal with misconduct of officers of the New South Wales Crime Commission. The amendments confer on the PIC similar functions in dealing with misconduct of NSW Crime Commission officers as the PIC has in dealing with corrupt conduct of police officers and administrative officers in the NSW Police Force. The amendments will extend to conduct occurring before the commencement of the proposed Act.

Schedule 1 Amendment of *Police Integrity Commission Act 1996*

Schedule 1 [1] and [2] insert definitions of various terms used in provisions being inserted by the proposed Act. In particular, ***Crime Commission officer*** is defined to mean the NSW Crime Commissioner, an Assistant NSW Crime Commissioner and any member of staff of the NSW Crime Commission. The term ***misconduct*** of a Crime Commission officer includes conduct that is corrupt conduct within the meaning of the ICAC Act. The amendments also make it clear that the misconduct of former Crime Commission officers may be dealt with by the PIC.

Schedule 1 [3] confers functions on the PIC that relate to the prevention, detection and investigation of misconduct of Crime Commission officers. The functions of the PIC will also extend to overseeing other agencies (by way of providing guidance) in detecting or investigating misconduct of Crime Commission officers. The amendment also enables the PIC Commissioner to allocate the responsibility for dealing with such matters by the PIC to an Assistant Commissioner and particular staff of the PIC.

Schedule 1 [14] provides for the making of complaints to the PIC about matters involving misconduct of Crime Commission officers. Certain public officials, including the NSW Crime Commissioner and the Commissioner of Police, will be under a duty to report any such suspected misconduct to the PIC.

Schedule 1 [32] enables certain public officials to make complaints to the PIC about the conduct of Crime Commission officers.

Schedule 1 [4]–[9] and [11]–[13] make amendments that are consequential on the amendments made by Schedule 1 [3] and [14].

Schedule 1 [10] makes it clear that answers given by a person at a hearing before the PIC may be used for the purposes of taking disciplinary action under Part 2.7 of the *Public Sector Employment and Management Act 2002* in addition to being used in disciplinary proceedings.
Schedule 1 [15]–[23], [25] and [26] provide that the referral of matters by the PIC to the NSW Crime Commission concerning Crime Commission officers will be subject to the same reporting requirements as currently apply to matters that are referred by the PIC to the police.
Schedule 1 [24] provides that information in the PIC's annual report relating to its operations involving Crime Commission officers must be kept separate from other matters in the annual report.
Schedule 1 [27]–[29] extend existing provisions concerning the functions of the ICAC and the functions of the PIC where other public officials are involved so that the provisions apply in relation to Crime Commission officers in the same way as the provisions currently apply in relation to members of the NSW Police Force.
Schedule 1 [30] provides for the PIC and the ICAC to enter into arrangements for dealing with misconduct of Crime Commission officers (such arrangements may already be entered into regarding the conduct of members of the NSW Police Force).
Schedule 1 [31] makes it clear that the ICAC's educative and advisory roles may still be exercised in relation to the NSW Crime Commission.
Schedule 1 [33] enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.
Schedule 1 [34] inserts savings and transitional provisions consequent on the enactment of the proposed Act. In particular, the amendments made by the proposed Act will extend to conduct occurring before the commencement of the proposed Act. Also, the amendments make it clear that any existing ICAC investigation into the conduct of Crime Commission officers will not be affected.

Schedule 2 Amendment of *Independent Commission Against Corruption Act 1988*

Schedule 2 [1] provides that the NSW Crime Commissioner is not under a duty to report to the ICAC any matter that concerns misconduct of a Crime Commission officer unless the Crime Commissioner suspects that the matter also concerns corrupt conduct of another public official.
Schedule 2 [2] limits the functions of the ICAC in relation to the conduct of Crime Commission officers (in the same way as its functions are currently limited in relation to members of the NSW Police Force).

Issues Considered by the Committee

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

Issue: Self incrimination – Schedule 1 [10] – Proposed section 40 (3) – Privilege as regards answers, documents etc:

18. The proposed amendment makes it clear that answers given by a person at a hearing before the PIC may be used for the purposes of taking disciplinary action under Part 2.7 of the *Public Sector Employment and Management Act 2002* in addition to being used in disciplinary proceedings.

19. The Committee notes the right against self incrimination or the right to silence is a fundamental right. However, the Committee also notes that under section 40 (3) of the current legislation, an answer made, or document or other thing produced by a witness at a hearing before the PIC will remain inadmissible in evidence against the person in any civil or criminal proceedings (except as otherwise provided in this section such as certain proceedings under the *Police Act 1990;* any disciplinary proceedings; and the proposed disciplinary action under Part 2.7 of the *Public Sector Employment and Management Act 2002*).

20. Therefore, the Committee is of the view that the proposed amendment does not trespass unduly on personal rights and liberties.

Issue: Retrospectivity – Schedule 1 [34] – proposed insertion of application of amendments to previous conduct of Crime Commission officers:

21. The amendments concerning the detection and investigation of misconduct of Crime Commission officers or former Crime Commission officers will extend to conduct occurring before the commencement of the proposed Act. The Committee will always be concerned with any retrospective effect of legislation which may adversely impact on personal rights.

22. However, the Committee notes that the Bill does not appear to affect the integrity of the investigation process, and accordingly, does not consider that the retrospective effect of covering conduct occurring before the commencement of the proposed Act, as unduly trespassing on personal rights.

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

Issue: Exclude judicial and merit review – Schedule 1 [3] – Proposed section 13B (5) (b) - Other functions of PIC in relation to Crime Commission officers:

23. Proposed subsection (5)(b) reads that nothing in subsection (2), (3) or (4): provides a ground for any appeal or other legal or administrative challenge to the exercise of the PIC of any of those functions.

24. The Committee notes that the proposed subsection mirrors subsection (5)(b) under section 13A of the current Act with regard to the Police Integrity Commission's other functions in respect of administrative officers.

25. The other functions of PIC in relation to Crime Commission officers under the proposed section 13B include: to prevent misconduct, to detect or investigate or oversee other agencies in the detection or investigation of misconduct of Crime Commission officers. The proposed subsection (5)(b) does not provide a ground for any appeal or other legal or administrative challenge to the exercise by PIC of any of those functions proposed in subsection (2), (3) or (4). Proposed subsection (2) refers to the PIC is, as far as practicable, required to turn its attention principally to serious misconduct of Crime Commission officers. Proposed subsection (3) refers to overseeing other agencies in the detection or investigation of misconduct of Crime Commission officers is a reference to the provision by the PIC of guidance that relies on a system of guidelines prepared by it and progress reports and final reports furnished to it rather than the provision of detailed guidance in the planning and execution of such detection and investigation. Proposed subsection (4) refers to in

overseeing other agencies for such purposes, the PIC does not have a power of control or direction, and any such oversight is to be achieved by agreement.

26. The Committee will always be concerned when legislation seeks to exclude an appeal or review of a decision. However, the Committee notes that in some instances, a strong public interest may determine that an appeal or review is not necessary.

27. The Committee considers that in the context of the functions of the Police Integrity Commission (PIC) in relation to Crime Commission officers as set out in the proposed section 13B (similar to the section in relation to PIC functions with regard to administrative officers under the current Act), there appears to be a strong public interest in excluding an appeal or review with respect to the exercise by PIC of any of those functions proposed in subsection (2), (3) or (4).

The Committee makes no further comment on this Bill.

8. ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2008

Date Introduced:	18 June 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon. Reba Meagher MLA
Portfolio:	Health

Purpose and Description

1. To amend various Bills in relation to road transport and safety.

Background

2. The Bill amends the *Road Transport (Driver Licensing) Act 1998* and the *Road Transport (Driver Licensing) Regulation 1999* to provide for a penalty of driver licence disqualification for the offence of learner driver driving unaccompanied by a supervising driver. An automatic disqualification period of three months will apply with the court being able to disqualify for any other period up to a maximum of 12 months.

3. The Bill amends the *Road Transport (General) Act 2005* to enable the immediate suspension of a driver licence by police for a speeding offence by a learner or provisional driver that involves exceeding a speed limit by more than 30 kilometres an hour, down from the current 45 kilometres an hour, or for an offence of learner driver driving unaccompanied by a supervising driver.

4. The proposed amendments to the above Acts is a result of the high number of offences recorded by novice drivers for either excessive speeding and / or driving unaccompanied when required, in the past few years.

5. The Bill also amends the *Roads Act 1993* to extend the period in which criminal proceedings may commence for toll offences from six months to twelve months. This amendment is intended to reduce the opportunity for toll evaders to avoid prosecution by taking advantage of delaying the processing of penalty notices until the time limit to commence proceedings has passed and brings the period in which proceedings can commence in line with other road transport offences. This amendment also extends the certificate evidence provisions of the Act to provide for certificate evidence of non-contentious matters in toll offence prosecutions. Lastly, this amendment redefines "approved toll camera" to better align the terms of the definition with the practical demands upon toll operators in a free-flow toll collection environment.

6. The Bill amends the *Road Transport (General) Act 2005* and the *Road Transport (Safety and Traffic Management) Act 1999* to enable regulations to be made with respect to the prevention and management of driver fatigue and speeding compliance, in relation to heavy vehicles.

7. The amendment to Acts mentioned in paragraph 6 will apply chain of responsibility provisions to all parties in the heavy vehicle industry to manage fatigue, including

concepts from occupational health and safety legislation. Further, the amendments provide for shorter standard working hours, longer and more frequent rest breaks and increased accountability for the operator and other parts of the chain, including responsibility to ensure that a driver is not encouraged, or required, to speed. The amendments also ensure that an individual who commits an act or omission, which is an offence under both road law and occupational health and safety, is not subject to double punishment.

The Bill

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
Clause 3 is a formal provision that gives effect to the amendments to the Acts and Regulation set out in Schedules 1–5.
Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Road Transport (Driver Licensing) Act 1998

Regulation-making power for penalty of licence disqualification
Schedule 1 inserts new section 19A into the *Road Transport (Driver Licensing) Act 1998* to allow the regulations to provide for a penalty (in addition to any monetary penalty) of driver licence disqualification for the offence under the regulations of learner driver driving unaccompanied by a supervising driver.

Schedule 2 Amendment of Road Transport (Driver Licensing) Regulation 1999
Penalty of licence disqualification
Clause 12 (1) of the *Road Transport (Driver Licensing) Regulation 1999* (***the Regulation***) provides for an offence of learner driver driving unaccompanied by a supervising driver (***the unaccompanied learner offence***) for which the maximum penalty is 20 penalty units, or $2,200.
Schedule 2 [1] amends clause 12 of the Regulation to provide for a person who is convicted of the unaccompanied learner offence to be disqualified from holding a driver licence, automatically, for 3 months, or for such other period as the court on conviction may order, being:

(a) between 3 and 12 months, or
(b) less than 3 months if the person's driver licence or authority to drive in New South Wales has been suspended for a period under section 205 or 206 of the *Road Transport (General) Act 2005* and the disqualification period when added to the suspension period results in a total period of no less than 3 months.

The disqualification is in addition to any other penalty imposed for the offence. As a consequence of the amendment made by Schedule 2 [1], **Schedule 2 [2]** amends Schedule 2 to the Regulation (which specifies offences in respect of which demerit points are incurred) to remove reference to the unaccompanied learner offence.

Savings and transitional provision
Schedule 2 [3] inserts into the Regulation a savings and transitional provision concerning the application of the amendments made by Schedule 2 [1] and [2].

Schedule 3 Amendment of Road Transport (General) Act 2005

Immediate suspension of driver licences by police
Section 205 (1A) of the *Road Transport (General) Act 2005* (***the Principal Act***) enables a police officer to suspend immediately any driver licence held by a person if it appears to the police officer that the person has committed a speeding offence that involves exceeding a speed limit by more than 45 kilometres per hour.
Schedule 3 [2] substitutes section 205 (1A) and inserts new section 205 (1B) into the Principal Act to enable a police officer to suspend immediately any driver licence held by a person also if it appears to the police officer that the person has committed:

(a) a speeding offence that involves exceeding a speed limit by more than 30, but not more than 45, kilometres an hour, as the holder of a learner licence or provisional licence for the class of vehicle being driven, or
(b) an offence under the regulations of learner driver driving unaccompanied by a supervising driver.

Schedule 3 [3]–[5] make consequential amendments.
Schedule 3 [1] inserts new section 204A into the Principal Act containing definitions of terms used in sections 205 and 206 of the Principal Act.
Schedule 3 [6] and [7] omit a definition which Schedule 3 [1] reinserts in new section 204A.

Immediate suspension of visiting drivers' driving privileges by police
Section 206 (2A) of the Principal Act enables a police officer to suspend immediately a visiting driver's authority to drive in New South Wales if it appears to the police officer that the person has committed a speeding offence that involves exceeding a speed limit by more than 45 kilometres per hour.
Schedule 3 [11] substitutes section 206 (2A) and inserts new section 206 (2B) into the Principal Act to enable a police officer to suspend immediately a visiting driver's authority to drive in New South Wales also if it appears to the police officer that the person has committed an offence referred to in paragraph (a) or (b) above.
Schedule 3 [8]–[10] make consequential amendments.

Savings and transitional provisions
Schedule 3 [12] allows savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.
Schedule 3 [13] inserts into the Principal Act provisions of a savings and transitional nature concerning the application and effect of the amendments made by Schedule 3 to sections 205 and 206 of the Principal Act.

Schedule 4 Amendments relating to fatigue management and speeding compliance

Fatigue management
In February 2007, the Australian Transport Council endorsed the adoption by Australian jurisdictions of model Heavy Vehicle Driver Fatigue provisions. The amendments made by the proposed Schedule facilitate the adoption in this State of legislation that reflects the provisions endorsed by the Australian Transport Council.

Schedule 4.1 [2] inserts proposed section 11B into the *Road Transport (General) Act 2005* (the ***Principal Act***). The proposed section enables regulations to be made for or with respect to the management and prevention of driver fatigue in connection with the driving of heavy vehicles and heavy combinations. In addition to (and without limiting) that general power there is also power to make regulations for or with respect to matters including the duties of drivers, employers of drivers, prime contractors, operators, schedulers, consignors, consignees, loading managers, loaders and unloaders, the duties of other persons, the periods drivers spend resting and working, records in respect of heavy vehicles or heavy combinations and other matters.
Schedule 4.1 [1] amends section 3 of the Principal Act to make regulations under proposed section 11B applicable road laws for the purposes of certain enforcement provisions of the Principal Act. Among other things, this will enable various inspection and other powers of authorised officers in relation to load restraint etc offences to be exercised in relation to fatigue-related offences.
Schedule 4.1 [3] and [4] amend sections 130 and 146 of the Principal Act as a consequence of the amendment made by **Schedule 4.1 [1]** and the amendment made by **Schedule 4.2**.
Schedule 4.1 [5] inserts proposed section 154A into the Principal Act. The proposed section enables authorised officers to direct drivers who have committed fatigue-related offences to take rests and to work for specified periods and to give other directions. It will be an offence to contravene a direction.
Schedule 4.1 [6] amends section 180 of the Principal Act so as to enable a Local Court to impose the maximum penalty permitted to be imposed under proposed section 11B (which is 250 penalty units).
Schedule 4.2 repeals the provisions of the *Road Transport (Safety and Traffic Management) Act 1999* that permit regulations to be made about fatigue management, as a consequence of the insertion of proposed section 11B into the Principal Act.

Speeding compliance
In February 2007, the Australian Transport Council endorsed the adoption by Australian jurisdictions of model Speeding Compliance provisions. The amendments made by the proposed Schedule facilitate the adoption in this State of legislation that reflects the provisions endorsed by the Australian Transport Council.
Schedule 4.1 [2] inserts proposed section 11C into the Principal Act. The proposed section enables regulations to be made for or with respect to the management and prevention of speeding in connection with heavy vehicles and heavy combinations.
In addition to (and without limiting) that general power there is also power to make regulations for or with respect to matters including the duties of employers of drivers, prime contractors, schedulers, operators, consignors and consignees and other persons.
Schedule 4.1 [1] amends section 3 of the Principal Act to make regulations under proposed section 11C applicable road laws for the purposes of certain enforcement provisions of the Principal Act. Among other things, this will enable various inspection and other powers of authorised officers in relation to load restraint etc offences to be exercised in relation to speeding-related offences.
Schedule 4.1 [6] amends section 180 of the Principal Act so as to enable a Local Court to impose the maximum penalty permitted to be imposed under proposed section 11C (which is 250 penalty units).

Occupational health and safety legislation
Schedule 4.1 [7] inserts proposed section 244A into the Principal Act. The proposed section makes it clear that the provisions of applicable road laws (that is, mass, dimension and load

provisions, fatigue management provisions and speeding compliance provisions for heavy vehicles and heavy combinations and enforcement provisions) do not preclude, or otherwise affect, the operation of occupational health and safety legislation. A person is not required to comply with a provision of an applicable road law if the person would by so doing contravene a provision of the occupational health and safety legislation. A person is not liable to be punished twice for an act or omission that is an offence under both an applicable road law and the occupational health and safety legislation.

Schedule 5 Amendment of Roads Act 1993

Approved toll cameras

Section 250A of the *Roads Act 1993* (***the Principal Act***) provides for the use of digital photographs taken by approved toll cameras as evidence of an offence under the *Roads (General) Regulation 2000* of failure or refusal to pay a toll or charge.

Schedule 5 [4] substitutes the definition of ***approved toll camera*** in section 250A (1) of the Principal Act (which currently relates to cameras designed to take, and to record information specified in the definition on, a photograph of a vehicle driven in contravention of a requirement to pay a toll) so that it relates to cameras designed to take a photograph of a vehicle as it is driven past a toll point and to record on the photograph the information specified in the definition.

However, **Schedule 5 [5]** inserts new section 250A (1A) into the Principal Act to make it clear that the fact that a camera takes a photograph of a vehicle only if it is driven in contravention of a requirement to pay a toll, or records the specified information only on such photographs, does not prevent the camera from being an approved toll camera.

Schedule 5 [6] amends section 250A of the Principal Act to clarify that section 250A (5) (which allows a person who acquires information in the exercise of functions connected with the use or operation of an approved toll camera to divulge that information to certain persons and entities) applies only in respect of information acquired in relation to a vehicle driven in contravention of a requirement to pay a relevant toll (as is currently the case).

Schedule 5 [9] inserts definitions of ***toll operator*** and ***toll point*** into the Dictionary to the Principal Act as a consequence of the amendments made by Schedule 5 [2] and [4].

Evidentiary certificates

Schedule 5 [2] and [3] amend section 248 of the Principal Act to provide for the issue of evidentiary certificates with respect to various matters (such certificates being admissible in legal proceedings as to the matters which they certify).

Time limit for proceedings for non-payment of toll

Schedule 5 [1] amends section 242 of the Principal Act to extend from 6 months to 12 months the time within which proceedings may be brought for an alleged offence under the *Roads (General) Regulation 2000* of failure or refusal to pay a toll or charge.

Savings and transitional provisions

Schedule 5 [7] allows savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 5 [8] inserts into the Principal Act other provisions of a savings and transitional nature concerning the application and effect of the amendments made by Schedule 5 [1]–[5].

Issues Considered by the Committee

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

Issue: Retrospectivity – Schedule 5 [2], [3] and [8]

8. The proposed amendment to insert new section 78(2) of the *Roads Act 1993* provides that proposed Schedules 5[2] and 5[3] apply in relation to legal proceedings commenced on or after the commencement of the amendments but extend to matters and events occurring before that commencement.

9. In turn, Schedule 5[2] expands on the allowable content of an evidentiary certificates and Schedule 5[3] refers to the admissibility into evidence of those certificates as evidence of the fact or facts so stated.

10. Although the provisions expressly prohibit legal proceedings that have already commenced from allowing into evidence certificates under the changes in proposed Schedules 5[2] and 5[3], the provisions expressly permit legal proceedings to allow into evidence certificates under those changes even if it relates to offences that allegedly occurred before the commencement of proposed Schedule 5[2] and 5[3].

11. Generally, the Committee is concerned about legislation that has been applied retrospectively as this may detrimentally affect people. However, the Committee notes that the legislation does not retrospectively create any new offences, retrospectively change the definitions that pertain to an offence, or retrospectively provide for any new penalties.

12. Instead, the provisions merely amend the rules regarding the admissibility of new content in certificates into evidence for future legal proceedings. To this end, the Committee does not consider that the proposed changes are extensive enough which would warrant concern that it might otherwise raise if the evidentiary changes were substantial or would detrimentally affect people. The Committee also notes the relatively minor effect the proposed amendments will have on the overall legal proceedings.

13. As such, the Committee is of the opinion that the changes do not constitute a trespass on personal rights and liberties.

14. The Committee considers that, as no person is detrimentally affected by the retrospective operation of this amendment, this provision does not trespass on personal rights or liberties.

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

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

15. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses, or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

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

The Committee makes no further comment on this Bill.

9. THOROUGHBRED RACING AMENDMENT BILL 2008

Date Introduced:	19 June 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Graham West MP
Portfolio:	Gaming and Racing, Sport and Recreation

Purpose and Description

1. This Bill amends the *Thoroughbred Racing Act 1996* to make further provision for the membership and functions of Racing NSW; and for other purposes.

2. The major reform is the creation of an independent Racing NSW Board selected against prescribed skills based on criteria and merit. The Bill carries forward the existing duty of members of Racing NSW to act in the public interest and in the interests of the industry as a whole.

3. It prescribes the following skills criteria: experience in a senior administrative role; or experience at a senior level in one or more of the fields of business, finance, law, marketing, technology, commerce, regulatory administration or regulatory enforcement.

4. It proposes a maximum eight-year term for future members of Racing NSW. The Bill also provides for an appointments panel to select candidates with the assistance of an external recruitment consultant and a Government-appointed probity adviser. The 10-member appointments panel will include a non-voting Government-appointed probity adviser, and representatives from the Australian Jockey Club, the Sydney Turf Club, Country Racing NSW, Provincial Association of NSW, owners of thoroughbred racehorses, breeders of thoroughbred racehorses, licensed trainers, licensed jockeys and apprentice jockeys, and Unions NSW. The bill also provides for the Racing Industry Consultation Group [RICG] and other requirements aimed at facilitating formal and robust consultation between Racing NSW and stakeholders.

5. Owners, trainers, jockeys and breeders will each have individual representation on the RICG. Joint meetings between the RICG and Racing NSW are provided for at least 12 times each year unless otherwise agreed. Racing NSW must respond formally to any recommendation made by the RICG, including by providing reasons when it does not agree to a recommendation put by the RICG.

6. This Bill requires Racing NSW, in consultation with RICG and industry stakeholders, to prepare an industry strategic plan within 12 months of the commencement of the amending legislation; and conduct consultations in relation to the initiation, development and implementation of policies for the promotion, strategic development and welfare of the industry.

7. It ensures the board is responsible to its shareholders (the racing industry) by proposing that if a 75 per cent majority of the appointments panel is of the view that the Board of Racing NSW should show cause against specified grounds and if Racing NSW does not provide a satisfactory response, a fresh recruitment process will be undertaken. The appointments panel will be required to provide reasons for its decision to the Minister and the Board of Racing NSW.

8. The Bill also requires that Racing NSW undertake a review of the distribution arrangements of TAB payments to race clubs under the intra-code agreement, with the obligation that any proposals for change are considered necessary or desirable for ensuring that the arrangements are, or remain, in the best interests of the industry as a whole.

9. At present, amendment of the distribution arrangements is possible only if there is unanimous agreement of the signatories. The Bill addresses this 'deadlock', so that unless the parties agree to the proposal or, after consultation, Racing NSW may give a written direction which specifies the changes to the intra-code that are to be given effect.

10. This Bill provides Racing NSW with an express power to prohibit race clubs from entering into any future agreement for the broadcasting of races unless first approved by Racing NSW. There is appropriate exemption for the provision in favour of Racing NSW in terms of the *Trade Practices Act 1974* of the Commonwealth and the Competition Code of NSW.

11. The other major reform is to provide Racing NSW with the power to set conditions, standards and operating requirements for the conduct of races and race meetings. The power does not extend to direct a race club to sell its land. It is limited to ensuring that optimal arrangements are in place by way of industry benchmarks for the conduct of race meetings and training facilities.

12. This includes the power to compel race clubs to provide information and documents, which will enable Racing NSW to undertake its statutory consultation functions, including developing an industry strategic plan. A complementary provision allows Racing NSW to impose specified sanctions for non-compliance.

Background

13. According to the Agreement in Principle speech:

> The fundamental issue in question is that the current nominee structure tends to the expectation by the nominating body that its nominee will promote its narrower factional interest. An independent appointee will not be bound by a nominee structure. Eligibility for appointment on this basis will require the severing of factional ties. The structural failure is not one created by previous board members, and no criticism is implied or levelled at them. They are all highly respected professionals committed to the wellbeing of the racing industry.

14. This Bill addresses questions about the powers and functions of Racing NSW which have been the source of uncertainty. There are three major reforms in the areas of the distribution of TAB payments to race clubs under the intra-code agreement, the role of Racing NSW in coordinating race broadcasting arrangements, and the setting by

Racing NSW of conditions, standards and operating requirements for the conduct of races and race meetings.

15. Currently, the 99-year thoroughbred intra-code agreement provides for a triennial review of distribution payments to race clubs but no amendment of the distribution arrangements is possible unless there is unanimous agreement of the signatories. Without a statutory amendment, the arrangements for distribution of TAB payments that were agreed to in 1998 may be in place for the life of the 99-year agreement. This creates inflexibility irrespective of the wishes of the majority of signatories of the agreement, or the appropriateness of rewarding good performance.

16. Another main concern raised in submissions and consultation during the independent review conducted by Mr Ken Brown, is to clarify that Racing NSW should be able to prevent an individual race club, or group of race clubs, exercising broadcast rights in a manner which would be detrimental to the industry as a whole. When making optimal arrangements for the racing industry regarding racing broadcasts, Racing NSW must have regard to balancing the interests of all race clubs including those in regional areas.

17. The Agreement in Principle speech also explained that:

> The race broadcasting amendments have been developed with the assistance of detailed Crown Solicitor's advice. Based on that advice the proposed amendment applies to future arrangements only, including extensions of existing arrangements. There are a number of concerns and fears that the broadcasting power in the bill assigns a race club's broadcasting rights to Racing NSW. Those concerns are unfounded. The power in the bill is limited to prohibiting a race club from entering into future arrangements. The provision does not transfer the ownership of broadcasting rights to Racing NSW. In addition, Racing NSW may only negotiate such arrangements if a race club has authorised it to do so. Racing NSW may not, of its own volition, negotiate broadcasting arrangements.

18. There are two important transitional issues which are the provisions that relate to the caretaker period and the facilitation of ancillary appointment processes before the commencement of the amending legislation. The caretaker provision has effect upon the introduction of this Bill. The Agreement in Principle speech explained that this provides the existing members of Racing NSW with the recognition and protection that they are in caretaker mode in expectation of the appointment of a new board. The new appointment processes require a lead-in time for the need to convene an appointments panel, appoint a probity adviser and engage a recruitment consultant.

The Bill

19. The object of this Bill is to amend the *Thoroughbred Racing Act 1996* (the ***Principal Act***):

(a) to reconstitute Racing NSW so that it will have 6 members consisting of the Chief Executive of Racing NSW (who is to be a non-voting member) and 5 appointed members nominated by an Appointments Panel, and
(b) to establish an Appointments Panel consisting of representatives of industry participants that is to have responsibility for nominating persons for appointment to membership of Racing NSW, and

(c) to provide for a fresh recruitment process for the entire membership of Racing NSW if a 75% majority of the Appointments Panel decide that the Panel should be convened for that purpose, and
(d) to require proposed members of Racing NSW to be subject to a probity check before being appointed to membership, and
(e) to empower Racing NSW to set minimum standards in connection with the conduct of races and race meetings by registered race clubs, and
(f) to empower Racing NSW to give directions to registered race clubs requiring the provision of documents or information in connection with the policy making functions of Racing NSW, and
(g) to empower Racing NSW to impose sanctions against a race club that has failed to comply with a minimum standard set by Racing NSW or failed to provide required documents or information, and
(h) to provide a mechanism for Racing NSW to amend the Intra-Code agreement for the distribution of thoroughbred racing TAB payments if the parties to the agreement have not reached unanimous agreement on a change to the distribution arrangements, and
(i) to require the approval of Racing NSW before a racing body can enter into a race broadcasting arrangement in the future, and
(j) to establish the Racing Industry Consultation Group (RICG) as a replacement for the Racing Industry Participants Advisory Committee (RIPAC) to consult with and make recommendations to Racing NSW with regard to horse racing in the State, and
(k) to require the adoption of a code of conduct by Racing NSW to be observed by members and staff of Racing NSW, and
(l) to make it clear that Racing NSW has functions as provided in the Principal Act in relation to the business, economic development and strategic development of the horse racing industry in the State, and
(m) to require that Racing NSW must undertake regular formal consultation with RICG and other industry stakeholders, and
(n) to require Racing NSW to prepare a strategic plan for the horse racing industry in consultation with RICG and other industry stakeholders, and
(o) to make it clear that the functions of Racing NSW are not limited by the Australian Rules of Racing and are to be exercised independently of the Australian Racing Board, and
(p) to provide that Racing NSW may nominate the auditor when it orders an audit of a race club, and
(q) to make it clear that the circulation of papers and the passing of a resolution for the transaction of business by Racing NSW may be done by email, and
(r) to repeal provisions relating to the custody and affixing of the corporate seal of Racing NSW, and
(s) to repeal the requirement that any profits of Racing NSW must be distributed to the Consolidated Fund, and
(t) to require the Minister to undertake a review of the Principal Act within 5 years after the date of assent to the proposed Act, and
(u) to make minor and consequential amendments.

Special functions of Racing NSW

Schedule 1 [28] inserts a new Part 2A into the Principal Act that provides for the following proposed new functions of Racing NSW:

(a) Proposed section 29A gives Racing NSW the power to set minimum standards in connection with the conduct by registered race clubs of races and race meetings.

(b) Proposed section 29B gives Racing NSW the power to direct a registered race club to provide Racing NSW with specified documents or information to assist Racing NSW in connection with its various policy making functions.
(c) Proposed section 29C gives Racing NSW power to impose various sanctions against a race club that fails to comply with a minimum standard set under proposed section 29A or a direction under proposed section 29B.
(d) Proposed sections 29D–29G prevent race clubs and other racing bodies from entering into race broadcasting arrangements without the prior approval of Racing NSW. Racing NSW may refuse to approve of a proposed arrangement if of the opinion that the arrangement is not in the best interests of the horse racing industry in NSW as a whole. Provision is made for the mediation of disputes about a decision to refuse approval for a race broadcasting arrangement.
(e) Proposed sections 29H–29J provide a mechanism for the review of the Intra-Code agreement to which Racing NSW is a party that deals with the distribution of thoroughbred racing TAB payments. Following a review, Racing NSW can invite the other parties to submit proposals for changes to the agreement to ensure that the agreement remains in the best interests of the horse racing industry as a whole. If the parties to the agreement have not agreed to changes within 6 months after the invitation, Racing NSW can direct changes to the agreement.
(f) Proposed sections 29K–29N provide for an appeal on limited grounds against certain decisions of Racing NSW under the proposed new provisions.

Issues Considered by the Committee

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

Issue: Exclude merits review – Schedule 1 [28] inserts a new Part 2A – proposed Division 4 Appeal and Review:

20. Proposed Division 4 provides for appeal and review but under this Division, appeal or review is limited on procedural grounds (proposed sections 29L, 29M, and 29N). Proposed section 29L defines procedural grounds on the grounds that any procedure required to be followed by this Act in connection with the making of the decision was not properly followed or on the grounds of denial of procedural fairness in connection with the making of the decision.

21. Proposed section 29M refers to the matters that are appealable or reviewable, on procedural grounds, by the Racing Appeals Tribunal or the ADT (Administrative Decisions Tribunal) such as certain sanctions imposed by Racing NSW under proposed section 29C (a public admonishment of the race club, or a race club to pay Racing NSW a civil penalty to be reviewable by the Racing Appeals Tribunal); or if a person is aggrieved by a decision of Racing NSW under proposed Division 2 (race broadcasting arrangements) or proposed Division 3 (totalizator distribution arrangements), to be reviewable by the ADT.

22. No appeal lies to the Racing Appeals Tribunal against a decision of Racing NSW to impose a sanction of suspension or cancellation of the race club's registration (proposed section 29M (2)). However, the Committee notes that the proposed section 29M does not prevent the taking of administrative review proceedings in the Supreme Court.

23. The Committee notes the importance of merits review in protecting rights against oppressive administrative decisions. The Committee considers that given the impact of sanctions or the impact of decisions on race broadcasting arrangements or totalizator distribution arrangements, the limitation of appeal or review to be only on procedural grounds rather than a broader merits review by the relevant tribunal body (Racing Appeals Tribunal or the ADT) under the proposed Division 4, may trespass unduly on personal rights.

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

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

24. The Committee notes that the proposed Act (other than in the case of savings and transitional provisions which will commence on the date of assent), is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

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

The Committee makes no further comment on this Bill.

10. THREATENED SPECIES CONSERVATION AMENDMENT (SPECIAL PROVISIONS) BILL 2008

Date Introduced:	18 June 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Verity Firth MP
Portfolio:	Climate Change and Environment

Purpose and Description

1. This Bill amends the *Threatened Species Conservation Act 1995* with respect to the biodiversity certification of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006; and to amend the Local Government Act 1993 with respect to rates payable on land subject to conservation agreements.

2. It aims to remove any doubts about the validity of the original order by confirming that the growth centres State environmental planning policy has biodiversity certification on the basis of the same measures as contained in the original certification order. It also provides that the Minister will be able to revoke the certification if these measures are not met in the future.

3. The second part of this Bill relates to voluntary conservation agreements. These are agreements attached to land titles that bind current and future landowners to protect natural bushland and to forgo future development rights. In recognition of their contribution, participating landowners receive proportional relief from local council rates and land tax. Currently, there are 235 such agreements in New South Wales. However, amendments to the *Valuation of Lands Act 1919* in 2006 changed the way that land is to be valued at section 28A. This had an unintended negative consequence for voluntary conservation agreement holders.

4. From 2007, properties that are partially subject to conservation agreements are now valued as two separate parts, such as, a highly valued small part with road access and a building entitlement, and a larger conservation part being assigned a low value. This new rating approach greatly increases council rates compared to the proportionately reduced rates previously levied—in some cases up to 14 times higher. The separate valuations have also created a misperception that those parts of the properties covered by the conservation agreement have been devalued.

5. This Bill will reinstate the former position, where lands that were partially subject to a conservation agreement were valued as a single parcel and rates were calculated proportionally. For example, if the conservation agreement covered 50 per cent of the property, then a 50 per cent rates exemption applied.

Background

6. The Bill aims to remove doubts about the validity of the original certification of the growth centres State environmental planning policy that are being raised in legal proceedings brought by True Conservation Association Inc. in the Land and Environment Court.

7. The Bill involved community consultations. According to the Agreement in Principle speech:

> Biodiversity certification was granted by the Minister assisting the Minister for Climate Change, Environment and Water on the basis that the Sydney region growth centres State environmental planning policy and the conditions of the certification will lead to the overall improvement or maintenance of biodiversity values. The Sydney region growth centres State environmental planning policy establishes a broad framework for future development in the growth centres in south-west and north-west Sydney. Biodiversity certification provides the means to focus on protecting the largest and most viable remnants of endangered vegetation, away from areas of intense urban development…Biodiversity certification removes the need for each separate development in those growth centres to comply with the threatened species assessment and concurrence provisions under the *Environmental Planning and Assessment Act 1979* because biodiversity assessment has occurred instead at the landscape level. It provides a green tick for the release of new land to market, with the first stage of releases to provide a minimum of 40,000 new homes. The biodiversity certification package ensures protection for 2,000 hectares of bushland within the growth centres. More than 50 per cent of all high-quality native vegetation will be protected, even as more than 200,000 people move into the areas over the next 25 years. Remarkably, the package delivers the most outstanding conservation investment program ever associated with development in Western Sydney. Developers will be required to contribute towards a $530 million program over coming decades to secure high-conservation value bushland to build a string of reserves, national parks and conservation agreements within and outside of the Sydney region growth centres.

The Bill

8. The object of this Bill is to amend the *Threatened Species Conservation Act 1995* to confirm that the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 has biodiversity certification under that Act.

9. The Bill also amends the *Local Government Act 1993* to make it clear that, for local government rating purposes, where part of a parcel of land is the subject of a conservation agreement under the *National Parks and Wildlife Act 1974*, the rate payable on the whole parcel is to be proportionately reduced.

Schedule 1 Amendment of *Threatened Species Conservation Act 1995*

On 14 December 2007, an order made by the Minister Assisting the Minister for Climate Change, Environment and Water (Environment) (***the original order***) was published in the Gazette conferring biodiversity certification on *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (***the Growth Centres SEPP***).

Biodiversity certification removes the need for each separate development under the Growth Centres SEPP to comply with the threatened species, assessment and concurrence provisions under the *Environmental Planning and Assessment Act 1979*, on the basis that the

Growth Centres SEPP, in addition to other relevant measures specified in the original order, will lead to overall improvement or maintenance of biodiversity values.

Schedule 1 [2] inserts proposed Part 7 into Schedule 7 to the *Threatened Species Conservation Act 1995*. The purpose of the proposed Part is to confirm that the Growth Centres SEPP has biodiversity certification.

The proposed Part confers biodiversity certification on the Growth Centres SEPP.

The biodiversity certification only applies to certain land within the Growth Centres SEPP, that is the land to which the original order applied. The Minister may vary the land within the Growth Centres SEPP to which the biodiversity certification applies.

The biodiversity certification remains in force until 30 June 2025, as provided by the original order.

The Minister may, by order published in the Gazette, suspend or revoke the biodiversity certification of the Growth Centres SEPP if any relevant biodiversity measure has not been complied with. The ***relevant biodiversity measures*** are the conditions of biodiversity certification that were set out in the original order (subject to any future variation by the Minister following a review of the biodiversity certification).

The suspension or revocation of the biodiversity certification of the Growth Centres SEPP does not affect the validity of development consent granted under Part 4 of the *Environmental Planning and Assessment Act 1979*, or any approval of an activity
granted in accordance with Part 5 of that Act, before the suspension or revocation.

The biodiversity certification is taken to have had effect on and from 14 December 2007, the date of the original order, and anything done or omitted to be done on or after 14 December 2007 under the *Environmental Planning and Assessment Act 1979* in connection with the biodiversity certification is duly validated.

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

Schedule 2 Amendment of the *Local Government Act 1993*

Schedule 2 [1] amends section 555 of the *Local Government Act 1993* in relation to the calculation of local government rates where part of a parcel of land is the subject of a conservation agreement under the *National Parks and Wildlife Act 1974*. The amendment makes it clear that, instead of the land being rated as 2 separate parcels
as is currently the case, any rate levied on the whole parcel (for any period on or after 1 July 2008) is to be reduced by the proportion that the area of the parcel, which is the subject of the conservation agreement, bears to the area of the whole parcel of land. For example, if a parcel of land would normally be subject to a rate of $1,000, but 40% of the area of the land is subject to a conservation agreement, that rate is to be reduced by 40% to $600.

Schedule 2 [2] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Issues Considered by the Committee

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

Issue: Retrospectivity – Schedule 1 [2] - inserts proposed Part 6 into Schedule 7 to the *Threatened Species Conservation Act 1995*:

10. The proposed Part confers biodiversity certification on the Growth Centres SEPP (State Environmental Planning Policy). Proposed clause 22 refers to this Part as having effect on and from 14 December 2007.

11. The Committee will always be concerned where provisions have retrospective effect that may adversely impact on personal rights. However, the Committee notes that the biodiversity certification only applies to certain land within the Growth Centres SEPP, namely, the land to which the original order applied. The Committee also notes that the Bill ensures that the Minister, may, by order published in the Gazette, suspend or revoke the biodiversity certification of the Growth Centres SEPP if any relevant biodiversity measure has not been complied with.

12. The Committee further notes that on 14 December 2007, the original order was made by the Minister Assisting the Minister for Climate Change, Environment and Water (Environment) and which was published in the Gazette conferring biodiversity certification on the Grown Centres SEPP. Therefore, the Committee is of the view that the proposed Part 6 of Schedule 7, taken to have had effect on and from 14 December 2007, does not appear to trespass unduly on personal rights.

The Committee makes no further comment on this Bill.

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Appropriation (Special Offices) Bill 2008	8
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Australian Jockey Club Bill 2008	7
Board of Adult and Community Education Repeal Bill 2008	5
Building Professionals Amendment Bill 2008	7
Children and Young Persons (Care and Protection) Amendment (Body Piercing and Tattooing) Bill 2008	7
Children (Criminal Proceedings) Amendment Bill 2008	8
Children (Detention Centres) Amendment Bill 2008	8
Clean Coal Administration Bill 2008	5
Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill 2008	8
Consumer, Trader and Tenancy Tribunal Amendment Bill 2008	5
Conveyancing Amendment (Mortgages) Bill 2007*	1
Courts and Crimes Legislation Amendment Bill 2008	8
Crimes Amendment (Drink and Food Spiking) Bill 2008	2
Crimes Amendment (Rock Throwing) Bill 2008	6
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Marine Parks Amendment Bill 2007	1
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Mining Amendment Bill 2008	3
Miscellaneous Acts Amendment Bill 2008	6
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Peak Oil Response Plan Bill 2008*	6
Police Integrity Commission Amendment (Crime Commission) Bill 2008	9
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Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008*	8
Public Sector Employment Management Amendment Bill 2008	4
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APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1	
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08			9
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07		1	
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning				8
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7	
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07		1	
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1,2	
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1	

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

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Board of Adult and Community Education Repeal Bill 2008	N, R				
Building Professionals Amendment Bill 2008	N, R			N, R	
Children (Criminal Proceedings) Amendment Bill 2008	N			N, R	
Coal and Oil Shale Workers (Superannuation) Amendment Bill 2008	N				
Consumer, Trader and Tenancy Tribunal Amendment Bill 2008	N, R			N	
Courts and Crimes Legislation Amendment Bill 2008	N				
Crimes Amendment (Drink and Food Spiking) Bill 2008				R	
Crimes Amendment (Rock Throwing) Bill 2008	N, R			N, R	
Crimes (Administration of Sentences) Legislation Amendment Bill 2008			N		
Crimes (Forensic Procedures) Amendment Bill 2008	N, C				
Crimes (Sentencing Procedure) Amendment (Life Sentences) Bill 2008	N, R		N, R		
Criminal Case Conferencing Trial Bill 2008	N, R				
Dividing Fences and Other Legislation Amendment Bill 2008				N, R	
Education Amendment Bill 2008	N, R				
Election Funding Amendment (Political Donations and Expenditure) Bill 2008				N, R	
Electricity Industry Restructuring Bill 2008	N, R	N, R		N, R	
Environmental Planning and Assessment Amendment Bill 2008	N, R	N, R	N, R	N, R	N, R
Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008	N, R	N, R			
Filming Related Legislation Amendment Bill 2008				N, R	
Food Amendment (Public Information on Offences) Bill 2008				R	
Gaming Machines Amendment (Temporary Freeze) Bill 2008	N				

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Hemp Industry Bill 2008	N, R		N, R	N, R	
Housing Amendment (Tenant Fraud) Bill 2008	N, R	R			
Independent Commission Against Corruption Amendment (Reporting Corrupt Conduct) Bill 2008	N				
Jury Amendment Bill 2008	N				
Local Government and Planning Legislation Amendment (Political Donations) Bill 2008				N, R	
Marine Safety Amendment Bill 2008				N, R	
Medical Practice Amendment Bill 2008	N, R			N, R	
Mining Amendment Bill 2008	N				
Miscellaneous Act Amendment (Same Sex Relationships) Bill 2008	N			N, R	
National Gas (New South Wales) Bill 2008					N
Police Integrity Commission Amendment (Crime Commission) Bill 2008	N		N		
Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008		N, R		N, R	
Public Sector Employment and Management Amendment Bill 2008	R				
Road Transport Legislation Amendment Bill 2008	N			N, R	
Road Transport Legislation Amendment (Car Hoons) Bill 2008	R		R	R	
Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2008*	N, R				
Sporting Venues Authorities Bill 2008	N				
State Emergency and Rescue Management Amendment (Botany Emergency Works Bill 2008	N				
State Revenue Legislation Amendment Bill 2008	N, R				
Statute Law (Miscellaneous Provisions) Bill 2008	N			N, R	
Strata Management Legislation Amendment Bill 2008				N, R	
Summary Offences and Law Enforcement Legislation Amendment (Laser Pointers) Bill 2008	N, R			N, R	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Thoroughbred Racing Amendment Bill 2008			N, R	N, R	
Threatened Species Conservation Amendment (Special Provisions) Bill 2008	N				
Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008*	N, R				
Western Crown Lands Amendment (Special Purpose Leases) Bill 2008		N, R			
Workers Compensation Amendment Bill 2008	N, R				

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

Appendix 4: Index of correspondence on regulations reported on in 2007

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2007
Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Mobility Parking Scheme) Regulation 2007	Minister for Roads	04/12/07	25/03/08	3