PARLIAMENT OF NEW SOUTH WALES

Legislation Review Committee

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No 17 of 2010

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

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

9 Functions with respect to Regulations:

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

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

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

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

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

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 iv).

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

Appendix 1: Index of Bills Reported on in 2010

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

Appendix 2: Index of Ministerial Correspondence on Bills

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

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

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

Appendix 4: Index of correspondence on Regulations reported on

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

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Building and Construction Industry Security of Payment Amendment Bill 2010

Issue: Retrospectivity – Schedule 1 [4] – insertion of Schedule 2, Part 4 – Application of amendments:

17. The Committee will always be concerned to identify the retrospective effects of legislation which may have an adverse impact on a person. The Committee acknowledges the difficulties that subcontractors, being those businesses at the bottom of the contractual chain, have with the enforcement of outcomes of adjudications of payment disputes. However, the respondent (the contractor) and the principal contractor (third legal party) that has a contractual agreement with the respondent, are also entitled to rely on the certainty of the current law at the time to order their affairs accordingly.

18. Accordingly, the Committee asks Parliament to consider whether the retrospective application of the proposed Act may unduly trespass on the rights of individuals.

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

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

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

2. Children and Young Persons (Care and Protection) Amendment Bill 2010

Issue: Excludes Merits Review

16. It is incumbent upon the Committee to identify provisions in Bills that exclude an individual from seeking a merits review before a relevant tribunal, such as the proposal to restrict access to the Administrative Review Tribunal to review permanency plans.

17. However, the Committee is aware that there is an alternative and more appropriate avenue for redress through application for review by the Children's Court. The Committee notes that the intention of the amendment is to prevent forum shopping or the seeking of additional review in circumstances where a decision has been made by the Children's Court that fails to satisfy the applicant.

18. Given the preservation of alternative review rights, the Committee does hold any concerns with the proposed amendment.

Issue: Commencement by Proclamation

21. On advice received from the Minister's Office, the Committee understands that those parts of the Bill to be proclaimed will commence operation on 1 January 2011 with the voluntary out-of-home care provisions to commence operation on 1 February 2011, subject to advice from the Children's Guardian.

3. Contract Cleaning Industry (Portable Long Service Leave Scheme) Bill 2010

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

4. Courts and Crimes Legislation Further Amendment Bill 2010

Issue: Oppressive Official Powers

24. The Committee is concerned that the considerable extension of the class of individuals who will be required to pay into the victims compensation levy constitutes an oppressive official power.

25. This is because the levy will apply to individuals convicted of offences in which there are no victims, despite the objectives of the Victims Compensation Fund being to provide relief funded, in part, from those individuals who have committed crimes in which there is an obvious and direct victim. The Committee is concerned about the disconnect between the intentions of the Victims Compensation Fund and the manner in which revenue being paid into it is being sourced.

26. The levy may also constitute excessive punishment as, in providing for only two types of fees, the levy fails to give adequate weight to the nature of the offence an individual has been convicted of in determining what payment is required. The result may therefore be that an individual is penalised to an extent that is disproportionate to the offence committed. Further, the requirement to pay an additional levy may place serious financial burdens on individuals who, having been convicted of an offence, may not have the capacity to pay.

27. In light of these concerns, the Committee refers this matter to Parliament for its further consideration.

5. Crimes (Sentencing Procedure) Amendment Bill 2010

Issue: Commencement by Proclamation

12. Given that the amendments foreshadowed by this Bill require changes to the complex area of sentencing procedure, the Committee recognises that an appropriate time period is required to inform affected persons about these changes before commencement. As the Committee has not identified any issues with this Bill, it does not consider commencement by proclamation to be an inappropriate delegation of power in this instance.

6. Crimes (Serious Sex Offenders) Amendment Bill 2010

Issue: Retrospectivity - Schedule 1 [3]

10. While the Committee is aware that individual rights must be weighed against public safety, it is always concerned about retrospective application of the law, particularly in criminal matters. By changing the definition of "serious sex offence" to include sex offences which were perpetrated before the 1989 changes to the *Crimes Act 1900* (NSW) offenders may now be subject to supervision or detention orders who did not previously qualify to be under them.

16. The Committee is concerned that the threshold of the test by which a court can impose or extend a supervision or detention order has been lowered. Further, the court has been given a test which is partially speculative in nature and may be overly susceptible to a variance in application.

Issue: Schedule 1 [8] and 1[24] – Right to a fair hearing

22. The Committee is concerned that the affect of requiring the court to consider the views of the original sentencing judge and the views of victims of the offender by virtue of Schedule 1[8] and Schedule 1[24] when making or extending orders may compromise an offender's right to a fair hearing.

7. Education Amendment (Ethics) Bill 2010

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

8. Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010*

Issue: Privacy

14. The Committee notes that the effect of this provision would be to oust the authority of the *Privacy and Personal Information and Protection Act 1998* and therefore may subsequently interfere with the privacy rights of individuals. The Committee would only generally accept any encroachment on privacy rights in circumstances where there is a compelling interest to do so. It is unclear if the circumstances set out in the Bill meet that condition. The Committee refers this matter to Parliament for its further consideration.

Issue: Search of Property

18. The Committee is concerned about the extent of the power inherent in this provision as it removes the requirement that a council inspector first obtain a search warrant before entering a private residence. The Committee is not aware of any compelling public interest or urgency in dispensing with the longstanding necessity of first obtaining a search warrant.

19. This provision may also adversely affect the rights of property holders by requiring them to justify the use of their property and who they permit to reside there.

20. In light of these concerns, the Committee refers this matter to Parliament for its further consideration.

Issue: Reversal of the Onus of Proof

24. The Committee notes that this provision effectively reverses the onus of proof by requiring the defendant to actively negate the elements of the offence. This is inconsistent with a presumption of innocence. The Committee is of the view that the burden of proving the elements of the offence should almost always rest with the prosecution.

25. This provision may also adversely affect the rights of property holders by requiring them to justifying the use of their property and who they permit to reside there.

26. In light of these concerns, the Committee refers the matter to Parliament for its further consideration.

Issue: Ill and Widely Defined Powers

29. Given the various powers foreshadowed by this Bill in relation to boarding houses, including the power for council inspectors to search boarding houses, and the reversing of the onus of proof on proprietors to prove that they are not operating a boarding house, the lack of a comprehensive definition could be considered insufficient and confusing.

Issue: Commencement by Proclamation

32. The Committee is of the view that Bills should commence on assent or on a specified date and that, should a Bill commence on proclamation, there should be good reasons doing so. The Committee is not aware of the reasons for providing a timeframe in which this Bill can commence operation on any day within that timeframe.

9. Fair Trading Amendment (Australian Consumer Law) Bill 2010

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

10. Greenhouse Gas Storage Bill 2010

Issue: Self – Incrimination

18. Historically, the common law has recognised a privilege against self-incrimination in which individuals have the right (within certain limitations) to not do or say anything that might be used as evidence against them in criminal proceedings. The Committee recognises that the right against self-incrimination as a longstanding principle and would ordinarily raise its concerns to any abrogation or variation of that right.

19. In the circumstances set out by the Bill, the Committee is of the view that the proposed provisions do not erode the privilege against self-incrimination. As such, the Committee does not consider these provisions to unduly trespass on individual rights and liberties.

Issue: Commencement by Proclamation

23. Considering the various administrative arrangements that need to take place before this Bill can commence operation, the Committee does not regard the commencement by proclamation provision to be an inappropriate delegation of power in this instance.

11. Liquor Amendment (Drinking Age) Bill 2010*

Issue: Personal liberties – Schedule 1 [1], [2] and [3] – omitting "18 years" and inserting instead "21 years":

12. The Committee is of the view that it may be an undue trespass on individual rights and liberties to authorise the state to take away existing rights and liberties currently enjoyed by persons of or over 18 years and under 21 years of age, in the context of the *Liquor Act* without compelling justification and that it may potentially be a form of discrimination against a person on the ground of the age of the person between the age of 18 years and under 21 years old, in light of the fact that persons who have attained the age of 18 years are treated as adults, capable of forming an opinion and giving consent, and are also eligible to vote.

13. The Committee believes that the rights and liberties currently associated with the legal drinking age, while not absolute, should only be removed by compelling public harm minimisation justifications and only to the extent necessary to achieve the objective while leaving the rights and liberties of individuals as intact as possible. Accordingly, the Committee refers this Bill to Parliament for consideration as to whether it trespasses unduly on individual rights and liberties; whether there are sufficient compelling public harm minimisation justifications, and whether the extent to achieve the objective is necessary without causing trespass to personal rights and liberties that is undue.

12. Local Government Amendment (Confiscation Of Alcohol) Bill 2010*

Issue: Oppressive Official Powers – Clause 3 – Amendment of *Local Government Act 1993* No 30 – Section 632A Confiscation of alcohol in alcohol prohibited areas:

15. The Committee is concerned with widening the scope of the definition of 'alcohol prohibited area' as proposed by clause 3 of this Bill, which will extend the power to confiscate and tip out alcohol beyond to an area that is not situated in the precinct or area to which a precinct liquor accord or a community liquor accord applies.

16. The Committee is concerned that this may not only undermine or weaken the aims of Division 2 of Part 8 of the *Liquor Act 2007* with regard to measures for minimising alcohol-related violence or anti-social behaviour, or to support the good order or amenity of such areas in connection with the presence of or proposed increase of licensed premises in the precinct or area, but, in particular, the power to confiscate alcohol will be extended to outside or beyond a precinct or area covered by a precinct liquor accord or a community liquor accord. This may potentially impact more adversely and disproportionately on members of marginalised groups such as those who may tend to use public space or be more highly visible in public place, including young people, Aboriginal people, people who are homeless, and those with mental health, drug and/or alcohol related problems .

17. The Committee has already raised similarly based concerns in the context of the then Liquor Legislation Amendment Bill 2008 reported in *Digest 14 of 2008*.

18. Therefore, the Committee refers clause 3 of this Bill to Parliament for consideration as to whether it may trespass unduly on personal rights and liberties arising from its potential to disproportionately affect individuals of marginalised or disadvantaged groups (such as young people, Aboriginal people, people who are homeless, and those with mental health, drug and/or alcohol related problems).

13. Long Service Corporation Bill 2010

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

14. National Broadband Network Co-ordinator Bill 2010

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

15. Parliamentary Electorates and Elections Further Amendment Bill 2010

Issue: Exclude Judicial Review

20. The Committee recognises the importance of establishing procedures to enable individuals who are otherwise impaired from voting to be able to exercise their democratic franchise. The Committee also appreciates that the Electoral Commissioner is the most appropriate authority to establish such procedures.

21. However, the Committee is concerned that the Bill will prevent any court or tribunal – including the Court of Disputed Returns – from scrutinising the processes to be established by the Electoral Commissioner for technology assisted voting.

22. Given the Electoral Commissioner is charged with functions to ensure electoral processes are sufficiently scrutinised and conducted with transparency, the Committee does not consider it appropriate that relevant courts or tribunals are denied the ability to oversight the procedures that give rise to technology assisted voting, if the need arises. As such, the Committee refers this matter to Parliament for its further consideration.

16. Plumbing Bill 2010

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

10. The Committee accepts that the Bill must commence on proclamation as time is needed to complete the entire regulatory framework surrounding the Bill

17. Public Health Bill 2010

Issue: Standard of proof – Clause 61 (1) of Division 4 of Part 4 – [Director-General may direct persons to undergo medical examination]; Clause 82 of Division 2 of Part 5 – [Health practitioners to make hospital CEO aware of notifiable diseases]; and Clause 83 of Division 2 of Part 5 – [Hospital CEO to notify Director-General of notifiable diseases]:

31. The Committee holds some concerns regarding these provisions that have lowered the threshold for the standard of proof from belief on reasonable grounds to one of suspicion. Clause 61 enables the Director-General to require a person to undergo a medical examination if the Director-General reasonably suspects that the person is suffering from a Category 4 or 5 condition. Clause 82 requires a medical practitioner to notify the chief executive officer of a hospital if the medical practitioner suspects that a patient who is, or has been, receiving treatment at the hospital is or was suffering from a notifiable disease. Similarly, clause 83 requires the chief executive officer of a hospital to provide the Director-General with information concerning persons suffering from a notifiable disease who are, or have been, patients at the hospital if the officer suspects that a patient or former patient has or has had a notifiable disease.

32. Giving consideration to the public health reasons, the Committee refers the above clauses to Parliament and asks whether the compelling public health interests may outweigh concerns regarding any potential trespass on individual rights and liberties that might arise from the lowering of the standard threshold from a belief on reasonable grounds to one of suspicion.

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

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

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

18. Public Sector Employment and Management Amendment Bill 2010

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

19. Road Transport Driver Licensing Bill 2010

Issue: Clause 2 - Commencement by Proclamation

7. The Committee has sought comment on why the Bill is to commence on proclamation rather than assent from the Minister for Roads' Office. It has received the response that the Roads and Traffic Authority are still assessing the internal system changes necessary to implement the new demerit point system. The Committee accepts the explanation and thanks the Minister's Office for its response.

20. Rural Fires Amendment Bill 2010

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

21. State Revenue Legislation Further Amendment Bill 2010

Issue: Retrospectivity

18. Schedule 1 [1] of this Bill is to commence, retrospectively, on 1 July 2010. It is incumbent on the Committee to identify those provisions in legislation that are to commence retrospectively.

19. The Committee notes that many of the changes foreshadowed by the amendments are of a machinery or technical nature which would not adversely affect the rights and liberties of individuals.

20. However, clause 7 of the Bill proposes to amend section 62A of the *Duties Act 1997* which changes the duty payable for transfers to self managed superannuation funds, including the provision that $500 is chargeable on certain transfers. The Committee is concerned with the retrospective application of this provision given it will likely cause a financial burden to individuals who had not planned for or considered that such charges would be payable at the time of transaction. As such, the Committee refers this matter to Parliament for its further consideration.

22. Statute Law (Miscellaneous Provisions) Bill (No 2) 2010

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

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

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

23. Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Bill 2010*

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

24. Vocational Education and Training (Commonwealth powers) Bill 2010

Issue: Commencement by Proclamation

9. As the Bill is part of a national scheme the Committee does not consider the commencement by proclamation provision to be an inappropriate delegation of power in this instance.

25. Wagering Legislation Amendment Bill 2010

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

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

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

Part One – Bills

SECTION A: COMMENT ON BILLS

1. BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT AMENDMENT BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Paul Lynch MP
Portfolio:	Industrial Relations, Commerce

Purpose and Description

1. This Bill amends the *Building and Construction Industry Security of Payment Act 1999* to make further provision for securing the payment of progress payments under contracts for construction work.

2. At present, if a claimant knows that the respondent is owed money by a principal contractor they must go through the court system to have those funds frozen, utilising the *Contractors Debts Act*. This Bill establishes that a principal contractor can be required to retain sufficient money to cover the claim being made by the claimant against the respondent without requiring the subcontractor claimant to go through the courts. The moneys withheld are to be taken from any money that is, or becomes, payable by the principal contractor to the respondent.

3. The requirement for the principal contractor to retain moneys is not automatic and can only be instigated through service of a payment withholding request.

4. If the principal contractor does not owe any moneys to the respondent, they are required to notify the subcontractor claimant they are no longer a principal contractor for the claim. This will need to be done within 10 business days of receiving the payment withholding request. The obligation for the principal contractor to retain money is in force for 20 business days after the claimant's adjudication application is determined and served. If the claim is withdrawn, or if the respondent makes a payment to the claimant before 20 business days, the requirement to retain moneys will lapse. The requirement also lapses if the claimant commences proceedings for the recovery of the debt under the *Contractors Debts Act 1997*. If the principal contractor fails to retain moneys according to these requirements, the principal becomes jointly liable for the amount paid to the respondent in contravention of the payment withholding request.

5. Any money that the subcontractor claimant recovers from the principal under this part can be recovered as a debt by the principal contractor from the respondent. This aims to protect the principal contractor from the risk of double payment.

6. The Bill also provides protections for principal contractors in relation to their contractual payment arrangements with the respondent. If a principal is required to retain moneys as a result of being issued a payment withholding request, the time these moneys are withheld cannot be taken into account for the purposes of invoicing and payment dates. This aims to prevent payment claims being made against the principal contractor as a result of withholding moneys under this legislation.

7. To address the situation when subcontractor claimants are unaware of who the principal contractor is, the Bill will establish a requirement for a respondent to provide information regarding the identity and contact details of the principal contractor in relation to that particular claim.

8. The amendments will require the principal to freeze moneys owing to the contractor, equal to the amount being claimed by the subcontractor, but the proposed amendments do not provide a mechanism to assign the debt to the claimant. Debt assignment will still need to be done through the court system under the *Contractors Debts Act*.

Background

9. The aim of the amendments is to improve security of payment for subcontractor claimants. These are businesses at the bottom of the contractual chain.

10. Stakeholders have advised that some subcontractors are finding it difficult to enforce the outcomes of adjudications of payment disputes under the *Building and Construction Industry Security of Payment Act*.

11. The Agreement in Principle speech explained that:

> Payment disputes at the subcontractor level involve three key players. The first is the subcontractor themselves, known as the claimant. The second is the contractor who owes the claimant money. This person is known as the respondent. The third is the legal entity next up the contractual chain that has a contractual agreement with the respondent, known as the principal contractor.

12. One of the problems facing subcontractors is ensuring that the respondent (the contractor owing money) makes the payments outlined in the adjudication determination. The Bill aims to deal with this issue.

13. However, the Agreement in Principle stated that:

> …while these amendments will alert the principal to payment issues and the lodging of an adjudication application by a subcontractor, there will not be any additional protection for subcontractors when the principal has already paid the contractor all moneys owed.

The Bill

14. The object of this Bill is to amend the *Building and Construction Industry Security of Payment Act 1999* (the principal Act) to provide a procedure for a subcontractor on a construction project who is claiming progress payments from a defaulting contractor to secure payment of those progress payments by giving notice of the claim to a principal contractor further up the chain of contractors engaged on the project. The principal contractor is then required to withhold payment of money owed by the

principal contractor to the defaulting contractor, to give the subcontractor a reasonable opportunity to make use of the recovery procedures provided for under the principal Act and the *Contractors Debts Act 1997*.

15. Outline of provisions

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

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

Schedule 1 Amendment of *Building and Construction Industry Security of Payment Act 1999* No 46

Schedule 1 [1] establishes the scheme for securing the payment of progress payments described in the Overview. The main features of the scheme are as follows:

(a) a subcontractor who has made an adjudication application under the principal Act for a progress payment owed by a contractor on a construction project (the defaulting contractor) will be able to require another contractor on the project (the principal contractor) who owes money to the defaulting contractor to withhold payment of money owed to the defaulting contractor,

(b) the principal contractor will then be required to withhold payment to the defaulting contractor (and will become liable with the defaulting contractor for the amount owed to the subcontractor by the defaulting contractor if the principal contractor fails to withhold payment to the defaulting contractor),

(c) the obligation of the principal contractor to withhold payment continues until the subcontractor's claim is withdrawn or, if the claim is successful, for a sufficient period after the claim is finalised to give the subcontractor a reasonable opportunity to recover from the defaulting contractor using procedures under the principal Act or the *Contractors Debts Act 1997*,

(d) the subcontractor will be able to obtain from the defaulting contractor (via the claim adjudication process) the name and contact details of any person who is a principal contractor to the defaulting contractor,

(e) the principal contractor will be protected from any claim for payment by the defaulting contractor while the obligation to withhold payment continues.

Schedule 1 [2] makes a consequential amendment.

Schedule 1 [3] authorises the making of savings and transitional regulations.

Schedule 1 [4] enacts a transitional provision to provide that the scheme extends to matters arising before the commencement of the scheme.

Issues Considered by the Committee

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

Issue: Retrospectivity – Schedule 1 [4] – insertion of Schedule 2, Part 4 – Application of amendments:

16. Schedule 1 [4] enacts a transitional provision to provide that the scheme extends to matters arising before the commencement of the scheme. The proposed new Schedule 2, Part 4 to be inserted, will provide that: An amendment made to this Act by the *Building and Construction Industry Security of Payment Amendment Act 2010* extends to matters arising before the commencement of the amendment (including an adjudication application made before that commencement and pending on that commencement).

17. The Committee will always be concerned to identify the retrospective effects of legislation which may have an adverse impact on a person. The Committee acknowledges the difficulties that subcontractors, being those businesses at the bottom of the contractual chain, have with the enforcement of outcomes of adjudications of payment disputes. However, the respondent (the contractor) and the principal contractor (third legal party) that has a contractual agreement with the respondent, are also entitled to rely on the certainty of the current law at the time to order their affairs accordingly.

18. Accordingly, the Committee asks Parliament to consider whether the retrospective application of the proposed Act may unduly trespass on the rights of individuals.

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:

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

> "The Government is of the view that increasing awareness of payment problems in the contractual chain can help to protect subcontractors and further improve payment performance in the building industry…The requirement for the principal contractor to retain moneys is not an automatic requirement and can only be instigated through service of a payment withholding request".

20. The implementation of the application for and service of a payment withholding request, and the need to increase awareness of payment issues in the building industry may require administrative and transitional arrangements.

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

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

The Committee makes no further comment on this Bill.

2. CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Linda Burney MP
Portfolio:	Community Services

Purpose and Description

1. The object of this bill is to amend the *Children and Young Persons (Care and Protection) Act 1998* to make various miscellaneous amendments.

2. These proposed amendments include the making of further provision in respect of voluntary out-of-home care, enabling child protection reports to be admissible in certain proceedings and clarifying that financial assistance is available to certain carers.

3. The amendments also extend the regulation-making power in respect of probity checks on persons involved in the provision of children's services.

4. Lastly, the Bill provides that certain decisions about permanency plans for children and young persons are not reviewable by the Administrative Decisions Tribunal.

Background

5. The amendments to the *Children and Young Persons (Care and Protection) Act 1998* are designed to improve the regulatory framework for voluntary out of home care and clarify provisions that support general casework and court practice.

6. Some of the amendments included in the Bill relate to provisions of the care Act, which were introduced to implement recommendations of the Special Commission of Inquiry into Child Protection Services undertaken by Justice Wood.

7. The Bill clarifies some of the powers established under the *Children and Young Persons (Care and Protection) Act 1998* and it is intended to allow for a more consistent interpretation and application of the relevant provisions to make the task of the courts and child protection practitioners clearer.

8. This Bill was drafted in consultation with National Disability Services NSW, the Association of Children's Welfare Agencies, Carers NSW, the Federal Departments of Health and Ageing and Families, Housing and Community Services and Indigenous Affairs.

The Bill

9. Outline of Provisions

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

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of *Children and Young Persons (Care and Protection) Act 1998* No 157

Schedule 1 [1] extends the types of proceedings in which a report made in relation to a child or young person to the Director-General or to a person who has the power or responsibility to protect the child or young person will be admissible.

Schedule 1 [2]–[4] make it clear that the disclosure of the identity of a person who makes a report in respect of a child or young person is not prevented if it is disclosed in connection with the investigation of a serious indictable offence or reportable conduct alleged to have been committed or done against a child or young person.

Schedule 1 [5] clarifies the circumstances in which the Children's Court may make an order to give effect to a care plan without the need for a care application under the principal Act.

Schedule 1 [6] and [7] make it clear that the 3-day period within which the Director-General is to make a care application after the removal of a child or young person or assumption of responsibility for a child or young person is 3 working days (ie the 3-day period does not include a Saturday, Sunday or public holiday). However, the amendments also provide that, in any event, such an application must be made within 5 days or on the first working day after that 5 day-period.

Schedule 1 [8] updates a cross-reference in a note.

Schedule 1 [9] clarifies the definition of ***voluntary out-of-home care*** for the purposes of the principal Act so that such care does not include out-of-home care provided by an individual in a private capacity.

Schedule 1 [10] makes it clear that a relevant agency under the voluntary out-of-home care provisions may arrange, as well as provide, such care.

Schedule 1 [11] makes a consequential amendment to the regulation-making power in respect of voluntary out-of-home care.

Schedule 1 [12] substitutes section 156A and inserts proposed section 156B. Proposed new section 156A provides that if a child or young person is placed in voluntary out-of-home care:

> (a) the child or young person must not remain in that care for more than a total of 90 days in any period of 12 months unless the care is provided by or supervised by a designated agency or supervised by the Children's Guardian, and
> (b) the child or young person must not remain in out-of-home care for more than a total of 180 days in any period of 12 months unless the designated agency

responsible for providing or supervising the care of the child or young person, or the Children's Guardian, has ensured that a plan has been prepared that meets the needs of the child or young person under the arrangement If those time periods are not met, the Children's Guardian may determine that the child or young person is taken to be at risk of significant harm, and the various mandatory reporting and other provisions of the principal Act will apply. Proposed section 156B replicates, with some changes, clause 40D of the *Children and Young Persons (Care and Protection) Regulation 2000* to restrict who may provide or arrange voluntary out-of-home care. It will be an offence (maximum penalty $22,000) for a person, other than a relevant agency or an individual who is authorised by a relevant agency or the Children's Guardian, to provide voluntary out-of-home care. It will also be an offence (maximum penalty $22,000) for a person, other than a relevant agency or the Children's Guardian, to arrange with a parent of a child or young person for the child or young person to be placed in voluntary out-of-home care, or to hold out as being willing to make such an arrangement.

Schedule 1 [13]–[16] provide that a person who is providing voluntary out-of-home care in respect of a child or young person may restrain the child or young person in certain circumstances (this currently only applies to parents and authorised carers).

Schedule 1 [17] makes it clear that financial assistance under the principal Act is available to carers of children or young persons who have parental responsibility pursuant to an order of the Children's Court and are providing supported out-of-home care or care under an emergency care and protection order.

Schedule 1 [18] and [19] make it clear that an adult who has been in out-of-home care while he or she was a child or young person is entitled to free access to his or her personal information held by certain persons or bodies.

Schedule 1 [20] provides that one of the functions of the Children's Guardian under the principal Act is to register organisations that provide or arrange voluntary out-of-home care and to monitor their responsibilities.

Schedule 1 [21] includes a relevant agency as a body or organisation to whom the Children's Guardian may furnish certain information relating to the safety, welfare and well-being of children or young persons, or whom the Children's Guardian may direct to provide such information.

Schedule 1 [22] expands the current regulation-making power in relation to probity checks so that such checks may be made on the following:

(a) a person who is involved in the control and management of a licensee or proposed licensee,
(b) a person who is involved in the control and management of the majority shareholder corporation of a licensee or proposed licensee,
(c) a person who is, or who is proposed to be, an authorised supervisor for a children's service.

Schedule 1 [23] provides that a person who is authorised under the principal Act or the regulations made under that Act, or under a search warrant issued under that Act, to search

for, apprehend or remove a person in or from any premises or place may take such photographs and films, and audio, video and other recordings, as the person considers necessary.

Schedule 1 [24] provides that decisions relating to the making and implementation of permanency plans for children and young persons under the parental responsibility of the Minister are not decisions reviewable by the Administrative Decisions Tribunal.

Schedule 1 [25] includes the Family Court of Australia as a Commonwealth agency for the purposes of the exchange of information and co-ordination of services provisions under the principal Act.

Schedule 1 [26] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [27] inserts a savings and transitional provision into the principal Act in respect of the provision of voluntary out-of-home care.

Schedule 2 Amendment of other Acts and Regulation
Schedule 2.1 amends the *Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010* as a consequence of the proposed amendment to be made by Schedule 1 [22].

Schedule 2.2 amends the *Children and Young Persons (Care and Protection) Regulation 2000* as a consequence of the insertion of proposed section 156B by Schedule 1 [12].

Schedule 2.3 repeals an uncommenced amendment contained in the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009* that would have made it an offence for a parent to place a child or young person in out-of-home care that is provided by an organisation unless the organisation is a relevant agency.

Issues Considered by the Committee

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

Issue: Excludes Merits Review

10. The Committee notes that clause 24 of the Bill provides that the preparation of a permanency plan or the enforcement of a permanency plan that has been embodied in, or approved by, an order or orders of the Children's Court, are not to be reviewable by the Administrative Decisions Tribunal.

11. It is incumbent upon the Committee to identify provisions in Bills that exclude an individual from seeking a merits review before a relevant tribunal, such as the exclusion proposed by clause 24.

12. However, the Minister for Community Services advised the Parliament that the reason that decisions relating to permanency plans are not to be reviewable by the Administrative Decisions Tribunal is because there is an alternative and more appropriate avenue for redress through application for review by the Children's Court.

13. This amendment is designed 'to prevent forum shopping' between the Children's Court and the Administrative Decisions Tribunal, and also prevent the seeking of additional review where the Children's Court has failed to provide a decision to the satisfaction of the applicant.

14. The Minister further advised Parliament that:

> The decision in *PR v Department of Community Services* highlighted a potential for direct conflict between the jurisdictions in respect to intervening and determining the adequacy of a permanency plan. The intention of the amendment is to circumvent any further conflict or confusion by making clear that a permanency plan, including whether a plan adequately addresses the permanency planning for a child, is a matter only for judicial consideration by the Children's Court in making an order to reallocate parental responsibility.

15. In light of this reasoning, and given the preservation of alternative review rights, the Committee does not raise any concerns about the exclusion of certain review rights in this instance.

16. It is incumbent upon the Committee to identify provisions in Bills that exclude an individual from seeking a merits review before a relevant tribunal, such as the proposal to restrict access to the Administrative Review Tribunal to review permanency plans.

17. However, the Committee is aware that there is an alternative and more appropriate avenue for redress through application for review by the Children's Court. The Committee notes that the intention of the amendment is to prevent forum shopping or the seeking of additional review in circumstances where a decision has been made by the Children's Court that fails to satisfy the applicant.

18. Given the preservation of alternative review rights, the Committee does hold any concerns with the proposed amendment.

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

Issue: Commencement by Proclamation

19. The Committee notes that all Schedules of the Bill except for Schedule 1 [22] 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. Meanwhile, Schedule 1 [22] is to commence on the date of assent.

20. On advice received from the Minister's Office, the Committee understands that those parts of the Bill to be proclaimed will commence operation on 1 January 2011 with the voluntary out-of-home care provisions to commence operation on 1 February 2011, subject to advice from the Children's Guardian.

21. On advice received from the Minister's Office, the Committee understands that those parts of the Bill to be proclaimed will commence operation on 1 January 2011 with the voluntary out-of-home care provisions to commence operation on 1 February 2011, subject to advice from the Children's Guardian.

The Committee makes no further comment on this Bill.

3. CONTRACT CLEANING INDUSTRY (PORTABLE LONG SERVICE LEAVE SCHEME) BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Paul Lynch MP
Portfolio:	Industrial Relations

Purpose and Description

1. This Bill establishes a scheme for portability of long service leave in the contract cleaning industry; and for other purposes.

2. The Long Service Corporation Bill 2010 is cognate with this Bill.

3. This Bill contains a clear definition of cleaning work sourced from the Federal Cleaning Services Modern Award 2010: work carried out that has as its main component the bringing of premises into a clean condition, including incidental and minor property maintenance work.

4. The Bill provides that contract cleaning industry workers will be entitled to 8.67 weeks of long service leave after 3,650 days service in the industry, which is the equivalent of 10 years service, and further entitlements will be available after second and subsequent blocks of 1,825 days, which is the equivalent of five years service. These are consistent with the benefits available to workers under the general *Long Service Leave Act 1955*. A worker who has an entitlement to long service leave under the scheme will receive a payment from scheme funds based on their ordinary wage, which includes shift and weekend penalties but not overtime.

5. To minimise the potential for financial exploitation through artificially inflated wage rates, the Bill provides the corporation with the authority to review the wages reported by an employer and to vary it as appropriate. As with the requirements of the general Long Service Leave Act, an employer is required to grant a period of leave within six months of a worker becoming entitled to it. This can be extended by agreement and in the event an agreement cannot be reached, an employer or worker may apply to the Long Service Corporation to have an extension approved.

6. Appeals can be reviewed by the Industry Committee. The minimum period of leave that can be granted is two consecutive weeks. A pro rata entitlement will be available in defined circumstances. For example, death, disability or permanent exit from the industry.

7. The Bill provides for a foundation membership bonus of 365 days service credits to industry workers who are registered in the scheme within six months of its commencement. There will be some capacity for the Long Service Corporation to

recognise workers as foundation members outside the prescribed period if they meet exceptional circumstance criteria.

8. The one-off bonus is aimed to recompense workers for service to the industry prior to the introduction of the scheme. It will be credited immediately after registration and will count towards a worker's eligibility for a future long service leave benefit under the scheme. While the scheme will not recognise prior industry service for the purposes of accessing a long service leave entitlement under the scheme, the Bill will ensure that contract cleaning industry workers who have continuous service with a single industry employer prior to the commencement of the scheme are not disadvantaged by its introduction.

9. This Bill ensures a compulsory obligation on employers to register themselves and their employees in the scheme, to provide service records and to pay the requisite levy. Penalty provisions apply for breaches of these obligations.

10. The Long Service Corporation can register eligible employers and workers of their own volition.

Background

11. This Bill seeks to address the inequity experienced by contract cleaners who are unable to access long service leave entitlements. There are approximately 44,000 cleaners working in New South Wales. Around 30,000 of those workers are engaged in connection with commercial cleaning contracts, working for consecutive, unrelated employers and are unable to accrue the requisite 10 years continuous service with a single employer to be eligible for long service leave benefits under the *Long Service Leave Act 1955*.

12. The Agreement in Principle speech explained that:

> It is not unusual for a worker to clock up a few years service with an employer only to have their accrued long service leave reset to zero following the expiration of a contract, even if they are re-hired by the new contract holder. They effectively forfeit the time they have already served despite working in the same building or shopping centre, doing the same work for 10 years and often longer. With the high frequency of the changeover of cleaning contracts, the cycle repeats itself over and over again. The most effective method of addressing this anomaly is to introduce new legislation to establish a statutory portability scheme which recognises a worker's service to the cleaning industry rather than to a single employer.

13. On 19 August 2010, the examination of the feasibility of a portable long service leave scheme was announced. It received support from cleaning workers. Since then, New South Wales Industrial Relations has conducted consultations to identify the level of industry support for the scheme; to assess the scheme's financial viability; and to explore optimum governance and administrative arrangements. Peak industry stakeholders who participated in consultation meetings included: the Liquor, Hospitality and Miscellaneous Union; the Building Service Contractors' Association of Australia (NSW Division); and the Australian Cleaning Contractors Association.

14. A leave entitlement rather than a payment in lieu of leave, like the one that exists in the building industry, addresses the industry-based barriers that workers face in accessing extended leave. The model was drawn from the content of two similar

schemes which have been operating in Queensland and the Australian Capital Territory for a number of years, with some minor modifications to suit New South Wales' circumstances.

15. The scheme is designed to cover contract commercial cleaners and will be funded by a levy on registered industry employers. The levy will be calculated as a prescribed percentage of the ordinary wages of industry workers. At commencement, it is proposed to be 1.7 per cent. The scheme will provide a paid long service leave entitlement in line with the New South Wales *Long Service Leave Act 1955* and will cover all employees and self-employed contractors performing contracted cleaning work.

16. Scheme levies and income will be held in a separate fund, invested with T-Corp. The financial performance of the scheme and the rate of the levy will be subject to compulsory periodical actuarial reviews. The scheme will have reciprocal arrangements with interstate cleaning portability schemes. It is intended that the scheme will commence on 1 July 2011.

17. The portability scheme will not apply to cleaners employed directly by schools, hospitals, factories and such like. The Bill provides the Minister for Industrial Relations with a delegated authority to declare additional scheme coverage as required.

18. According to the Agreement in Principle speech:

> Seed funding of approximately $4 million will be provided by way of a Crown advance from the Treasurer on commercial terms repaid over a period of five years at the prevailing T-Corp long-term loan rate, which is currently 5.52 per cent…It should be noted that the Bill does not create a new entitlement, it simply extends an existing industrial standard to a group of workers who are currently denied access to such entitlement due to industry-based circumstances or other factors beyond their control.

19. There are provisions that clarify the connection between the operation of the scheme and existing benefits under the Long Service Leave Act. For example, a contract cleaner who has nine years of service with a single employer and continues to be employed by that employer for 12 months following the commencement of the scheme will apply for long service leave in the usual manner. They do not need to restart the clock. In this case, a split liability will apply. The employer remains directly responsible for the initial nine years service and the scheme is liable for the payment in relation to the service accrued after 1 July 2011.

20. The Agreement in Principle speech also stated that:

> It should be noted that the former Deputy Prime Minister and Minister for Education, Employment and Workplace Relations confirmed in writing earlier this year that States and Territories retain the authority to administer existing and new portable long service leave schemes. It was made clear that such schemes will remain separate from the Fair Work National Employment Standard for long service leave.

The Bill

21. The Long Service Corporation Bill 2010 is cognate with this Bill.

The object of this Bill is to establish a scheme for the portability of long service leave in the contract cleaning industry. The scheme will operate in a broadly similar manner to comparable schemes for the industry in the Australian Capital Territory and Queensland. The scheme will enable certain workers in the contract cleaning industry who are registered under the proposed Act to access paid long service leave based on 10 or more years (3650 days or more) of recognised service in the industry. There will be no ability to access payments instead of leave but a pro rata payment will be granted after 5 years (1825 days) of service in limited circumstances (death, incapacity and permanent exit from the contract cleaning industry).

Payments will be funded through the imposition of a levy calculated as a prescribed percentage of the ordinary remuneration of the workers and payable by employers in the contract cleaning industry. The levies will be held in a fund to be established under the proposed *Long Service Corporation Act 2010* (which is cognate with this Bill).The scheme is to be administered by the Building and Construction Industry Long Service Payments Corporation as reconstituted and renamed as the Long Service Corporation (the Corporation) by that proposed Act.

The Bill also makes provision for the entry into reciprocal arrangements with authorities in other States and Territories with laws corresponding to the proposed Act.

22. Outline of provisions

Part 1 Preliminary

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

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

Clause 3 defines certain words and expressions used in the proposed Act. The ***contract cleaning industry*** is defined as the industry in which employers provide cleaning work, and minor property maintenance work that is incidental or peripheral to such cleaning work, to other people through the provision of workers' services. A ***worker*** is defined (in proposed section 7) as a person who is engaged by an employer under a contract of service to perform cleaning work in the contract cleaning industry or a contractor who performs cleaning work in the contract cleaning industry. The definition of ***contract cleaning industry*** also includes the contract cleaning industry within the meaning of a corresponding law for a reciprocal State or Territory.

The Bill is not designed to cover people engaged directly to perform cleaning work (for example, a person engaged by a house owner to clean the owner's house).

Contractor is defined as a person (other than an employee) who carries out work for another person for fee or reward on the person's own account. The meaning of the term can be expanded by the Minister by an order made under proposed section 8.

Clause 4 defines ***cleaning work*** as being work that has as its only or main component, the bringing of premises into, or maintaining premises in, a clean condition. The meaning of the term can be expanded by the Minister by an order made under proposed section 8.

Clause 5 defines ***employee*** for the contract cleaning industry. The meaning of the term can be expanded by the Minister by an order made under proposed section 8.

Clause 6 defines ***employer*** for the contract cleaning industry as a person who employs one or more persons to perform cleaning work in that industry. The meaning of the term can be expanded by the Minister by an order made under proposed section 8. The Commonwealth, the State, local government authorities and companies whose only workers are directors (if each of the directors participates in the management of the company or shares its profits) are not employers for the purposes of the definition.

Clause 7 defines ***worker*** as a person who is engaged under a contract of service by an employer to perform cleaning work in the contract cleaning industry or who is a contractor who performs cleaning work in that industry. It also includes a person who is engaged both to perform cleaning work and to supervise other workers regardless of the position title. Specific exclusions from the definition include persons working in a managerial or clerical capacity, persons who are members of a partnership where they share in the profits or participate in its management (or both) and persons employed under a contract of service with the Commonwealth, the State or a local government authority.

Clause 8 enables the Minister administering the Act to expand its coverage by widening the scope of the definitions of ***employer, contractor, employee*** and ***cleaning work*** by order published on the NSW legislation website. The order is a disallowable instrument.

Clause 9 constitutes a Contract Cleaning Industry Long Service Leave Committee (the ***Committee***) consisting of nominees of various bodies representing the interests of peak contract cleaning industry stakeholders and chaired by the Chief Executive Officer of the Corporation.

Part 2 Registration

Division 1 The registers: clauses 10 to 15.

Division 2 Registration of employers: clauses 16 to 20.

Division 3 Registration of workers: clauses 21 to 27.

Division 4 Cancellation and suspension of registration: clauses 28 to 31.

Division 5 Notices: clause 32.

Part 3 Service Credits: clauses 33 to 38.

Part 4 Returns and records:

Division 1 Returns: clauses 39 to 41.

Division 2 Review of ordinary remuneration: clauses 42 to 45.

Division 3 Records: clauses 46 to 47.

Part 5 Long service leave levy: clauses 48 to 54.

Part 6 Long service leave: clauses 55 to 72.

Part 7 Appeals to Committee:

Division 1 General: clauses 73 to 76.

Division 2 Rights of appeal: clauses 77 to 84.

Part 8 Enforcement:

Division 1 Authorisation and identification of inspectors: clauses 85 to 87.

Division 2 Powers of entry and inspection: clauses 88 to 95.

Division 3 Other enforcement matters: clauses 96 to 102.

Division 4 Proceedings for offences and debt recovery: clauses 103 to 107.

Part 9 Relationship to other laws: clauses 108 to 111.

Part 10 Reciprocal arrangements: clauses 112 to 114.

Part 11 Miscellaneous: clauses 115 to 117.

Schedule 1 Constitution and procedure of Committee

Schedule 2 Savings, transitional and other provisions

Schedule 3 Amendment of other Acts and regulation

Issues Considered by the Committee

23. 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.

4. COURTS AND CRIMES LEGISLATION FURTHER AMENDMENT BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Council
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Attorney General

Purpose and Description

The objects of this Bill are as follows:

1. To amend various Acts to provide legislative immunity for a person who is a member of the Guardian Ad Litem Panel and is appointed as a guardian ad litem;

2. To amend the *Administrative Decisions Tribunal Act 1997* to allow, in certain circumstances, the Administrative Decisions Tribunal to hear a matter where an individual has duly applied for an internal review, even if the internal review has not been finalised,

3. To amend the *Children (Criminal Proceedings) Act 1987* and related legislation to enable additional offenders to participate in the youth conduct order scheme established by that Act and to make other amendments to improve the administration of the scheme,

4. To amend the *Children's Court Act 1987* to increase the maximum term of appointment of a Children's Magistrate,

5. To amend the *Civil Procedure Act 2005*:

    (i) to provide for a statutory regime for the conduct of proceedings of a representative nature in certain actions and proceedings in the Supreme Court, and
    (ii) to facilitate the taking of pre-litigation steps in certain civil disputes to resolve or narrow the issues in dispute before the commencement of court proceedings, and
    (iii) to extend the Uniform Rules Committee's power to make rules in relation to the means for answering questions of foreign law,

6. To amend the *Crimes Act 1900* to replace and modernise the offence of not providing a servant or other dependant with food and other necessities of life,

7. To amend the *Crimes (Criminal Organisations Control) Act 2009* to extend the period at the end of which the Ombudsman must scrutinise the exercise of powers conferred on police officers under the Act,

8. To amend the *Criminal Procedure Act 1986*:

(i) with respect to evidence in proceedings in relation to sexual offences, and
(ii) to allow certain aspects of committal proceedings to be conducted in the absence of the public for the purposes of facilitating the use of an electronic case management system, and
(iii) to enable both prosecutors and accused persons in criminal proceedings in the Supreme Court or District Court to apply for the trial of an accused person by judge alone and to set out the circumstances in which such an application is to be refused or granted by the Supreme Court or District Court, and
(iv) to increase the maximum property value for break and enter offences that are dealt with summarily by the Local Court,

9. To amend the *Graffiti Control Act 2008* and related legislation for law revision purposes,

10. To amend the *Industrial Relations Act 1996* to enable a Commissioner who is an Australian lawyer to exercise any function of the Commission in Court Session in respect of small claims proceedings under the *Fair Work Act 2009* of the Commonwealth, and to clarify a provision in respect of small claims applications under the *Industrial Relations Act 1996*,

11. To amend the *Local Court Act 2007*:

(i) to give the Minister administering that Act power to make determinations in relation to the extended leave entitlements of Magistrates appointed before 20 September 2002, and
(ii) to validate a determination made with respect of extended leave of Magistrates in 2005, and
(iii) to increase the limit of the civil jurisdiction of the Local Court in its General Division,

12. To amend the *Mining Act 1992* to extend the jurisdiction of the Land and Environment Court to hear all disputes regarding the determination of whether a significant improvement to land exists (for the purposes of determining whether a mining lease may be granted over that land),

13. To amend the *Supreme Court Act 1970* to enable rules to be made in relation to the Supreme Court's ability to refer to a foreign court a question as to the principles of foreign law and to provide assistance on a question as to the principles of Australian law,

14. To amend the *Victims Support and Rehabilitation Act 1996* to make further provision for the scheme for victims compensation and assistance under that Act, as described in more detail below,

15. To amend the *Victims Rights Act 1996* to make further provision with respect to the Charter of Victim Rights, as described in more detail below.

16. The Bill also makes other minor amendments, including amendments of a consequential nature.

Background

17. This Bill is part of the Government's regular legislative review and monitoring program designed to improve the operation of the courts, Acts and various schemes that constitute the justice system.

18. The amendments contained in the Bill have been the subject of consultation with key stakeholders, including the judiciary, the courts and tribunals, the legal profession, relevant government agencies and community stakeholders.

The Bill

19. Outline of Provisions

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

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of *Administrative Decision Tribunal Act 1997* No 76
Schedule 1 [3] allows the Administrative Decisions Tribunal (the ***Tribunal***) to review a decision in cases where the person is entitled to seek internal review of the decision and the person has duly applied for such a review, even if the review has not been finalised. The Tribunal may decide to review such a decision if the Tribunal is satisfied that it is necessary for the protection of the applicant's interests.

Currently, under the *Administrative Decision Tribunal Act 1997*, the Tribunal may only review such a decision if the internal review has been finalised. This will permit the Tribunal to hear and determine an application for a stay of a reviewable decision, even though an application for internal review has not been finalised. **Schedule 1 [1]** is a consequential amendment that makes it clear that a person may apply to the Tribunal for review of a decision by the end of (instead of during) the default application period for the decision. **Schedule 1 [2]** makes a minor related amendment.

Schedule 1 [4] and [5] provide that a member of the panel constituted as the Guardian Ad Litem Panel by the Director-General of the Department of Justice and Attorney General (the ***Guardian Ad Litem Panel***) who is appointed by the Tribunal to represent a party who is an incapacitated person will not be personally liable in respect of any action, liability, claim or demand if the member acted in good faith for the purpose of representing the incapacitated person.

Schedule 1 [6] and [7] are savings and transitional provisions.

Schedule 2 Amendment of *Adoption Act 2000* No 75
Schedule 2 provides that a member of the Guardian Ad Litem Panel who is appointed as a guardian ad litem by the Supreme Court will not be personally liable in respect of any action, liability, claim or demand if the member acted in good faith for the purpose of carrying out his or her functions as a guardian ad litem under the *Adoption Act 2000*.

Schedule 3 Amendment of *Children and Young Persons (Care and Protection) Act 1998* No 157

Schedule 3 provides that a member of the Guardian Ad Litem Panel who is appointed as a guardian ad litem by the Children's Court will not be personally liable in respect of any action, liability, claim or demand if the member acted in good faith for the purpose of carrying out his or her functions as a guardian ad litem under the *Children and Young Persons (Care and Protection) Act 1998*.

Schedule 4 Amendment of Children (Criminal Proceedings) legislation
Children (Criminal Proceedings) Act 1987
Schedule 4.1 [2] replaces a definition in Part 4A (Youth conduct orders) of the *Children (Criminal Proceedings) Act 1987* (the ***CCP Act***) to reflect the re-naming of the Anti-Social Behaviour Pilot Project as the Supporting Children, Supporting Families Program (the ***SCSF Program***). **Schedule 4.1 [14]–[16]** make consequential amendments.

Schedule 4.1 [3] expands the definition of ***relevant offence*** for the purposes of Part 4A of the CCP Act. The new definition will include any offence that the Children's Court has jurisdiction to hear and determine other than a prescribed sexual offence (within the meaning of the *Criminal Procedure Act 1986*), any other serious children's indictable offence or traffic offence. The current definition mirrors the offences that are covered by the *Young Offenders Act 1997*. **Schedule 4.1 [1], [4], [5] and [9]** make consequential amendments.

Schedule 4.1 [7] requires the Children's Court, before it refers a child for a suitability assessment, to be satisfied that it is appropriate for a child to be dealt with under the scheme established by Part 4A of the CCP Act (the ***scheme***) having regard to certain matters such as the serious nature of the offence concerned and the harm caused to victims.

Schedule 4.1 [8] precludes the Children's Court from referring a child for a suitability assessment if it considers that the appropriate penalty for the relevant offence concerned is for the child to be under the control of the Minister administering the *Children (Detention Centres) Act 1987* or the *Crimes (Administration of Sentences) Act 1999*.

Schedule 4.1 [10] confirms that the Children's Court may make a final youth conduct order without first making an interim youth conduct order. **Schedule 4.1 [6]** makes a consequential amendment.

Schedule 4.1 [11] makes it clear that if a youth conduct order is revoked in relation to a child, the child is not subject to the imposition of a more severe penalty for the relevant offence concerned than would have been the case if the order had not been made.

Schedule 4.1 [12] enables the Children's Court to make an order directing that the charge for a relevant offence to which a final youth conduct order relates be dismissed if the child concerned substantially complies with the order for the period it is in force in circumstances where the child pleaded guilty to the offence before the order was made. Currently, an order directing the dismissal of a charge may only be made if the child did not plead guilty to (or was not found guilty of) the relevant offence in relation to which the final youth conduct order relates. **Schedule 4.1 [12]** also requires the Court to give reasons whenever it refuses to exercise its power to direct that a charge be dismissed. **Schedule 4.1 [13]** makes a consequential amendment.

Schedule 4.1 [17]–[20] facilitate the exchange of information concerning the administration of the SCSF Program between agencies.

Schedule 4.1 [21] extends the period during which the scheme will be in effect to 1 September 2013.

Schedule 4.1 [22] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 4.1 [23] inserts provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Children (Criminal Proceedings) Regulation 2005

Schedule 4.2 [1] amends the *Children (Criminal Proceedings) Regulation 2005* to extend the areas within which the scheme will be available. Currently, the scheme operates in the areas of the Campbelltown Local Area Command, Mount Druitt Local Area Command and New England Local Area Command of the NSW Police Force. The new Local Area Commands will be Blacktown, St Marys, Liverpool and Macquarie Fields.

Schedule 4.2 [2] and [3] provide for a child to be eligible to participate in the scheme if he or she has an appropriate connection with a Local Area Command that is participating in the scheme. This will be the case if:

> (a) the child permanently or temporarily resides in, or is an habitual visitor to, the area of the Command, or
>
> (b) the relevant offence (or, in the case where more than one relevant offence is sought to be dealt with, at least one of the offences) was committed, or alleged to have been committed, in the area of the Command.

Schedule 4.2 [5] makes a consequential amendment.

Schedule 4.2 [4] extends the cut off date for participation in the scheme from 1 July 2011 to 25 February 2012.

Schedule 4.2 [6] makes an amendment that is consequential on the amendments made to the CCP Act by **Schedule 4.1 [17]–[20]**.

Schedule 5 Amendment of *Children's Court Act 1987* No 53

Schedule 5 allows a Children's Magistrate to be appointed for a period of up to 5 years, instead of the current maximum period of appointment of 3 years.

Schedule 6 Amendment of *Civil Procedure Act 2005* No 28

Amendments relating to representative actions

Schedule 6.1 [1] amends section 4 of the *Civil Procedure Act 2005* (the ***CP Act***) to limit the application of proposed Part 10 to civil proceedings in the Supreme Court.

Schedule 6.1 [2] inserts proposed Part 10 (sections 155–184) into the CP Act. The Part contains the following provisions:

Division 1 Preliminary Proposed section 155 contains terms and expressions used in the proposed Part. ***Representative proceedings*** is defined as proceedings in respect of a cause of action commenced in accordance with the proposed Part by one or more persons on their own behalf and on behalf of any other person or persons. A ***representative party*** in

representative proceedings is defined as any person who commences the proceedings. A ***defendant*** in representative proceedings is defined as any person against whom representative proceedings are commenced. Proposed section 156 provides for the proposed Part to apply to proceedings commenced after the commencement of the section, whether the cause of action arose before or arises after that commencement.

Division 2 Commencement of representative proceedings

Proposed section 157 enables representative proceedings against a defendant to be brought under the proposed Part in certain circumstances. The circumstances are as follows:

> (a) there are 7 or more persons (the ***claimants***) who have claims against the same proposed respondent,
> (b) one or more of these claimants seeks to commence the proceedings,
> (c) the claims of all of the claimants are in respect of, or arise out of, the same, similar or related circumstances,
> (d) the claims of all of the claimants give rise to a substantial common issue of law or fact,
> (e) all persons seeking to commence the proceedings have a sufficient interest to commence the proceedings on behalf of the claimants.

Proposed section 158 (1) provides that a person has a sufficient interest to commence representative proceedings against one or more defendants on behalf of others if that person would have standing to commence proceedings against the defendants on the person's own behalf. It also provides that such standing to continue representative proceedings is not lost simply because the person ceases to have an individual claim against a defendant.

Proposed section 158 (2) makes it clear that representative proceedings may be taken against several defendants even if not all group members have a claim against all defendants. The provision overcomes the view to the contrary expressed in relation to the operation of Part IVA of the *Federal Court of Australia Act 1976* of the Commonwealth in *Philip Morris (Australia) Ltd v Nixon* [2000] FCA 229.

Proposed section 159 provides that generally there is no requirement for consent to being a group member in representative proceedings. However, such consent is required from any of the following:

> (a) the Commonwealth, a State or a Territory,
> (b) a Minister or other officer of any such jurisdiction,
> (c) a body corporate (other than an incorporated company or association) established for public purposes under a law of any such jurisdiction.

Proposed section 160 provides that a person under a legal incapacity may be a group member even though the person does not have a tutor. However, a tutor is required if the person wishes to take any step in the proceedings.

Proposed section 161 sets out additional information that must be contained in the originating process that commences representative proceedings.

Proposed section 162 enables a group member to opt out of representative proceedings by written notice given in accordance with rules of court before a date fixed for that purpose by the Supreme Court.

Proposed section 163 enables the Supreme Court, on the application of a representative party, to alter the description of the group of persons in respect of which representative proceedings have been commenced.

Proposed section 164 enables the Supreme Court to order either that representative proceedings continue or no longer continue under the proposed Part if at any stage the group members are fewer than 7.

Proposed section 165 enables the Supreme Court to direct that representative proceedings no longer continue under the proposed Part if the cost of distributing relief to group members is excessive, or to stay the proceedings to the extent that they relate to such relief.

Proposed section 166 (1) enables the Supreme Court to order that proceedings in the Court no longer continue under the proposed Part in certain circumstances if it considers it is in the interests of justice to do so. The circumstances are if:

> (a) the costs that would be incurred if the proceedings were to continue as representative proceedings are likely to exceed the costs that would be incurred if each group member conducted separate proceedings, or
> (b) all the relief sought can be obtained by means of proceedings other than representative proceedings under the proposed Part, or
> (c) a representative party is not able to adequately represent the interests of the group members, or
> (d) the representative proceedings will not provide an efficient and effective means of dealing with the claims of group members, or
> (e) it is otherwise inappropriate that the claims be pursued by means of representative proceedings.

Proposed section 166 (2) makes it clear that it is not inappropriate for representative proceedings to be brought on behalf of a limited group of identified individuals. This is consistent with the view taken by the Full Court of the Federal Court in relation to the operation of Part IVA of the *Federal Court of Australia Act 1976* of the Commonwealth in *Multiplex Funds Management Limited v Dawson Nominees Pty Limited* [2007] FCAFC 200.

Proposed section 167 specifies the effect of an order under the proposed Part for the discontinuance of representative proceedings. The section provides that such proceedings may be continued by a representative party against a defendant on the party's own behalf. It also enables the Supreme Court to join former group members as applicants in such continued proceedings.

Proposed section 168 enables the Supreme Court to give directions in respect of the determination of issues in representative proceedings that are common to some, but not all, group members. For this purpose, the Court may direct the establishment of sub-groups in the proceedings and the appointment of sub-group representative parties.

Proposed section 169 enables the Supreme Court to give a direction that a group member appear in proceedings for the purpose of determining an issue relating only to the claims of that member.

Proposed section 170 provides that if an issue cannot conveniently be determined by the Supreme Court by giving directions under proposed section 168 or 169, the Court may:

> (a) if the issue concerns only the claim of a particular member—give directions relating to the commencement and conduct of separate proceedings by that member, or
> (b) if the issue is common to the claims of all members of a sub-group—give directions relating to the commencement and conduct of representative proceedings in relation to the claims of those members.

Proposed section 171 enables the Supreme Court to substitute another group member as representative party (or sub-group representative party) if it considers that the existing representative party (or sub-group representative party) is not able to adequately represent the interests of group members (or sub-group members).

Proposed section 172 enables the Supreme Court to order a stay of execution in respect of relief awarded to a group member in representative proceedings if the group member has brought other proceedings. The stay operates until those other proceedings are determined.

Proposed section 173 requires any settlement or discontinuance of representative proceedings to be approved by the Supreme Court.

Proposed section 174 enables a representative party, with the leave of the Supreme Court, to settle the party's individual claim against the defendant and withdraw as a representative party.

Division 3 Notices
Proposed section 175 requires notices to be given to group members in representative proceedings in relation to certain matters (including, for instance, dates for opting out of the proceedings).

Proposed section 176 provides for the form and content of, and the manner for giving, such notices to group members.

Division 4 Powers of the Court
Proposed section 177 specifies the powers of the Supreme Court in determining representative proceedings, including determining individual entitlements to relief.

Proposed section 178 enables the Supreme Court, in determining representative proceedings, to order the establishment of a fund consisting of money to be distributed to group members. It also enables the Court to make orders in respect of the administration of the fund.

Proposed section 179 provides for the content and effect of judgments given by the Supreme Court in representative proceedings.

Division 5 Appeals

Proposed section 180 provides for appeals to the Court of Appeal from judgments of the Supreme Court in representative proceedings also to be conducted as representative proceedings.

Division 6 Miscellaneous

Proposed section 181 provides that the Supreme Court may not award costs against a person on whose behalf representative proceedings have been commenced (other than a representative party) except as authorised by proposed section 168 or 169.

Proposed section 182 provides for the suspension of certain limitation periods on the commencement of representative proceedings.

Proposed section 183 confers a general power on the Supreme Court to make such orders as it considers appropriate or necessary to ensure that justice is done in representative proceedings.

Proposed section 184 enables the Supreme Court to order that a representative party's costs in representative proceedings in which damages have been awarded be recoverable from the damages awarded.

Schedule 6.1 [3] amends Schedule 6 to the CP Act to preserve certain existing proceedings of a representative character.

Amendments relating to dispute resolution

Schedule 6.2 [2] inserts proposed Part 2A (Steps to be taken before the commencement of proceedings) in the CP Act. The proposed Part contains the following provisions:

Proposed section 18A includes definitions of terms used in the proposed Part and other interpretive provisions.

Proposed section 18B provides for the civil disputes and civil proceedings to which the proposed Part is or is not to apply. The proposed Part enables the Governor to make regulations excluding disputes and proceedings from the Part. A similar power to make rules of court for that purpose is also conferred, subject to the regulations.

Proposed section 18C enables the Governor to make regulations setting out pre-litigation protocols. Rules of court may also set out such protocols. A ***pre-litigation protocol*** is a set of provisions setting out steps that will constitute reasonable steps for the purposes of the pre-litigation requirements in their application to a specified class of civil disputes to which the proposed Part applies.

Proposed section 18D requires each person involved in a civil dispute to which the proposed Part applies to comply with the ***pre-litigation requirements*** set out in proposed section 18E before the commencement of any civil proceedings in a court in relation to that dispute.

Proposed section 18E provides that each person involved in a civil dispute to which the proposed Part applies is to take reasonable steps having regard to the person's situation, the nature of the dispute (including the value of any claim and complexity of the issues) and any applicable pre-litigation protocol:

(a) to resolve the dispute by agreement, or
(b) to clarify and narrow the issues in dispute in the event that civil proceedings are commenced.

The proposed section also gives examples of reasonable steps, such as the exchange of relevant information and documents and the use of alternative dispute resolution processes where appropriate.

Proposed section 18F limits the use of information or documents by a party who receives them as part of an exchange carried out in accordance with the pre litigation requirements.

Proposed section 18G requires a plaintiff who commences civil proceedings to which the proposed Part applies to file a dispute resolution statement at the time the originating process for the proceedings is filed. The statement is to indicate the steps taken before the commencement of proceedings to narrow or resolve the issues in dispute and, if no steps are taken, the reasons why such steps were not taken.

Proposed section 18H requires a defendant in civil proceedings to which the proposed Part applies who has been served with a copy of a dispute resolution statement filed by the plaintiff to file a dispute resolution statement at the time the defendant files a defence in the proceedings. The statement is to indicate whether the defendant agrees with the plaintiff's statement and, if not, specify the reasons for the disagreement and specify other reasonable steps that the defendant believes can be taken to resolve the dispute.

Proposed section 18I provides that a dispute resolution statement is to comply with such additional requirements as may be specified in rules of court.

Proposed section 18J requires a legal practitioner engaged to represent a person involved in a civil dispute to which the proposed Part applies to provide certain information and advice about the person's pre-litigation responsibilities. A failure to provide the information and advice will be relevant in determining whether the legal practitioner should have costs awarded against him or her.

Proposed section 18K provides that a failure to comply with the pre-litigation requirements or to file a dispute resolution statement does not generally prevent the commencement or affect the validity of proceedings.

Proposed section 18L provides that, as a general rule, each person involved in a civil dispute (or each party to civil proceedings) to which the proposed Part applies is to bear that person's or party's own costs of compliance with the pre-litigation requirements.

Proposed section 18M enables a court, in certain circumstances, to order that a party to civil proceedings or a legal practitioner is to pay some or all of the costs of another party to the proceedings of complying with the pre-litigation requirements.

Proposed section 18N enables a court to take into account the failure by a party to civil proceedings to comply with the pre-litigation requirements for the purposes of:

(a) determining costs in the proceeding generally, and
(b) making any order about the procedural obligations of parties to proceedings, and

(c) making any other order the court considers appropriate.

Proposed section 18O limits the disclosure of information concerning a mediation undertaken for the purposes of complying with the pre-litigation requirements. The proposed section also extends protection from the laws of defamation for publications made in such a context.

Schedule 6.2 [1] inserts a definition of ***civil dispute*** in the CP Act by reference to the meaning of that term in proposed Part 2A.

Schedule 6.2 [3]–[7] amend section 56 of the CP Act:

> (a) to recognise that the facilitation of the just, quick and cheap resolution of the real issues in civil disputes is also part of the overriding purpose of the CP Act and rules of court, and
> (b) to impose a duty on a party to a civil dispute or civil proceedings to take reasonable steps to resolve or narrow the issues in dispute in accordance with the provisions of proposed Part 2A (if any) that are applicable to the dispute or proceedings in a way that is consistent with the overriding purpose, and
> (c) to prevent legal practitioners and persons with a relevant interest in civil proceedings, by their conduct, from causing parties to civil disputes or civil proceedings to be put in breach of their duties under section 56.

Schedule 6.2 [8] confers new powers to make uniform rules with respect to pre-litigation requirements (both under proposed Part 2A and otherwise).

Schedule 6.2 [9] provides for savings and transitional matters.

Miscellaneous amendments

Schedule 6.3 [1] extends the Uniform Rules Committee's power to make rules in respect of the means for answering questions of foreign law and their application.

Schedule 6.3 [2] amends Schedule 6 to the CP Act to enable the making of savings and transitional regulations.

Schedule 6.4 amends the *Uniform Civil Procedure Rules 2005* as a consequence of the amendments in Schedule 6.1.

Schedule 7 Amendment of *Community Services (Complaints, Reviews and Monitoring) Act 1993* No 2

Schedule 7 provides that a member of the Guardian Ad Litem Panel who is appointed by the Administrative Decisions Tribunal will not be personally liable in respect of any action, liability, claim or demand if the member acted in good faith for the purpose of carrying out his or her functions under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

Schedule 8 Amendment of *Consumer, Trader and Tenancy Tribunal Act 2001* No 82

Schedule 8 provides that a member of the Guardian Ad Litem Panel who is appointed by the Consumer, Trader and Tenancy Tribunal of New South Wales to represent a person who is a minor, is disabled or mentally incapacitated or is otherwise a special class of

person prescribed by the regulations will not be personally liable in respect of any action, liability, claim or demand if the member acted in good faith for the purpose of carrying out his or her functions under the *Consumer, Trader and Tenancy Tribunal Act 2001*.

Schedule 9 Amendment of *Crimes Act 1900* No 40

Schedule 9 makes it an offence for a person who is under a legal duty to provide another person with the necessities of life to intentionally or recklessly fail, without reasonable excuse, to provide that person with the necessities of life, if such a failure causes a danger of death or causes serious injury or the likelihood of serious injury to that person. The maximum penalty for this offence is imprisonment for 5 years.

The new offence replaces and modernises the current offence in the *Crimes Act 1900* of not providing any wife, apprentice, servant or insane person with the necessary food, clothing or lodging, where a person is legally liable to do so and which endangers the life of, or causes serious injury (or the likelihood of serious injury) to, the wife, apprentice, servant or insane person.

Schedule 10 Amendment of *Crimes (Criminal Organisations Control) Act 2009* No 6

Schedule 10 extends the period within which the Ombudsman must scrutinise the exercise of powers conferred on police officers under the *Crimes (Criminal Organisations Control) Act 2009* from 2 years to 4 years. Consequently, the date by which the Ombudsman is to prepare a report of the Ombudsman's work and activities connected with it is also extended to 4 years.

Schedule 11 Amendment of *Criminal Appeal Act 1912* No 16

Schedule 11 is related to the amendments to the *Criminal Procedure Act 1986* described at **Schedule 12.1** below. **Schedule 11 [1]** provides for an appeal to the Court of Criminal Appeal by a protected confider who is not a party to proceedings in which there is a decision to grant leave to produce a document or adduce evidence that contains a protected confidence that relates to the protected confider. An appeal is also granted to a person who, because of the leave, is required to produce a document or adduce evidence that contains a protected confidence. Finally, if a court determines that a document or evidence does not contain a protected confidence, a person may appeal if the person claims the document or evidence does, despite the determination, contain a protected confidence in relation to which the person is a protected confider. Any such appeal is permitted only if the Court of Criminal Appeal gives leave to appeal or if the judge or magistrate of the court of trial certifies that the decision is a proper one for determination on appeal.

Schedule 11 [2] provides for transitional matters.

Schedule 12 Amendment of *Criminal Procedure Act 1986* No 209
Amendments relating to evidence in sexual offence matters

Schedule 12.1 [1] extends the special arrangements set out in Division 1 (Evidence in certain sexual offence proceedings) of Part 5 of Chapter 6 of the *Criminal Procedure Act 1986* to a witness (other than the complainant) in criminal proceedings who is alleged to have been the victim of acts of the accused person that would constitute a prescribed sexual offence were those acts to occur in New South Wales at the time of the proceedings. **Schedule 12.1 [2]** makes a consequential amendment.

Schedule 12.1 [3] clarifies that a reference to criminal proceedings in Division 2 (Sexual assault communications privilege) of Part 5 of Chapter 6 of the *Criminal Procedure Act 1986*

includes pre-trial and interlocutory proceedings. **Schedule 12.1 [4]** extends the definition of ***sexual assault offence*** for the purposes of that Division to include acts that would constitute a prescribed sexual offence if those acts had occurred in this State, had occurred at some later date or had both occurred in this State and occurred at some later date.

Schedule 12.1 [5] rearranges some matter that was formerly in sections 297–299, 303 and 304 of the *Criminal Procedure Act 1986* that related to the admissibility of protected confidences and adds some additional requirements to those provisions. These new requirements now mean that a document or evidence containing a protected confidence (a communication made during counselling by, to or about a victim of a sexual offence) can only be produced or adduced into evidence in relation to criminal proceedings with the leave of the court. Protected confidences continue to be inadmissible in relation to preliminary criminal proceedings (committal and bail proceedings). A court must satisfy itself that a witness, party or protected confider (the victim or other person who made the protected confidence), who may have grounds for making an application for leave or objecting to the production of a document or the adducing of evidence, is aware of the relevant provisions of Division 2 of Part 5 of Chapter 6 of the *Criminal Procedure Act 1986* and has been given a reasonable opportunity to seek legal advice. This extends a similar requirement that currently applies only in respect of witnesses and parties. A protected confider who is not a party may appear in criminal proceedings or preliminary criminal proceedings if a document is sought to be produced or evidence is sought to be adduced that may disclose a protected confidence made by, to or about the protected confider. If a question arises relating to a document or evidence, a court may order the document or evidence to be produced or adduced to it for inspection or consideration. This is to be done in the absence of any jury. The document or evidence can be disclosed to a party other than the protected confider only if it does not contain a protected confidence or the court has given leave and the disclosure is consistent with that leave.

An applicant for leave is required to give notice of the application to each relevant protected confider (or the protected confider's nominee) as soon as is reasonably practicable. If the protected confider is not a party to the proceedings the notice can instead be given to the prosecutor (or if the regulations prescribe another person or body, to that other person or body). The prosecutor or prescribed person or body must give a copy to the protected confider within a reasonable time after its receipt. A court cannot grant leave until at least 14 days after all necessary notices have been given. The court can fix a shorter period. The court can also waive a requirement to give notice in exceptional circumstances, if the principal protected confider consents or if notice has already been given in the proceedings in relation to the protected confidence

A court when determining whether to grant leave is now required to take a number of factors into account including that the effectiveness of counselling is likely to be dependent on the maintenance of the confidentiality of the counselling relationship and that the adducing of the evidence is likely to infringe a reasonable expectation of privacy. The court is also able to permit a confidential statement to be made to it by or on behalf of the principal protected confider (the victim) by affidavit specifying the harm the confider is likely to suffer if the application for leave is granted. The court must not disclose a confidential statement to a party other than the victim.

Schedule 12.1 [6] and [7] make consequential amendments.

Schedule 12.1 [8] permits regulations to be made dealing with the giving of subpoenas in criminal proceedings or preliminary criminal proceedings that involve a prescribed sexual offence.

Schedule 12.1 [9] provides for transitional matters. **Miscellaneous amendments**

Schedule 12.2 [1] allows certain aspects of committal proceedings to be conducted in the absence of the public, but only for the purpose of facilitating the use of an electronic case management system in those proceedings under the *Electronic Transactions Act 2000*. The hearing of a matter may be conducted in the absence of the public, with the consent of the parties to the proceedings concerned, if the matter:

> (a) arises after the first appearance of the accused person in committal proceedings, and
> (b) is of a procedural nature, and
> (c) does not require the resolution of a disputed issue, and
> (d) does not involve a person giving oral evidence.

Schedule 12.2 [2] substitutes the existing provision of the *Criminal Procedure Act 1986* relating to trial by judge alone in criminal proceedings in the Supreme Court and the District Court. Currently, an accused person may elect to have a trial by judge alone, with the consent of the Director of Public Prosecutions, and the election must be accepted by the court if it is satisfied that the accused person obtained legal advice in relation to the election. Under the new section 132, both the accused person and the prosecutor may apply to the court for an order that the accused person be tried by judge alone. The order must be made if both agree but cannot be made if the accused person does not agree. If the prosecutor does not agree, the court may make an order if it considers it to be in the interests of justice to do so. The court must not make an order unless it is satisfied that the accused person has obtained legal advice about the effect of the order. Despite all of those provisions, the court may make an order if there is a substantial risk of jury tampering offences occurring and there is no other way of reasonably mitigating that risk. New section 132A provides for the time within which applications for orders must be made and applications in joint trials.

Schedule 12.2 [3] makes the indictable offence of entering with intent to commit a serious indictable offence of stealing, maliciously destroying or damaging property, the value of which does not exceed $60,000 (as opposed to the current value limit of such property at $15,000) capable of being tried summarily.

Schedule 12.2 [4] and [5] provide for savings and transitional matters.

Schedule 13 Amendment of Graffiti Control legislation
Schedule 13.1 incorporates the definition of ***fine*** from the *Fines Act 1996* into the *Graffiti Control Act 2008*. This ensures that an order requiring an offender to perform community clean up work can be made in respect of the full amount of any penalty, costs or amount imposed in respect of a graffiti offence that would be recoverable as a fine under the *Fines Act 1996*. **Schedule 13.2** repeals clause 12 of the *Graffiti Control Regulation 2009*, which is made redundant by the proposed amendment to the *Graffiti Control Act 2008*.

Schedule 14 Amendment of *Industrial Relations Act 1996* No 17
Schedule 14 [1] provides that a Commissioner (who is an Australian lawyer) may exercise any function of the Commission in Court Session (that is, the Industrial Court) in respect of

small claims proceedings dealt with under section 548 of the *Fair Work Act 2009* of the Commonwealth (***small claims proceedings***). A party to the small claims proceedings may apply to the Commission in Court Session to review, confirm, vary or discharge, or take such other action as the Commission in Court Session thinks fit in respect of, an order made by the Commissioner in such proceedings. The amendment is made in connection with a proposal to amend the *Fair Work Act 2009* of the Commonwealth to confer power on the Industrial Court to hear small claims proceedings.

Schedule 14 [2] makes it clear that a Commissioner who is an Australian lawyer and who is empowered to hear a small claims application under the *Industrial Relations Act 1996* constitutes the Industrial Relations Commission for the purposes of that hearing. Recent amendments to the *Industrial Relations Act 1996* permit small claims applications to be dealt with by such a Commissioner.

Schedule 15 Amendment of *Local Court Act 2007* No 93
Jurisdictional limit of Local Court

Schedule 15 [2] increases the jurisdictional limit of the Local Court sitting in its General Division to $100,000 from the previous $60,000 limit. However, in relation to a claim for damages arising from personal injury or death, the Local Court's jurisdictional limit remains at $60,000. **Schedule 15 [7]** includes a transitional provision to ensure that changes to the jurisdictional limit of the Local Court will not affect proceedings instituted in the Local Court prior to the commencement of the amendment.

Extended leave for Magistrates

Schedule 15 [5] confers power on the Minister to make determinations with respect to the extended leave entitlements of Magistrates appointed before 20 September 2002. At present, Magistrates appointed before that date have an entitlement to accrue extended leave on the basis of section 25 (1) of the *Local Courts Act 1982*, as in force before its repeal. For those Magistrates, service in the public sector is treated as equivalent to service as a Magistrate for the purposes of accrual of extended leave.

The new provision will give the Minister power to offer Magistrates with pre-2002 extended leave entitlements the opportunity to "cash out" their existing extended leave entitlements (by electing to be paid a gratuity) and then to accrue leave under an alternative extended leave scheme. Under the alternative extended leave scheme, prior service in the public sector, or as a Magistrate, before the date of election can be disregarded.

Schedule 15 [7] includes a transitional provision to validate a determination made by the Minister in 2005 that would have been validly made if the above amendment had been in force. It also allows the Minister to make arrangements under which
Magistrates or former Magistrates who did elect to be paid a gratuity under the 2005 determination can opt to repay the gratuity, and have their pre-2002 extended leave entitlements reinstated.

Schedule 15 [1], [3] and [4] are consequential amendments.

Other amendments

Schedule 15 [6] enables savings and transitional regulations to be made as a consequence of the proposed amendments.

Schedule 16 Amendment of *Mining Act 1992* No 29

Schedule 16 [1] gives the Land and Environment Court jurisdiction to determine whether land contains a significant improvement for the purposes of the *Mining Act 1992*. If land contains a significant improvement, the grant of a mining lease over the land is not permitted, except with the written consent of the owner of the improvement. Under the current provisions, a landholder of land may lodge a claim with the Director-General of the Department of Industry and Investment that something is a significant improvement on land. That claim is conclusive, unless an applicant for a mining lease objects to the claim and, on inquiry into the objection by a person appointed by the Director-General, the thing is found not to be a significant improvement. The amendments give the Land and Environment Court the jurisdiction to make all determinations relating to the issue of the existence of any significant improvement on land. Accordingly, **Schedule 16 [4]** removes the current inquiry provisions for the determination of such disputes. Additionally, as the Land and Environment Court will now make determinations regarding any claim that there is a significant improvement on land, **Schedule 16 [3]** provides that an applicant for a mining lease must be notified by the Director-General that there is a claim regarding a significant improvement to the land. These amendments replace the current requirement for an objection to be lodged with the Director-General.

Schedule 16 [2] makes a consequential amendment. **Schedule 16 [5] and [6]** provide for transitional matters.

Schedule 17 Amendment of *Supreme Court Act 1970* No 52

Schedule 17 enables rules to be made under the *Supreme Court Act 1970* and the *Civil Procedure Act 2005* for or with respect to the referral by the Supreme Court of a question as to the principles of a law of a country other than Australia or their application to a court of a country other than Australia (a ***foreign court***). Conversely, rules may also be made in relation to the provision by the Supreme Court to a foreign court of information, advice or assistance on a question as to the principles of Australian law or their application.

Schedule 18 Amendment of *Victims Support and Rehabilitation Act 1996* No 115

Schedule 18 amends the *Victims Support and Rehabilitation Act 1996*:

> (a) to ensure that acts of violence committed against a primary victim over a period of time by the same perpetrator or perpetrators are generally treated as being part of the same act of violence for the purposes of determining applications for the award of statutory compensation under that Act, and
> (b) to confer a discretion on a compensation assessor or the Victims Compensation Tribunal to treat acts that would otherwise be regarded as being part of the same act of violence, including acts committed against a primary victim over a period of time by the same perpetrator or perpetrators, as not being part of the same act of violence, and
> (c) to extend the scheme for statutory compensation for prescribed expenses, which currently covers particular kinds of actual expenses that a primary victim incurs as a direct result of an act of violence, to cover all such actual expenses, and

(d) to ensure that, if a secondary or family victim dies, he or she ceases to be eligible for statutory compensation and any pending application for statutory compensation made on his or her behalf does not survive, and

(e) to streamline the procedures relating to approved counselling services, including by enabling payments to be made for an initial period of counselling to primary and secondary victims of up to 10 hours, rather than 2 hours, and

(f) to clarify that, if a person's application for statutory compensation has been dismissed, the person cannot apply for and be awarded the same kind of statutory compensation in respect of the same act of violence, and

(g) to ensure that a primary or secondary victim of an act of violence cannot generally claim statutory compensation in respect of any act of violence that predates an earlier application in respect of another act of violence that has been determined by the awarding of compensation, and

(h) to make certain procedural changes in relation to statutory compensation for family victims, including by limiting the circumstances in which the Director, Victims Services, Department of Justice and Attorney General may give leave for the acceptance of applications by family victims that are lodged out of time, and

(i) to provide for the withdrawal and lapsing of applications for statutory compensation, and

(j) to clarify that the awarding of costs in respect of an application for statutory compensation is discretionary and to prevent an applicant from appealing to the Victims Compensation Tribunal against a determination of a compensation assessor that relates to costs, and

(k) to facilitate the efficient processing of any matter before the Victims Compensation Tribunal by providing that it is to conduct a hearing into the matter only if satisfied that the matter cannot be properly determined without a hearing, and

(l) to require any person who is convicted of an offence (whether or not punishable by imprisonment) to pay a victims compensation levy.

Acts of violence

Schedule 18 [2] makes the amendments to section 5 of the *Victims Support and Rehabilitation Act 1996* (the ***VSR Act***) described in paragraphs (a) and (b) above.

Victims Assistance Scheme

Schedule 18 [4] and [5] amend section 14A of the VSR Act to rename the existing scheme of statutory compensation for prescribed expenses as ***Victims Assistance*** (in line with the term used in practice) and to extend that scheme to all actual expenses, rather than particular actual expenses prescribed by the regulations under the VSR Act, that are incurred by a primary victim as a direct result of an act of violence.

Schedule 18 [3], [6], [7], [9]–[12], [15], [29], [34], [38], [43] and [44] make consequential amendments.

Schedule 18 [8] re-enacts the existing section 14A (4) and also extends it to enable the regulations under the VSR Act to make provision for or with respect to the particular kinds of actual expenses for which a person may or may not be compensated by way of Victims Assistance.

Applications of deceased victims

Sections 14 (2) and 14A (8) of the VSR Act currently provide that a primary victim who dies ceases to be eligible for statutory compensation and any pending applications for statutory compensation made on his or her behalf do not survive.

Schedule 18 [13] and [14] amend sections 15 and 16, respectively, to make similar provision in relation to the death of a secondary or family victim.

Approved counselling scheme

Section 21 of the VSR Act currently provides for payments for approved counselling services to be made with the approval of a compensation assessor or, in the case of a period of counselling exceeding 20 hours, the Director, Victims Services, Department of Justice and Attorney General (the ***Director***). The section also provides for payment of approved counselling services to primary and secondary victims for an initial period of two hours.

Schedule 18 [16] and [17] amend section 21 to confer the function of authorising any payments for approved counselling services on the Director.

Schedule 18 [21] makes an amendment that is related to those amendments. In particular, it amends section 21 to make provision in relation to the review of decisions of the Director, including decisions made by delegates of the Director.

Schedule 18 [16] also amends section 21 as follows:
(a) to enable the Director to authorise payments for an initial period of up to ten hours, rather than two hours, of counselling to primary and secondary victims,
(b) to ensure that the Director may not authorise payments for more than 22 hours unless satisfied that there are exceptional reasons for doing so.

Schedule 18 [18]–[20] make consequential amendments.

Eligibility to receive statutory compensation in respect of same act of violence

Section 23 (1) of the VSR Act currently provides that a person is not eligible to receive more than one award of statutory compensation in respect of the same act of violence. **Schedule 18 [24]** amends section 23, by inserting a new subsection (1A), to clarify that a person whose application for statutory compensation has been dismissed cannot, after making a further application, be awarded statutory compensation in respect of the same act of violence and in the same capacity of primary, secondary or family victim.

Schedule 18 [24] also inserts proposed section 23 (1B) as a consequence of the new section 23 (1A).

Schedule 18 [23] makes a further consequential amendment.

Claims may not be made for acts of violence occurring before successful claim lodged

Schedule 18 [25] inserts proposed section 23A into the VSR Act. Under proposed section 23A (1), a primary or secondary victim is generally not entitled to claim statutory compensation in respect of an act of violence (the ***uncompensated act of violence***) if:

> (a) the victim has been awarded statutory compensation in respect of another act of violence, and
> (b) the uncompensated act of violence occurred before the person lodged the application in respect of the other act of violence.

The uncompensated act of violence may or may not have occurred before the other act of violence in respect of which the award has been made.

Proposed section 23A (2) provides for two exceptions to proposed section 23A (1).
The first is to deal with cases in which the victim has been prevented from making an application for statutory compensation as a secondary victim because of section 22 (2) of the VSR Act. Section 22 (2) provides that a secondary victim is not entitled to claim statutory compensation before one year has elapsed since the act of violence concerned, unless certain procedural requirements are complied with. The second exception is that the Victims Compensation Tribunal (the ***VCT***) or a compensation assessor is satisfied that the case involves exceptional circumstances.

Procedural changes applying to family victims

Section 26 of the VSR Act currently provides that any application for statutory compensation by a family victim must be duly lodged within 2 years after the death of the primary victim. The section further provides that the Director may give leave for the acceptance of an application lodged out of time.

Schedule 18 [26] amends section 26 to limit the circumstances in which the Director may give leave for the acceptance of an application of a family victim.

Section 29 (1A) of the VSR Act provides that a family victim may be awarded compensation whenever the compensation assessor who is determining the claim is satisfied that there are no other family victims who are likely to apply for compensation. Section 29 (1B) currently provides that the assessor may assume this is the case if 3 months has elapsed since the original application was made and no other family victim has come forward.

Schedule 18 [28] omits section 29 (1B).

Withdrawal and lapsing of applications

Schedule 18 [27] inserts proposed sections 26A and 26B into the VSR Act, which provide for the withdrawal and lapsing, respectively, of applications for statutory compensation.

Costs

Section 35 (1) of the VSR Act currently provides that an applicant for statutory compensation is entitled to be paid his or her costs in respect of the application in accordance with the scale of costs prescribed by the rules. This entitlement is subject to section 35 (3), which enables the VCT or a compensation assessor to award an applicant

more or less than is provided for in the scale of costs or to decline to make any award of costs.

Schedule 18 [30] amends section 35 to clarify that the awarding of costs is discretionary. The maximum amounts of costs are to be provided by the rules. This is reflected in proposed section 35 (3) and (3A) (inserted by **Schedule 18 [31]**), which otherwise re-enacts the existing section 35 (3).

Schedule 18 [32] makes a consequential amendment.

Schedule 18 [33] inserts a clarifying note to section 35 (8).

Schedule 18 [34] re-enacts section 36 (1A) of the VSR Act and also extends it to provide that an applicant for statutory compensation may not appeal against a determination of a compensation assessor in relation to costs.

Appeals and references to the Victims Compensation Tribunal

Section 38 (2) of the VSR Act currently provides that, if the VCT is satisfied that a matter that has been appealed or referred to it can be properly determined without a hearing, it is to proceed to determine the matter accordingly.

Schedule 18 [36] amends section 38 to ensure that the VCT conducts a hearing into such a matter only if it is satisfied that it cannot be properly determined without a hearing.

Schedule 18 [35] makes a consequential amendment.

Compensation levies

Part 5 of the VSR Act currently makes a person liable to pay a victims compensation levy if the person is convicted by the Supreme Court, the District Court, the Drug Court, the Local Court or the Children's Court of an offence that is punishable by imprisonment. All such levies are paid into the Victims Compensation Fund, established under the VSR Act, from which payments for statutory compensation, costs and approved counselling and other payments incurred in the administration of the VSR Act are made.

Schedule 18 [40] amends section 78 of the VSR Act to expand the relevant offences to which Part 5 applies to all offences (whether or not punishable by imprisonment), as well as offences dealt with by the Land and Environment Court and the Industrial Relations Commission in Court Session. **Schedule 18 [1]** makes a consequential amendment.

Other amendments

Schedule 18 [22], [37] and [38] make statute law revision amendments.

Schedule 18 [39] makes a consequential amendment.

Schedule 18 [41] and [42] are savings and transitional provisions.

Schedule 19 Amendment of *Victims Rights Act 1996* No 114
Schedule 19 amends the *Victims Rights Act 1996*:

(a) to amend the provisions in the Charter of Victims Rights (the ***Charter***) to express them as matters that will be, rather than should be, afforded to victims of crime, and
(b) to amend the Charter to provide that a victim may make a complaint about a breach of the Charter and will, on request, be provided with information on the procedure for making a complaint, and
(c) to extend the application of the Charter to the provision of services to victims of crime by non-government agencies or persons funded by the State to provide those services, and
(d) to provide for the publication of codes, guidelines and other practical guidance on the implementation of the Charter, and
(e) to increase the number of members of the Victims Advisory Board that represent the general community from 4 to 6 members, and
(f) to update the references to the Victims of Crime Bureau to refer to Victims Services, which is the branch of the Department of Justice and Attorney General that carries out functions of the Bureau.

Issues Considered by the Committee

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

Issue: Oppressive Official Powers

20. The Committee notes that the proposed amendment to section 78 of the *Victims Support and Rehabilitation Act 1996* provides that the victims compensation levy will be extended to apply to all offences dealt with by the various courts listed under that section, not only those punishable by imprisonment, which is what the Act presently stipulates. The fee payable is $148 if the first offence is indictable and $64 otherwise.

21. The Committee is concerned that the considerable extension of the class of individuals who will be required to pay into the victims compensation levy constitutes an oppressive official power.

22. This is because the levy will apply to individuals convicted of offences in which there are no victims, despite the objectives of the Victims Compensation Fund being to provide relief funded, in part, from those individuals who have committed crimes in which there is an obvious and direct victim. The Committee is concerned about the disconnect between the intentions of the Victims Compensation Fund and the manner in which revenue being paid into it is being sourced.

23. The levy may also constitute excessive punishment as, in providing for only two types of fees, the levy fails to give adequate weight to the nature of the offence an individual has been convicted of in determining what payment is required. The result may therefore be that an individual is penalised to an extent that is disproportionate to the offence committed. Further, the requirement to pay an additional levy may place serious financial burdens on individuals who, having been convicted of an offence, may not have the capacity to pay.

24. The Committee is concerned that the considerable extension of the class of individuals who will be required to pay into the victims compensation levy constitutes an oppressive official power.

25. This is because the levy will apply to individuals convicted of offences in which there are no victims, despite the objectives of the Victims Compensation Fund being to provide relief funded, in part, from those individuals who have committed crimes in which there is an obvious and direct victim. The Committee is concerned about the disconnect between the intentions of the Victims Compensation Fund and the manner in which revenue being paid into it is being sourced.

26. The levy may also constitute excessive punishment as, in providing for only two types of fees, the levy fails to give adequate weight to the nature of the offence an individual has been convicted of in determining what payment is required. The result may therefore be that an individual is penalised to an extent that is disproportionate to the offence committed. Further, the requirement to pay an additional levy may place serious financial burdens on individuals who, having been convicted of an offence, may not have the capacity to pay.

27. In light of these concerns, the Committee refers this matter to Parliament for its further consideration.

The Committee makes no further comment on this Bill.

5. CRIMES (SENTENCING PROCEDURE) AMENDMENT BILL 2010

Date Introduced:	23 November 2010
House Introduced:	Legislative Council
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Attorney General

Purpose and Description

1. The objects of this Bill are to amend the *Crimes (Sentencing Procedure) Act 1999* and certain other Acts to implement the recommendations of the NSW Sentencing Council in its report *Reduction in Penalties at Sentence* of August 2009.

2. The Bill also amends the *Crimes (Sentencing Procedure) Act 1999* to facilitate the aggregation of sentences.

Background

3. This Bill gives effect to recommendations made by the Sentencing Council in its report on reduction in penalties at sentence and implements a system of aggregate sentencing to simplify sentencing for multiple offenders.

4. In 2008, the Sentencing Council was asked to advise on a number of matters relating to discounts on sentence, including the current principles and practices governing reductions in sentence, how factors leading to a discount on sentence are taken into account, and the effect of charge negotiations.

5. The council's final report was released for public consultation in November 2009. Following that consultation, the Government agreed to implement all the recommendations of the council. This Bill represents the 13 legislative recommendations made by the council. These changes largely relate to the factors a court must consider before deciding to reduce penalties for offenders in circumstances the offender has made a pre-trial disclosure or has assisted law enforcement authorities in the prevention or detection of another offence.

6. The Bill also implements a form of aggregate sentencing to simplify sentencing for multiple offenders. Currently, when sentencing for multiple offences, the sentencing court is required to set out in detail the precise length, commencement and expiry dates of the non-parole periods of custody for each offence. The complexity of this exercise has become noted when some of those offences are to be served partly concurrently, which is done to ensure that period of imprisonment adequately reflects the criminality of the offender's conduct.

7. As a result, the Government has decided to remove the requirement to specify the precise detail of any overlap between the sentences by allowing it to set one overall sentence and one non-parole period, provided that the court first indicates the

appropriate sentence that would have been given for each offence had it been sentenced individually.

8. At the request of the judiciary, these provisions have been drafted so that they are optional. It is recognised that the sentencing decisions that courts face are varied and complex. Should a court wish to sentence an offender convicted of multiple offences by setting individual sentences for each offence and setting out the degree of accumulation, commencement and expiry dates for each offence, that option will remain open to it.

The Bill

9. Outline of Provisions

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

Clause 2 provides for the commencement of the proposed Act (except Schedule 1.3) on a day or days to be appointed by proclamation. Schedule 1.3 commences on assent.

Schedule 1 Amendments relating to Sentencing Council recommendations
Schedule 1 contains the amendments to the Sentencing Act and certain other Acts referred to in paragraph (a) of the Overview above.

Amendments to *Crimes (Administration of Sentences) Act 1999* No 93

Section 135 of the *Crimes (Administration of Sentences) Act 1999* requires the Parole Authority to have regard to certain matters in deciding whether to make a parole order for a sentence of more than 3 years for which a non-parole period has been imposed on an offender.

Schedule 1.1 [1] implements Sentencing Council Recommendation 7 by amending section 135 to enable the Parole Authority to have regard to the nature and extent of the assistance provided by an offender after being sentenced (including the reliability and value of any information or evidence provided by the offender) and the degree to which the offender's willingness to provide such assistance reflects the offender's progress to rehabilitation in deciding whether or not it is appropriate in the public interest to release the offender on parole.

Schedule 1.1 [2] and [3] amend Schedule 5 to the *Crimes (Administration of Sentences) Act 1999* to enable the making of savings and transitional regulations and enact savings provisions consequent on the amendments to that Act described above.

Amendments to *Crimes (Sentencing Procedure) Act 1999* No 92 Guilty pleas

Section 22 of the Sentencing Act requires a court to take a guilty plea into account in passing sentence for an offence and enables it to impose a lesser penalty than it would otherwise have imposed.

Schedule 1.2 [1] implements Sentencing Council Recommendation 1. It amends section 22 of the Sentencing Act to require a court to take into account the circumstances in which an offender indicated an intention to plead guilty in passing sentence. It will allow the court to

take into consideration factors that may have affected the timeliness of the offender's offer or willingness to plead guilty.

Schedule 1.2 [2] implements Sentencing Council Recommendation 2. It amends section 22 of the Sentencing Act to specifically require that any lesser penalty imposed by the court under the section must not be unreasonably disproportionate to the nature and circumstances of the offence.

Power to reduce penalties for pre-trial disclosure

Section 22A of the Sentencing Act gives a court the discretion to impose a lesser penalty than it would otherwise impose on an offender, having regard to the degree to which the offender made pre-trial disclosures for the purposes of the trial.

Schedule 1.2 [3] implements Sentencing Council Recommendation 8. It enables a court to impose a lesser penalty having regard to the degree to which the administration of justice has been facilitated by the defence (whether by disclosures made pre-trial or during the trial or otherwise).

Power to reduce penalties for assistance provided to law enforcement authorities

Section 23 of the Sentencing Act empowers a court to impose a lesser penalty if an offender has assisted, or undertaken to assist, law enforcement authorities in the prevention, detection or investigation of an offence and sets out various factors to be taken into account in deciding whether to impose the lesser penalty.

Schedule 1.2 [4] and [5] implement Sentencing Council Recommendations 4 and 5 by repealing sections 23 (2) (a) and 23 (2) (j), respectively, of the Sentencing Act. The provisions to be repealed specify as factors the effect of the offence on the victim or victims of the offence and their families and the likelihood of the offender re-offending on release. The Sentencing Council states that these factors serve no useful purpose in the context of section 23 (para 8.44–47 of the Report).

Schedule 1.2 [6] implements Sentencing Council Recommendation 6. It requires a court that imposes a lesser penalty than it would otherwise impose on an offender because the offender has assisted or undertaken to assist law enforcement authorities, to indicate to the offender, and make a record of the fact, that the lesser penalty is being imposed for that reason, to state the penalty that it would otherwise have imposed and, where the lesser penalty is being imposed for both reasons, to state the amount by which the penalty has been reduced for each reason.

Fact that offender is prohibited person to be disregarded in sentencing

Section 24A of the Sentencing Act provides that a court must not take into account as a mitigating factor in sentencing an offender, certain matters relating to mandatory supervision of sex offenders.

Schedule 1.2 [7] implements Sentencing Council Recommendation 9 by including within section 24A the fact that an offender is prohibited from engaging in child-related employment under the *Commission for Children and Young People Act 1998* because of

being convicted of a serious sex offence, the murder of a child or a child-related personal violence offence.

Confiscation of assets and forfeiture of proceeds of crime to be disregarded in sentencing

Schedule 1.2 [8] implements Sentencing Council Recommendation 10. It inserts proposed section 24B into the Sentencing Act to prevent a court from taking into account, as a mitigating factor in sentencing, the consequences for the offender of any order of a court imposed because of the offence under confiscation or forfeiture legislation (for example, forfeiture orders, pecuniary penalty orders and drug proceeds orders under the *Confiscation of Proceeds of Crime Act 1989*).

Procedural error not to invalidate sentence

Schedule 1.2 [9] implements Sentencing Council Recommendation 14. It amends section 32 of the Sentencing Act to make it clear that procedural errors made in relation to the filing of lists of additional charges to be taken into account by the court in dealing with a principal offence do not invalidate any sentence imposed by the court for the offence.

Consultation with victim during charge negotiation

Section 22 of the Sentencing Act allows a court to take into account a guilty plea in passing sentence for an offence. Section 32 of the Sentencing Act allows a prosecutor to file a list of additional charges for offences that the offender wants the court to take into account when dealing with the principal offence after an offender is found guilty of the principal offence.

Schedule 1.2 [10] implements Sentencing Council Recommendation 11. It inserts proposed section 35A into the Sentencing Act to require consultation with the victim and any police officer in charge of investigating an offence in relation to agreed statements of facts and lists of additional charges compiled as a result of charge negotiations.

Sentences for offences involving escape by inmates

Section 57 of the Sentencing Act provides that sentences for offences involving escape from lawful custody committed by inmates of correctional centres are to be served consecutively with sentences of imprisonment imposed on the offender for other offences.

Schedule 1.2 [11] and [12] implement Sentencing Council Recommendation 13.
They amend section 57 to require the court to set the sentences for the non-escape offences first so that escape sentences will be served cumulatively on them.

Savings and transitional provisions

Schedule 1.2 [13] and [14] amend Schedule 2 to the Sentencing Act to enable the making of savings and transitional regulations and enact savings provisions consequent on the amendments to that Act described above.

Amendments to *Crimes (Serious Sex Offenders) Act 2006* No 7

Schedule 1.3 implements Sentencing Council Recommendation 12. It amends sections 6 and 14 of the *Crimes (Serious Sex Offenders) Act 2006* to make it clear that applications for extended supervision orders and continuing detention orders may be made in respect of sex offenders who are serving sentences of imprisonment for one or more serious sex offences or offences of a sexual nature or other offences being served concurrently or consecutively (or partly concurrently and partly consecutively) with such offences, irrespective of which was imposed first.

Schedule 2 Amendments to *Crimes (Sentencing Procedure) Act 1999* No 92 relating to aggregate sentencing

Schedule 2 contains the amendments to the Sentencing Act referred to in paragraph (b) of the Overview above.

The amendments enable a court, in sentencing an offender for more than one offence, to impose an aggregate sentence of imprisonment in respect of all or any 2 or more of those offences instead of imposing a separate sentence of imprisonment for each (**proposed section 53A—Schedule 2 [14]**).

The term of an aggregate sentence of imprisonment must not be more than the sum of the maximum periods of imprisonment that could have been imposed if separate sentences of imprisonment had been imposed in respect of each offence to which the sentence relates and must not be less than the shortest term of imprisonment (if any) that must be imposed for any separate offence or, if the sentence relates to more than one such offence, must not be less than the shortest term of imprisonment that must be imposed for any of the offences (**proposed section 49 (2)—Schedule 2 [13]**).

A court that imposes an aggregate sentence of imprisonment in respect of 2 or more offences on an offender may set one non-parole period for all the offences to which the sentence relates after setting the term of the sentence. The term of the sentence that will remain to be served after the non-parole period set for the aggregate sentence of imprisonment is served must not exceed one-third of the non-parole period, unless the court decides that there are special circumstances for it being more (in which case the court must make a record of its reasons for that decision)
(**proposed section 44 (2A) and (2B)—Schedule 2 [4]**).

Various other associated or consequential amendments are made to the Sentencing Act by other provisions of Schedule 2 to provide for aggregate sentencing.

Issues Considered by the Committee

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

Issue: Commencement by Proclamation

10. The Committee notes that all Schedules of the Bill except for Schedule 1.3 is to commence on a day or days to be appointed by proclamation. This may delegate to the Government the power to commence the Act on whatever day it chooses or not at all.

11. In discussions with a representative from the Attorney General's office, the Committee was advised that 'proclamation is on the basis that the Bill makes a

number of changes to the complex area of sentencing procedure, including some significant ones with respect to aggregate sentencing, and we thought it appropriate to allow a period to disseminate these changes amongst the judiciary prior to commencement'.

12. Given that the amendments foreshadowed by this Bill require changes to the complex area of sentencing procedure, the Committee recognises that an appropriate time period is required to inform affected persons about these changes before commencement. As the Committee has not identified any issues with this Bill, it does not consider commencement by proclamation to be an inappropriate delegation of power in this instance.

The Committee makes no further comment on this Bill.

6. CRIMES (SERIOUS SEX OFFENDERS) AMENDMENT BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Council
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Justice and Attorney General

Purpose and Description

1. The object of the Bill is to amend the Crimes (Serious Sex Offenders) Act 2006 as follows:

(a) to require the Supreme Court to be satisfied that an offender poses an unacceptable risk of committing a serious sex offence before it can make an order under the Act,

(b) to extend the definition of serious sex offence for the purposes of the Act,

(c) to expand the matters to which the Supreme Court is to have regard when determining whether to make an order,

(d) to make provision with respect to the term of orders,

(e) to permit a corrective services officer to have access to an offender's computer equipment when the offender is under a supervision order,

(f) to permit a continuing detention order to be sought in respect of an offender who is the subject of a supervision order if circumstances change and the supervision order is no longer adequate,

(g) to provide for supervision orders to be suspended or expire on the making of a detention order,

(h) to provide for victims to make statements about proposed orders,

(i) to provide for proceedings for offences under the Act,

(j) to enable the Supreme Court to make an extended supervision order at the same time as a continuing detention order.

This Bill also amends the *Crimes (Administration of Sentences) Act 1999* with respect to the effect that orders under the *Crimes (Serious Sex Offenders) Act 2006* have on parole and parole orders.

Background

2. According to the Attorney's Second Reading Speech, the bill amends the Crimes (Serious Sex Offenders) Act 2006 in response to recommendations made by the Sentencing Council and the recently completed statutory review of the Act. In April 2006 the Crimes (Serious Sex Offenders) Act 2006 came into force in New South Wales. This Act provided a new mechanism for the management of serious sex offenders who have completed their sentence, but who remain a serious risk to the community by providing for their extended supervision or continuing detention to ensure the safety and protection of the community, and to encourage serious sex offenders to undertake rehabilitation. Briefly, continuing detention orders may be sought whilst an offender is custody. Extended supervision orders may be sought when an offender is serving a sentence, even if the offender has recently been released to parole, but before the Court makes either order it must be established that there is a high degree of probability that the offender is likely to commit a further serious sex offence.

3. In 2009 the New South Wales Sentencing Council conducted a detailed examination of the Crimes (Serious Sex Offenders) Act 2006. This was due to a request from the then Attorney General in 2007 to conduct a review of the current penalties attached to sexual offences. As part of this review, the New South Wales Sentencing Council considered the use of alternative sentence regimes incorporating community protection, such as the schemes used in Canada, the United Kingdom and New Zealand; possible responses to address repeat offending committed by serious sexual offenders; and, in particular, whether second and subsequent serious sex offences should attract higher standard minimum and maximum penalties in order to help protect the community.

4. The New South Wales Sentencing Council, in its report released in July 2009 titled, "Penalties Relating to Sexual Assault Offences in New South Wales (Volume 3)", found that the scheme for the making of continuing detention orders and extended supervision orders as currently exist in New South Wales in relation to serious sex offenders provided an appropriate structure, in principle, for responding to the need to protect the community from such offenders. The New South Wales Sentencing Council noted that the Crimes (Serious Sex Offenders) Act 2006 provided a preferable model of responding to serious sex offenders than indefinite or disproportionate sentencing and that it occupied a proper place within the range of available strategies for protecting the community from serious sex offenders which it surveyed.

5. The New South Wales Sentencing Council made 24 recommendations in relation to the treatment and management of serious sex offenders. The bill implements the majority of the legislative recommendations made by the New South Wales Sentencing Council as well as the recommendations arising from the statutory review. As at 1 September 2010, 27 offenders were the subject of extended supervision orders and two offenders were the subject of continuing detention orders under the Act.

The Bill

6. Outline of provisions

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

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

Schedule 1 Amendment of *Crimes (Serious Sex Offenders) Act 2006* No 7
Schedule 1 [1] inserts definitions of ***Corrective Services NSW*** and ***sentencing court*** for the purposes of the *Crimes (Serious Sex Offenders) Act 2006* (***the Principal Act***).

Schedule 1 [2] updates the definition of ***corrective services officer***.

Schedule 1 [3] extends the definition of ***serious sex offence*** to include an offence that was not a serious sex offence at the time it was committed but which was committed in such circumstances that it would be such an offence were it committed in those circumstances at the time an order is sought under the Principal Act against the offender.

Schedule 1 [5] updates the test to be applied by the Supreme Court when determining to make an order under the Principal Act. The Court must be satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious sex offence before it can make an order (currently the Court must be satisfied to a high degree of probability that the offender is likely to commit a further serious sex offence). **Schedule 1 [6] and [16]** clarify that the Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence.

Schedule 1 [7] and [8] provide 2 additional matters that the Supreme Court must have regard to when determining an application for an order under the Principal Act.
These are any report prepared by Corrective Services NSW as to the extent to which the offender can reasonably and practicably be managed in the community and the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender.

Schedule 1 [9] and [10] provide for an extended supervision order to be extended to account for any time that the order is suspended because the offender is in lawful custody.

Schedule 1 [11] provides that a condition of an extended supervision order or an interim supervision order can require an offender to permit a corrective services officer to have access to any computer or related equipment at the offender's residential address or in the possession of the offender.

Schedule 1 [12] provides that the Supreme Court's power to vary an order under the Principal Act does not permit it to extend the period of an order so that period is greater than would otherwise be permitted under the Principal Act. **Schedule 1 [23]** makes a consequential amendment.

Schedule 1 [13] provides that the State of New South Wales can apply for a continuing detention order against a person who is the subject of an interim or extended supervision order if altered circumstances mean the person cannot be adequately supervised under the supervision order. **Schedule 1 [19]** requires the Supreme Court to be satisfied of this before making a continuing detention order.

Schedule 1 [14] requires the application for the continuing detention order to specifically address these matters. **Schedule 1 [13]** also contains an existing power to make such an application where a person has been found guilty of breaching a supervision order. **Schedule 1 [15], [18] and [21]** make consequential amendments.

Schedule 1 [17] requires the Supreme Court to have regard to the level of an offender's compliance with any interim supervision order when determining an application for a continuing detention order.

Schedule 1 [20] omits a provision that deals with the interaction of parole orders and orders under the Principal Act. This matter is proposed to be included in the *Crimes Administration of Sentences) Act 1999* by Schedule 2 to the proposed Act.

Schedule 1 [22] provides that, on the making of a continuing detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person expires and ceases to have effect and, on the making of an interim detention order in respect of a person, any interim supervision order or extended supervision order in respect of the person is suspended and ceases to have effect until such time as the interim detention order expires.

Schedule 1 [24] provides for registered victims to be notified of applications under the Principal Act and to be given an opportunity to make a statement setting out the person's views about the proposed order and any conditions to which the order may be subject. The statement may be placed before the Supreme Court for consideration. The Supreme Court and the State of New South Wales must not disclose a statement to the offender unless the person who made the statement consents to the disclosure.

Schedule 1 [4] inserts a note clarifying that a statement must not be disclosed without consent as part of the pre-trial procedures.

Schedule 1 [25] provides for proceedings under the Principal Act to be dealt with summarily before the Local Court (and in the case of an offence under section 12 of enables the Supreme Court to make an extended supervision order in respect of a person at the same time that it makes a continuing detention order in respect of the person. The extended supervision order commences at the end of the continuing detention order.

Schedule 1 [26] and [29] repeal redundant provisions and a redundant word.

Schedule 1 [28] makes a consequential amendment.

Schedule 1 [27] provides for a review of the Principal Act to be undertaken by the Attorney General 3 years after the commencement of the proposed Act.

Schedule 1 [30] permits regulations under the Principal Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [31] inserts transitional provisions that apply the amendments made by the proposed Act to existing offences and orders.

Schedule 2 Amendment of *Crimes (Administration of Sentences) Act 1999* No 93

Schedule 2 [1] provides that an offender is not eligible for release on parole if the offender is the subject of an interim detention order.

Schedule 2 [2] provides that an offender's obligations under a parole order are suspended while the offender is subject to an interim supervision order or an interim detention order.

Schedule 2 [3] provides that an offender's obligations under an interim supervision order are taken to be obligations under a parole order which means the offender's parole order may be revoked if the offender fails to comply with his or her obligations under the interim supervision order.

Schedule 2 [4] provides that any parole order to which an offender is subject is revoked if a continuing detention order is made against the offender.

Schedule 2 [5] permits regulations under the *Crimes (Administration of Sentences) Act 1999* to contain provisions of a savings or transitional nature 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 [3]

7. Under this provision the definition of "serious sex offence" is extended to include an offence that was not a serious offence at the time it was committed but which was committed in such circumstances that it would be such an offence were it committed in those circumstances at the time an order is sought under the Principal Act against the offender.

8. According to the Attorney General in his Second Reading Speech, prior to 1989 the *Crimes Act 1900* (NSW) did not contain aggravated versions of offences. A submission to the statutory review of the Act noted that, because of this, there were a number of sex offenders who may fall outside the scope of the Act in that they were committed before 1989.

9. While the Committee is aware that individual rights must be weighed against public safety, it is always concerned about retrospective application of the law, particularly in criminal matters. Further, there is now no limitation on how long ago these offences may have occurred. The retrospective application may well result in offenders now being subject to orders who did not previously qualify to be under them.

10. While the Committee is aware that individual rights must be weighed against public safety, it is always concerned about retrospective application of the law, particularly in criminal matters. By changing the definition of "serious sex offence" to include sex offences which were perpetrated before the 1989 changes to the *Crimes Act 1900* (NSW) offenders may now be subject to supervision or detention orders who did not previously qualify to be under them.

Issue: Schedule 1[5] – Lowering of the threshold to qualify for orders

11. Schedule 1[5] amends sections 9 and 17 of the *Crimes (Serious Sex Offenders) Act 2006* (NSW), which set out the test that the Supreme Court must apply when it is considering an application for an order under the Act. Currently sections 9 (2) and 17 (2) provide that the Supreme Court may impose an extended supervision order or continuing detention order if it is satisfied to a high degree of probability that the offender is likely to commit a further serious sex offence if he or she is not kept under supervision.

12. There has been considerable case law on the meaning of the word "likely" in both NSW and Victoria, which used the same test in relation to a similar piece of legislation. The New South Wales courts currently apply the interpretation *Tillman v Attorney General (New South Wales)* [2007] which found that the word "likely" should be construed as meaning probable, in the sense of a high degree of probability, but not necessarily involving a degree of probability that is more than 50 percent.

13. According to the Attorney General's Second Reading Speech, the changes proposed mean that the "new test will not only allow the courts to consider the risk of sexual reoffending of the particular offender but also the nature and gravity of the offences that the offender may commit in the future".

14. Schedule 1[6] and 1[16] clarify that the Supreme Court is not required to determine that the risk of a person committing a serious sexual offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious offence.

15. The Committee is concerned that the threshold of the test by which a court can impose or extend an order has been lowered. Further, the court has been given a test which is partially speculative in nature and may be overly susceptible to a variance in its application.

16. The Committee is concerned that the threshold of the test by which a court can impose or extend a supervision or detention order has been lowered. Further, the court has been given a test which is partially speculative in nature and may be overly susceptible to a variance in application.

Issue: Schedule 1 [8] and 1[24] – Right to a fair hearing

17. Schedule 1[8] provides that the Supreme Court must have regard to the views of the sentencing court at the time the sentence of imprisonment was imposed upon the offender.

18. The Attorney General, in his Second Reading Speech, said that the amendment "was recommended by the Sentencing Council, which noted that the observations of the sentencing judge were often based on the material at the time of sentence, which may include a presentence report and reports from psychiatrists or psychologists as to the factors behind the offending and the offender's rehabilitation prospects".

19. The Committee is concerned that many offenders have served lengthy sentences and the views expressed at the time of the original trial can be quite dated. However, the Committee does note that Schedule 1 [7] introduces a new requirement that the

Supreme Court must consider any report prepared by Corrective Services New South Wales as "the extent to which the offender can reasonably and practically be managed in the community" which should provide a more current assessment regarding the offender's rehabilitation.

20. Schedule 1[4] allows for victims of the offender to make a statement in relation to an application under the Act. According to the Attorney General this reform "was recommended by the NSW Sentencing Council, which considered that there would be merit in allowing victims' views to be considered by the court, particularly in circumstances where they might be aware of events not known to the authorities of relevance to any ongoing danger to themselves or other members of the community.

21. The Committee appreciates that the Act only applies to serious sex offenders. It also appreciates the genuine apprehension that victims of an offender may feel in relation to an offender being released even under the stringent conditions of a supervised order. However, it is concerned at the potential prejudicial nature of asking the court to take into account information which may be quite dated, and, in the case of victims, perhaps more upon a genuine apprehension than reality. Further, victims are not required to put their views forward, which may result in a variance in relation to orders depending upon the willingness of the victim to place their views before the court.

22. The Committee is concerned that the affect of requiring the court to consider the views of the original sentencing judge and the views of victims of the offender by virtue of Schedule 1[8] and Schedule 1[24] when making or extending orders may compromise an offender's right to a fair hearing.

The Committee makes no further comment on this Bill.

7. EDUCATION AMENDMENT (ETHICS) BILL 2010

Date Introduced:	26 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Verity Firth MP
Portfolio:	Education

Purpose and Description

1. The object of this Bill is to amend the *Education Act 1990* to allow special education in ethics as a secular alternative to special religious education at government schools.

Background

2. The right to a religious education is a longstanding part of New South Wales public education, reaffirmed by section 32 the *Education Act 1990* which provides that 'in every Government school time is to be allowed for the religious education of children of any religious persuasion.

3. Section 33 of the Act also provides that 'no child at a Government school is to be required to receive any general religious education or special religious education if the parent of the child objects to the child's receiving that education'.

4. The introduction of an ethics course to run alongside special religious education – or scripture – is designed to provide for an educational alternative for public school students who do not wish to participate in scripture class.

The Bill

5. Outline of provisions

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

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

Clause 3 amends the *Education Act 1990* by inserting proposed section 33A. The proposed section declares that special education in ethics is allowed as a secular alternative to special religious education at government schools.

If the parent of a child objects to the child receiving special religious education, the child is entitled to receive special education in ethics, but only if:

> (a) it is reasonably practicable for special education in ethics to be made available to the child at the government school, and

(b) the parent requests that the child receive special education in ethics. A government school cannot be directed (by the Minister or otherwise) not to make special education in ethics available at the school.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

8. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (BOARDING HOUSES) BILL 2010*

Date Introduced:	26 November 2010
House Introduced:	Legislative Assembly
Member with Carriage:	Victor Dominello MP
Portfolio:	Private Member

Purpose and Description

1. The object of this Bill is to provide for the regulation of boarding houses and other places of shared accommodation.

2. The Bill seeks to achieve this by amending the *Environmental Planning and Assessment Act 1979* to enable powers of entry and inspection to be exercised in relation to premises that are being unlawfully used for the purposes of a boarding house or other place of shared accommodation.

3. The Bill will facilitate the proof of the use of premises as a boarding house or other place of shared accommodation in proceedings under the *Environmental Planning and Assessment Act 1979.*

4. The Bill will enable a court to sentence a person to a maximum of six months imprisonment for an offence involving unlawful development for the purposes of a boarding house or other place of shared accommodation if the offence cause or contributed to appreciable danger or harm to any person.

5. The Bill will also require proprietors of boarding houses to register with the Department of Services, Technology and Administration various particulars about the operation of boarding houses.

6. The Bill will also amend the *Environmental Planning and Assessment Regulation 2000* to provide for an increase in the penalty notice amount for an alleged offence involving unlawful development for the purposes of a boarding house or other place of shared accommodation.

7. Lastly, the Bill will amend the *Ombudsman Act 1974* to require the Ombudsman to report on the Ombudsman's work and activities in relation to any complaints made about the conduct of a council, or an authorise officer of a council, in the exercise of proposed powers under this Bill.

Background

8. This Bill has been introduced following concerns about the increase in the number of illegal boarding houses in the electorate of Ryde.

9. The concern is that investors purchase large residential premises and convert them into boarding houses where they provide habitation that is unsuitable and charge rents that are unreasonable. This Bill is being introduced following concerns about the possible exploitation of individuals – mostly overseas students – who take up residence in such boarding houses, as well as for their health and safety and that of the community.

10. The Bill has been drafted following the signing of a petition by more than 1,000 people in the electorate of Ryde, together with concerns voiced by the Tenancy Union of NSW and the Redfern Legal Centre.

The Bill

11. 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 3 months from the date of assent to the proposed Act unless sooner commenced by proclamation.

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

Division 1A of Part 6 of the Principal Act enables a council to authorise a person to enter and inspect premises for the purpose of enabling a council to exercise its functions. Section 118J of the Principal Act currently provides that these powers of entry and inspection are not exercisable by such a person (an ***authorised officer***) in relation to residential premises except with the permission of the occupier concerned, under the authority of a search warrant or in other limited circumstances.

Schedule 1 [2] and [3] extend the circumstances in which an authorised officer may enter and inspect residential premises to include circumstances in which the authorised officer has reasonable grounds to believe that the premises concerned are being unlawfully used for the purposes of a boarding house or other place of shared accommodation.

Schedule 1 [1] makes a law revision amendment to section 118B that makes it clear that a council's authorised officer who enters premises under Division 1A of Part 6 has the power to take films, audio, video or other recordings in connection with the inspection, in line with the powers of authorised officers of the Department of Planning under Division 2C of that Part.

Facilitating proof in proceedings

Section 124AA of the Principal Act currently provides that the Land and Environment Court may rely on circumstantial evidence to establish that particular premises are used as a backpackers' hostel.

Schedule 1 [4] re-enacts and extends section 124AA of the Principal Act to cover not only backpackers' hostels, but also boarding houses and other places of shared accommodation.

Schedule 1 [6] inserts proposed section 156 into the Principal Act to make it clear that in any legal proceedings under the Principal Act, evidence of the alteration of premises in a way that is consistent with the use of those premises as a boarding house or other place of shared accommodation is evidence that the premises are being, or are proposed to be, used for those purposes.

Penalties

Section 126 of the Principal Act currently provides for a maximum penalty of 10,000 penalty units ($1.1 million) for offences under that Act and a further penalty of 1,000 penalty units ($110,000) for each day that the offence continues.

Schedule 1 [5] inserts proposed section 126A into the Principal Act. The proposed section makes a person who is guilty of an offence involving unlawful development for the purposes of a boarding house or other place of shared accommodation liable to the same maximum penalty as provided for in section 126. In addition, it provides that the person is liable to a maximum penalty of 6 months imprisonment if the offence concerned caused or contributed to appreciable danger or harm to any persons.

Notification and keeping of Register

Schedule 1 [6] inserts proposed section 156A into the Principal Act to give effect to the amendment referred to in paragraph (a) (iv) of the Overview above. The boarding houses concerned are those in which sleeping accommodation is provided for 5 or more lodgers, or 3 or more lodgers in any one bedroom.

Savings and transitional provisions

Schedule 1 [7] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of *Environmental Planning and Assessment Regulation 2000*
Schedule 2 makes the amendment to the *Environmental Planning and Assessment Regulation 2000* that is referred to in paragraph (b) of the Overview above.

Schedule 3 Amendment of *Ombudsman Act 1974* No 68
Schedule 3 makes the amendment to the *Ombudsman Act 1974* that is referred to in paragraph (c) of the Overview above.

Issues Considered by the Committee

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

Issue: Privacy

12. Proposed section 156A(11) of the Bill provides that the provisions of the Bill in relation to the notification and keeping of a Register of boarding houses has effect despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998.*

13. The Committee notes that the effect of this provision would be to oust the authority of the *Privacy and Personal Information and Protection Act 1998* and therefore may subsequently interfere with the privacy rights of individuals. The Committee would only generally accept any encroachment on privacy rights in circumstances where there is a compelling interest to do so. It is unclear if the circumstances set out in the Bill meet that condition.

14. The Committee notes that the effect of this provision would be to oust the authority of the *Privacy and Personal Information and Protection Act 1998* and therefore may subsequently interfere with the privacy rights of individuals. The Committee would only generally accept any encroachment on privacy rights in circumstances where there is a compelling interest to do so. It is unclear if the circumstances set out in the Bill meet that condition. The Committee refers this matter to Parliament for its further consideration.

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

Issue: Search of Property

15. Proposed section 118J of the Bill provides that a council may authorise an inspector to enter premises if there are reasonable grounds to believe that the premises concerned are being used for the purposes of a boarding house, or other place of shared accommodation, of a class prescribed by the regulations.

16. The Committee is concerned about the extent of the power inherent in this provision as it enables a council inspector to enter a private residence without obtaining a search warrant. The Committee is not aware of any compelling public interest or urgency in dispensing with the longstanding necessity of first obtaining a search warrant.

17. This provision may also adversely affect the rights of property holders by requiring them to justify the use of their property and who they permit to reside there.

18. The Committee is concerned about the extent of the power inherent in this provision as it removes the requirement that a council inspector first obtain a search warrant before entering a private residence. The Committee is not aware of any compelling public interest or urgency in dispensing with the longstanding necessity of first obtaining a search warrant.

19. This provision may also adversely affect the rights of property holders by requiring them to justify the use of their property and who they permit to reside there.

20. In light of these concerns, the Committee refers this matter to Parliament for its further consideration.

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

Issue: Reversal of the Onus of Proof

21. The Committee notes that proposed section 156 of the Bill provides that in legal proceedings, evidence of the alteration of premises in a way that is consistent with

the use of those premises for the purposes of a boarding house or other place of shared accommodation is, until the contrary is proved, evidence that the premises are being, or are proposed to be, used those purposes.

22. The Committee notes that this provision effectively reverses the onus of proof by requiring the defendant to actively negate the elements of the offence. This is inconsistent with a presumption of innocence. The Committee is of the view that the burden of proving the elements of the offence should almost always rest with the prosecution.

23. This provision may also adversely affect the rights of property holders by requiring them to justify the use of their property and who they permit to reside there.

24. The Committee notes that this provision effectively reverses the onus of proof by requiring the defendant to actively negate the elements of the offence. This is inconsistent with a presumption of innocence. The Committee is of the view that the burden of proving the elements of the offence should almost always rest with the prosecution.

25. This provision may also adversely affect the rights of property holders by requiring them to justifying the use of their property and who they permit to reside there.

26. In light of these concerns, the Committee refers the matter to Parliament for its further consideration.

Proposed Insufficiently defined administrative powers [s 8A(1)(b)(ii) *LRA*]

Issue: Ill and Widely Defined Powers

27. The Committee notes that various provisions of this Bill refer to 'boarding houses or other place of shared accommodation'. However, the Bill does not provide for comprehensive definition, despite such definitions being provided for in various State Environment Planning Policies.

28. Given the various powers foreshadowed by this Bill in relation to boarding houses, including the power for council inspectors to search boarding houses, and the reversing of the onus of proof on proprietors to prove that they are not operating a boarding house, the lack of a comprehensive definition could be considered insufficient and confusing.

29. Given the various powers foreshadowed by this Bill in relation to boarding houses, including the power for council inspectors to search boarding houses, and the reversing of the onus of proof on proprietors to prove that they are not operating a boarding house, the lack of a comprehensive definition could be considered insufficient and confusing.

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

Issue: Commencement by Proclamation

30. Proposed section 2 of the Bill provides that the Act commences 3 months from the date of assent, unless commenced sooner by proclamation.

31. The Committee is of the view that Bills should commence on assent or on a specified date and that, should a Bill commence on proclamation, there should be good reasons for doing so. The Committee is not aware of the reasons for providing a timeframe in which this Bill can commence operation on any day within that timeframe.

32. The Committee is of the view that Bills should commence on assent or on a specified date and that, should a Bill commence on proclamation, there should be good reasons doing so. The Committee is not aware of the reasons for providing a timeframe in which this Bill can commence operation on any day within that timeframe.

The Committee makes no further comment on this Bill.

9. FAIR TRADING AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Virginia Judge MP
Portfolio:	Fair Trading

Purpose and Description

1. The object of this Bill is to apply, as a law of New South Wales forming part of the *Fair Trading Act 1987* (the ***Principal Act***), the Australian Consumer Law comprising Schedule 2 to the *Trade Practices Act 1974* of the Commonwealth. The Australian Consumer Law on its commencement will contain uniform national consumer protection laws, many provisions of which are based on current provisions in the *Trade Practices Act 1974* of the Commonwealth and are reflected in the existing *Fair Trading Act 1987*.

2. The Australian Consumer Law includes provisions dealing with misleading and deceptive conduct, unconscionable conduct, unfair contract terms, unfair practices, consumer guarantees and unsolicited consumer agreements. It sets out new enforcement and redress powers and establishes a new national product safety regime. An explanation of the provisions of the Australian Consumer Law is contained in the Explanatory Memorandum for the *Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010* of the Commonwealth (which inserted new Schedule 2 into the *Trade Practices Act 1974* of the Commonwealth) at www.comlaw.gov.au.

3. The Bill also contains consequential amendments to the existing provisions of the *Fair Trading Act 1987* and other New South Wales legislation and extends certain provisions in the Australian Consumer Law to certain matters that are regulated by the *Fair Trading Act 1987* but are not included in the national scheme.

Background

4. According to the Agreement in Principle Speech, the Productivity Commission held an inquiry into Australia's consumer policy framework during 2007. By the time the commission was finalising its report, the Council of Australian Governments had agreed to an ambitious regulatory reform agenda, including an enhanced national consumer policy framework. The Ministerial Council on Consumer Affairs had the task of developing a new national approach to consumer policy, based on the recommendations in the Productivity Commission's report of May 2008. In their communiqué of 23 May 2008, Ministers noted that the reforms would serve to overcome inefficiencies resulting from the division of responsibilities between Australian governments so as to deliver better outcomes for consumers and lower costs for businesses, and to more speedily tackle practices that harm consumers.

5. In August 2008, the Ministers agreed to a series of proposals for far-reaching consumer policy reform. In summary, the reforms involved: a single national consumer law based on the consumer-protection provisions of the Trade Practices Act, with amendments reflecting best practice in State and Territory fair trading legislation; the Commonwealth as lead legislator, with States and Territories applying the national law as part of their own laws; and enforcement of the national generic consumer law shared between the Australian Competition and Consumer Commission and the State and Territory offices of Fair Trading. In October 2008, the Council of Australian Governments agreed to this new consumer policy framework.

6. The Australian Consumer Law replaces approximately 20 Commonwealth, State and Territory statutes, including parts of the New South Wales Fair Trading Act. For the first time, all Australian businesses and consumers will have the same rights and obligations concerning the supply of goods and services. The national consumer policy objective, agreed by the Ministerial Council on Consumer Affairs in May 2008, is as follows:

> To improve consumer wellbeing through consumer empowerment and protection, fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers trade fairly.

7. On 2 July 2009 the Council of Australian Governments signed the Intergovernmental Agreement for the Australian Consumer Law. The intergovernmental agreement governs the development, administration and enforcement of the Australian Consumer Law. Importantly, it also governs future amendment of the law, so that uniformity can be maintained.

8. The Australian Consumer Law scheme is an applied law scheme. Legislation is enacted by the Commonwealth and applied, as in force from time to time, by other participating jurisdictions as a law of those jurisdictions. The relevant Commonwealth legislation is the Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010. Under the amendments the Trade Practices Act becomes the Consumer and Competition Act 2010 and the Australian Consumer Law is schedule 2 to the Competition and Consumer Act. All States and Territories are passing application laws—the only exception to this is Western Australia. It has been Western Australian Government practice to adopt a different mechanism so that the Western Australian Parliament has the opportunity to consider any changes to national legislative schemes before they are made. This is the case with the Australian Consumer Law. Unlike some other applied law schemes, the States and Territories have, and will maintain, an active role in the development of consumer policy and the enforcement of consumer laws.

9. As far as changes to the law are concerned, the intergovernmental agreement provides that any jurisdiction may submit a proposal to the Commonwealth, supported by best practice regulation documentation similar to that required in New South Wales. Any Commonwealth proposal must be similarly justified. There is a three-month consultation period, after which a vote is held. Although consensus is the preferred outcome, in the end no amendments can be introduced to the Commonwealth Parliament unless they are supported by the Commonwealth plus four other jurisdictions, including at least three States.

The Bill

10. Outline of provisions

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

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

Schedule 1 Amendment of *Fair Trading Act 1987* No 68
Application of Australian Consumer Law as a law of New South Wales

Schedule 1 [24] inserts new Part 3 into the Principal Act which contains the following provisions:

Part 3 The Australian Consumer Law
Division 1 Definitions

Proposed section 26 defines certain terms used in the proposed Part.

Division 2 Application of Australian Consumer Law
Proposed section 27 states that the Australian Consumer Law text consists of Schedule 2 to the *Competition and Consumer Act 2010* of the Commonwealth (that is, the *Trade Practices Act 1974* which from 1 January 2011 will be renamed by the Commonwealth) and the regulations made under section 139G of that Act.

Proposed section 28 applies the Australian Consumer Law text, as in force from time to time, as a law of New South Wales that may be cited as the *Australian Consumer Law (NSW)* (***the ACL***) and that forms part of the *Fair Trading Act 1987*.

Proposed section 29 provides that modifications to the Australian Consumer Law text by the Commonwealth may be excluded by a New South Wales proclamation from having operation in New South Wales.

Proposed section 30 defines certain terms for the purposes of the ACL and specifies the jurisdiction of the courts and the Consumer, Trader and Tenancy Tribunal in relation to the provisions of the ACL.

Proposed section 31 applies the *Acts Interpretation Act 1901* of the Commonwealth to the ACL.

Proposed section 32 provides that the ACL applies to persons carrying on business in New South Wales, bodies corporate incorporated or registered in New South Wales, persons ordinarily resident in New South Wales and persons otherwise connected with New South Wales.

Division 3 References to Australian Consumer Law
Proposed sections 33 and 34 provide a system for referring to the Australian Consumer Law of the participating jurisdictions within Australia.

Division 4 Application of Australian Consumer Law to Crown

Proposed section 35 provides that the proposed Division does not apply to the Commonwealth.

Proposed section 36 provides that the provisions of the Principal Act that apply the ACL as a law of New South Wales, and the ACL, bind the Crown in right of New South Wales and of each other Australian jurisdiction, but only to the extent that the Crown carries on a business.

Proposed section 37 provides that the Australian Consumer Law applied by other jurisdictions binds the Crown in right of New South Wales to the extent that it carries on a business.

Proposed section 38 specifies activities that do not amount to the Crown carrying on a business, for example, imposing and collecting taxes and fees or granting authorisations.

Proposed section 39 provides that the Crown in any capacity is not liable to a pecuniary penalty or to be prosecuted for an offence under the provisions of the Principal Act that apply the ACL as a law of New South Wales or the ACL.

Division 5 Miscellaneous
Proposed section 40 confers functions on Commonwealth officers and authorities under the ACL.

Proposed section 41 provides that a person is not liable to be punished for an offence against the Australian Consumer Law of another jurisdiction and the Australian Consumer Law of New South Wales, or to pay pecuniary penalties, in respect of the same conduct.

Provisions relating to investigations

Schedule 1 [15] amends section 19 of the Principal Act to expand the powers that an investigator has when entering premises to include the power to film, photograph, videotape or otherwise take still or moving images of any thing (other than a document) for the purposes of an investigation.

Schedule 1 [16] substitutes section 19A of the Principal Act (which currently deals with powers of search and seizure under a search warrant for the purposes of the investigation of a contravention of a provision of the Principal Act) to extend that section to circumstances where an investigator believes on reasonable grounds that unsafe consumer goods or unsafe product related services are being supplied from premises in trade or commerce.

Schedule 1 [17] amends section 20 of the Principal Act to extend the current power of the Director-General or an investigator under that section to require a person to produce information, documents or evidence in connection with a contravention of the Principal Act or an investigation under that Act so as to enable the Director-General or an investigator to exercise that power in relation to information, documents or evidence relating to unsafe consumer goods or product related services.

Schedule 1 [20] inserts proposed Divisions 2 and 3 into new Part 2A of the Principal Act. Those Divisions contain the following provisions:

Division 2 Seized property and disposal of certain property

Proposed section 23A provides for the manner in which things seized under a search warrant issued under proposed section 19A of the Principal Act are to be dealt with. The proposed section mirrors current section 19A (6)–(6B) of the Principal Act but does not apply to consumer goods that are the subject of an application under proposed section 23B or are subject to an order for their disposal under that section or are unsafe.

Proposed section 23B enables the Director-General to make an application to a court to authorise an investigator to enter and search premises for consumer goods that are in a person's possession for the purposes of trade or commerce and that do not comply with safety standards or have been permanently banned or recalled or are unsafe. The court may make an order for the destruction or other disposal of any such goods.

Proposed section 23C enables the Director-General to order the disposal of certain things obtained during an investigation if they are no longer required to be retained and the lawful owner cannot be found or does not wish for their return.

Division 3 Embargo notices

Proposed section 23D enables an investigator who enters premises under a search warrant and finds unsafe consumer goods, or equipment used to supply unsafe product related services, to issue an embargo notice if it is not practicable to seize and remove the goods or equipment. An embargo notice can prevent the supply of the relevant goods or services from the premises and the removal of the relevant goods and equipment during the period for which it remains in force.

Proposed section 23E provides for the period for which an embargo notice remains in force. That period is 28 days or, if the goods or equipment to which it relates are secured under proposed section 23G, 24 hours.

Proposed section 23F prevents the issue of an embargo notice within 5 days of the expiry of another embargo notice that was issued in respect of the same goods, equipment or services.

Proposed section 23G enables an investigator to secure goods or equipment to which an embargo notice relates (for example, by locking them up or placing a guard) if the investigator considers it necessary to ensure the embargo notice is complied with.

Proposed section 23H enables an application to be made to the Minister, the Director-General or an investigator for consent to do something that is prevented by an embargo notice.

Proposed section 23I creates an offence of knowingly causing or permitting something to be done in contravention of an embargo notice.

Enforcement provisions and remedies

Schedule 1 [55] substitutes Part 6 of the Principal Act which contains provisions relating to the enforcement of the provisions of the Principal Act and remedies in relation to contraventions of that Act. Many of the current provisions will now be covered by the Australian Consumer Law. The proposed Part contains the following provisions:

Part 6 Enforcement and remedies

Division 1 Interpretation and application

Proposed section 61 contains interpretation provisions for the purposes of the proposed Part. (section 61, FTA)

Division 2 Enforcement provisions applying to ACL offences and local offences
Proposed section 62 specifies enforcement provisions of the ACL that extend to certain offences against the Principal Act that are not part of the Australian Consumer Law scheme.

Proposed section 63 provides for what constitutes an offence against the Principal Act. (section 62 (1), FTA)

Proposed section 64 provides for the imposition of additional penalties for a second or subsequent offence against certain provisions of the ACL. (section 62 (2A), FTA)

Proposed section 65 enables the Local Court to order a person convicted of an offence against the Principal Act or the regulations to pay compensation for loss or damage caused to another person. (section 63A, FTA)

Proposed section 66 enables the Local Court to order that unpaid fines and other amounts in connection with an offence against the Principal Act be recoverable as a debt due to the Crown and also enables a court to order a person convicted of an offence against the Principal Act to reimburse the government for the costs of purchasing or testing goods to which the offence relates. (section 62 (7), FTA)

Proposed section 67 enables a penalty notice to be served on a person in relation to an offence against the Principal Act or the regulations that is prescribed by the regulations as a penalty notice offence. (section 64, FTA)

Proposed section 68 deals with proceedings for offences. (section 63, FTA)

Division 3 Enforcement provisions applying to local offences only
Proposed section 69 specifies the maximum penalties for offences against the Principal Act (other than the ACL) for which penalties are not otherwise provided. (section 62 (2), FTA)

Division 4 Remedies applying to ACL matters and local matters
Proposed section 70 specifies provisions of the ACL dealing with remedies available for contraventions of the ACL that extend to certain contraventions of provisions of the Principal Act that are not part of the Australian Consumer Law scheme.

Proposed section 71 enables the Director-General or, with leave, a party to a consumer contract that is a standard form contract to apply to the Supreme Court for a declaration that a term in contracts of that kind is unfair. (section 64B, FTA)

Proposed section 72 enables the Director-General, if satisfied that a person has engaged in conduct on more than one occasion that is (or would be) a contravention of the Principal Act, to ask the person to show cause why the person should not be prevented from carrying on a business of supplying goods or services. (section 66A, FTA)

Proposed section 73 enables the Director-General to apply to the Supreme Court for an order prohibiting the person from trading for a specified period after issuing a show cause notice under proposed section 72 and considering any submissions made.

Proposed section 74 contains provisions interpreting or limiting the provisions in the ACL relating to actions for damages and compensation orders. (section 68 (1A) and (2A), FTA)

Proposed section 75 requires the court to reduce compensation for loss or damage in certain defective goods actions under the ACL if an act or omission of the individual who suffered the loss or damage, or a person for whom that individual is responsible, contributed to the loss or damage.

Proposed section 76 enables the court, in proceedings under the ACL for a compensation order in relation to loss or damage suffered due to a contravention of the ACL or the application of an unfair contract term, to have regard to the conduct of the parties to the proceedings since the contravention occurred or the contract term was declared to be unfair.

Proposed section 77 enables a person to whom goods were supplied that do not comply with a safety standard or were supplied in contravention of an interim ban or permanent ban to recover as a debt any money paid for the goods. (section 68A, FTA)

Proposed section 78 enables the Supreme Court, in the course of other proceedings under the Principal Act, to make orders to prevent the transfer of money or property where a person involved in the proceedings is or may become liable to pay money by way of a fine, damages, compensation, refund or otherwise or to transfer, sell or return other property. (section 73, FTA)

Proposed section 79 enables the Supreme Court to grant an injunction if a person has engaged in or been involved in, or proposes to engage in or be involved in, a contravention of certain provisions of the Principal Act (other than the ACL) or other legislation administered by the Minister. (section 66, FTA)

NSW Consumer Law Fund

Schedule 1 [55] inserts new Part 7 into the Principal Act which consists of proposed section 79B. The proposed section establishes the NSW Consumer Law Fund in the Special Deposits Account and provides for the following to be paid into that Fund:

> (a) pecuniary penalties under the ACL that are ordered by a court to be paid into the Fund,
> (b) amounts ordered to be paid by a court on application by the Director-General to redress loss or damage suffered by a class of persons who have not taken proceedings ("non-party consumers") if the loss or damage is a result of a contravention by another person of certain provisions of the ACL or that other person being advantaged by an unfair contract term.

Money is to be paid out of that Fund in accordance with the relevant court orders and may be paid out of the Fund for other specified purposes, including special purpose grants for improving consumer well-being, consumer protection or fair trading.

Miscellaneous amendments

Schedule 1 [12] amends section 9 of the Principal Act to provide that the Director-General is to have regard, in carrying out his or her functions under the Principal Act, to the need for communication, co-operation and co-ordination in relation to relevant co-operative legislative schemes.

Schedule 1 [13] amends section 9A of the Principal Act to make it clear that information that may be exchanged by the Director-General with other relevant agencies includes reports, recommendations, opinions, assessments and operational plans.

Schedule 1 [27] amends section 28 of the Principal Act (which is renumbered by the proposed Act as section 42) to alter the functions of the Product Safety Committee so as to more closely align those functions with the Minister's functions under the Act.

Schedule 1 [32] inserts proposed section 44 into the Principal Act to enable the Minister to publish safety warning notices not only on the internet (as is required by the ACL) but in any other manner that the Minister considers appropriate.

Schedule 1 [61] substitutes section 86 of the Principal Act to provide that the Minister or the Director-General may intervene in proceedings before a court or tribunal under legislation administered by the Minister. Currently, that section provides that the Minister may intervene in court proceedings.

Schedule 1 [63] inserts proposed section 86B into the Principal Act to require the Director-General to maintain a register of undertakings accepted by the Director-General under the ACL.

Schedule 1 [74]–[79] amend Schedule 5 to the Principal Act to provide for savings and transitional provisions consequent on the enactment of the proposed Act.

All the items of Schedule 1 that are not specifically referred to in this Outline contain consequential amendments to the Principal Act.

Schedule 2 Amendment of *Fair Trading Regulation 2007*
Schedule 2 amends the *Fair Trading Regulation 2007* as a consequence of the enactment of the proposed Act and, in particular, repeals certain prescribed product safety standards and product information standards that will be covered by the national scheme.

Schedule 3 Consequential amendment of other Acts and regulation
Schedule 3 amends the Acts and regulation specified in the Schedule as a consequence of the enactment of the proposed Act.

Issues Considered by the Committee

11. 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.

10. GREENHOUSE GAS STORAGE BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Steve Whan MP
Portfolio:	Primary Industries

Purpose and Description

1. The object of this Bill is to establish a regime for the permanent underground storage of greenhouse gases.

2. The Bill will achieve this by enabling the Minister to approve certain geological formations for the permanent storage of carbon dioxide and other greenhouse gases.

3. The Bill will establish a system of prospecting licenses and assessment leases to enable the exploratory work necessary to discover such formations to be carried out and establish a system of injection leases to enable the work involves in injecting carbon dioxide and other greenhouse gases into such formations to be carried out.

4. The Bill will also facilitate that the holders of such licenses or leases can obtain access to land in accordance with a formal access arrangement.

5. Lastly, the Bill will provide for the payment of fair compensation to persons whose interests are adversely affected by the exercise of the rights conferred by such a license or lease as well as providing that the health and safety of the public, together with that of the environment, is appropriately protected from any adverse effects created by greenhouse gas storage facilities.

Background

6. This Bill establishes a regulatory framework for the injection and permanent storage of greenhouse gases, such as carbon dioxide, in deep underground geological reservoirs.

7. The Government has signalled its intention to reducing the State's greenhouse gas emissions to 60% of year 2000 levels by 2050. It is understood that greenhouse gas injection and storage has the potential to significantly contribute to the reduction of the State's greenhouse gas emissions.

8. New South Wales will follow the Commonwealth, Queensland, Victoria and South Australia in passing legislation relating to the storage of greenhouse gases. To ensure a nationally consistent approach, the Ministerial Council on Mineral and Petroleum Resources has developed the Australian Regulatory Guiding Principles for Carbon Dioxide Capture and Geological Storage.

9. The Bill 2010 is drafted to be in line with the ministerial council's regulatory guiding principles, as well as drawing on the regulatory framework in the *Mining Act 1992.*

10. The Government released a detailed position paper in August this year for public comment which set out the legislative framework that is the basis for this Bill.

11. The Government received seven submissions, four of which were from industry groups and three were from Commonwealth Government agencies.

12. In addition, the Department of Industry and Investment consulted with other agencies in developing the Bill to ensure the legislation is effectively integrated with existing legislation such as the *Environmental planning and Assessment Act 1979* and the *Protection of the Environment Operations Act 1997.*

The Bill

13. Outline of Provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 sets out the objects of the proposed Act (as referred to above).

Clause 4 defines the expression ***greenhouse gas*** for the purposes of the proposed Act.

Clause 5 defines the expression ***approved reservoir*** for the purposes of the proposed Act.

Clause 6 defines the expression ***prospecting work*** for the purposes of the proposed Act.

Clause 7 defines the expression ***injection work*** for the purposes of the proposed Act.

Clause 8 defines the expression ***monitoring work*** for the purposes of the proposed Act.

Clause 9 defines certain other words and expressions used in the proposed Act, including ***assessment lease***, ***competing interest***, ***greenhouse gas authority***, ***Greenhouse Gas Safety Fund***, ***injection lease***, ***injection site***, ***monitoring site***, ***prospecting licence***, ***serious situation*** and ***supplementary authority***.

Part 2 Declaration of reservoirs
Clause 10 enables the Minister to declare a geological formation to be an approved reservoir for the purposes of the proposed Act. Such a declaration may not be made in respect of land that is reserved or dedicated under the *National Parks and Wildlife Act 1974* other than land that is reserved as a state conservation area within the meaning of that Act.

Clause 11 enables an application to be made to the Minister for declaration of a geological formation as an approved reservoir, and deals with the manner and form in which such an application must be made.

Clause 12 sets out the criteria that must be satisfied before a geological formation may be declared an approved reservoir, principally that it must be capable of being used for the

permanent storage of greenhouse gases and that there would be no conflict between an injection lease granted over the land concerned and any competing interests. The clause enables the Minister to declare a geological formation to be a potential reservoir if some, but not all, of those criteria have been met.

Clause 13 requires the Minister to consult with the Minister administering the *Water Management Act 2000* before making a declaration under the proposed Part.

Clause 14 requires notice of a declaration under the proposed Part to be published in the Gazette.

Clause 15 provides that all approved reservoirs are the property of the Crown, and that the declaration of a geological formation as an approved reservoir does not entitle any landowner to compensation.

Clause 16 provides for the establishment of a Register of Greenhouse Gas Storage Reservoirs.

Part 3 Prospecting licences Division 1 Prospecting licences generally
Clause 17 enables the Minister to invite applications for prospecting licences to authorise prospecting for geological formations that can be used for the permanent storage of greenhouse gases.

Clause 18 establishes who may apply for a prospecting licence, and deals with the manner and form in which such an application must be made.

Clause 19 sets out the criteria that must be satisfied before a prospecting licence may be granted, principally that the applicant must have the resources and expertise to carry out prospecting work.

Clause 20 provides that a prospecting licence lasts for 6 years, with a possibility of a single renewal.

Clause 21 describes the authority conferred by a prospecting licence, that is, to carry out prospecting work, to apply for a declaration under proposed Part 2 and to apply for an assessment lease or injection lease under proposed Part 4 or 5.

Division 2 Special conditions applicable to prospecting licences
Clause 22 makes it a condition of a prospecting licence that any prospecting work is carried out in accordance with the relevant program of work and that any rehabilitation work is carried out in accordance with the relevant program of site rehabilitation.

Part 4 Assessment leases Division 1 Assessment leases generally
Clause 23 enables the Minister to invite applications for assessment leases to secure an approved reservoir for future use for injecting greenhouse gases.

Clause 24 establishes who may apply for an assessment lease, and deals with the manner and form in which such an application must be made.

Clause 25 sets out the criteria that must be satisfied before an assessment lease may be granted, principally that the applicant must have the resources and expertise to carry out prospecting work.

Clause 26 provides that there are two classes of assessment lease, one (Class 1) for approved reservoirs and the other (Class 2) for potential reservoirs.

Clause 27 provides that a Class 1 assessment lease lasts for 5 years, with a possibility of up to two renewals, while a Class 2 assessment lease lasts until 5 years after the potential reservoir to which it relates is declared to be an approved reservoir.

Clause 28 describes the authority conferred by an assessment lease, that is, to carry out prospecting work, to apply for a declaration under proposed Part 2 (relevant only to the holder of a Class 2 assessment lease) and to apply for an injection lease under proposed Part 5.

Division 2 Special conditions applicable to assessment leases

Clause 29 makes it a condition of an assessment lease that any prospecting work is carried out in accordance with the relevant program of work and that any rehabilitation work is carried out in accordance with the relevant program of site rehabilitation.

Clause 30 makes it a condition of an assessment lease that the holder of the lease complies with the terms of any agreement that has been reached with the holder of a competing interest in the land over which the lease is granted.

Part 5 Injection leases Division 1 Injection leases generally

Clause 31 enables the Minister to invite applications for injection leases to authorise the operations necessary for the injection of greenhouse gases into an approved reservoir.

Clause 32 establishes who may apply for an injection lease, and deals with the manner and form in which such an application must be made. In particular, an application must be accompanied by an operational plan, a map showing the locations of any proposed injection sites and monitoring sites and a proposed site plan and site closure plan for each injection site.

Clause 33 sets out the criteria that must be satisfied before an injection lease may be granted, principally that the applicant must have the resources and expertise to carry out injection work and to decommission the proposed injection plant, that all relevant approvals and consents have been obtained and that arrangements are in place for the construction of appropriate injection plant and the supply of appropriate supplies of greenhouse gases for injection into the approved reservoir.

Clause 34 provides that an injection lease lasts until site closure certificates have been issued in relation to each injection site in the injection lease area.

Clause 35 describes the authority conferred by an injection lease, that is, to carry out injection work, monitoring work and prospecting work and, for that purpose, to construct appropriate injection plant and monitoring plant.

Clause 36 provides for the amendment of an injection lease in relation to the number, size and location of the injection sites and monitoring sites specified in the lease.

Clause 37 enables an injection lease to be cancelled, and replaced by an assessment lease, if injection work is not started in the injection lease area within 5 years after the injection lease takes effect.

Division 2 Special conditions applicable to injection leases
Clause 38 makes it a condition of an injection lease that the holder of the lease will make contributions to the Greenhouse Gas Safety Fund.

Clause 39 makes it a condition of an injection lease that the holder of the lease will keep proper records.

Clause 40 makes it a condition of an injection lease that the holder of the lease will comply with the terms of any agreement that has been reached with the holder of a competing interest in the land over which the lease is granted.

Clause 41 makes it a condition of an injection lease that the holder of the lease will monitor greenhouse gases stored in the leased reservoir in accordance with the relevant operational plan.

Clause 42 makes it a condition of an injection lease that, while carrying out injection work, the holder of the lease will comply with the requirements of the site plan for each injection site and the requirements of the relevant operational plan.

Clause 43 makes it a condition of an injection lease that, when closing an injection site, the holder of the lease will comply with the requirements of the site closure plan for that site.

Division 3 Operational matters
Clause 44 entitles the holder of an injection lease to a right of way between each injection site and monitoring site to the nearest accessible public road.

Clause 45 prohibits the establishment of an injection site in close proximity to a dwelling-house or other significant improvement.

Clause 46 enables the Minister to issue directions to preserve the safety and effectiveness of separate reservoirs between which it is possible for greenhouse gases to pass.

Clause 47 requires the holder of an injection lease to notify the Minister if certain situations (such as an escape of greenhouse gases from the leased reservoir) occur.
Such situations are referred to in the proposed Act as ***serious situations***.

Division 4 Site closure
Clause 48 enables the holder of an injection lease to apply for cancellation of the lease and deals with the manner and form in which such an application must be made. In particular, the application must identify the location of any monitoring plant that is intended to continue operating after the lease is cancelled. This plant is referred to in the proposed Act as ***permanent monitoring plant***.

Clause 49 enables the Minister to direct the applicant to close all injection sites in the injection lease area.

Clause 50 enables the applicant, once an injection site has been closed in accordance with such a direction, to apply for a site closure certificate.

Clause 51 specifies the requirements that need to be satisfied before a site closure certificate can be issued, and requires an injection lease to be cancelled when site closure certificates have been issued in relation to each injection site in the injection lease area.

Clause 52 states when cancellation of an injection lease takes effect, and the effect of cancellation.

Clause 53 provides that permanent monitoring plant vests in the Crown, and that the vesting does not entitle any person to compensation.

Clause 54 provides that, when an injection lease has been cancelled, long-term liability for the acts and omissions of the former holder of an injection lease is transferred to the Crown, subject to an indemnity from the holder of the lease for any act or omission that constitutes fraud or negligence.

Clause 55 excludes the cancellation of an injection lease under the proposed Division from the operation of the general cancellation provisions of Division 4 of Part 7.

Division 5 Audits
Clause 56 defines certain words and expressions used in the proposed Division.

Clause 57 enables the Minister to impose a mandatory audit condition on an injection lease, that is, a condition requiring the appointment of an auditor, the conduct of an audit, the preparation of an audit report and the production of the audit report to the Director-General.

Clause 58 requires any audit carried out for the purposes of a mandatory audit condition to be duly certified by the holder of the injection lease and by the auditor.

Clause 59 specifies the purposes for which information furnished pursuant to a mandatory audit condition may be used, that is, to furnish information to agencies engaged in the administration of environmental protection legislation.

Clause 60 provides that the documents prepared for the purpose of carrying out a voluntary audit are protected documents.

Clause 61 sets out the nature of the protection conferred by the proposed Act in relation to protected documents.

Clause 62 sets out the circumstances in which such protection ceases to have effect.

Clause 63 sets out the relationship between the provisions of the proposed Division and the other provisions of the proposed Act in relation to monitoring and reporting.

Part 6 Other ancillary authorities Division 1 Supplementary authorities
Clause 64 defines the expression ***greenhouse gas authority*** for the purposes of the proposed Division.

Clause 65 provides that the holder of a greenhouse gas authority may apply for a supplementary authority, and deals with the manner and form in which such an application must be made.

Clause 66 sets out the criteria that must be satisfied before a supplementary authority may be granted, principally that the applicant must have the resources and expertise to carry out prospecting work and (if the authority is associated with an injection lease) that all relevant approvals to the construction of appropriate monitoring plant have been obtained.

Clause 67 provides that a supplementary authority lasts until the expiry of the greenhouse gas authority with which it is associated.

Clause 68 describes the authority conferred by a supplementary authority, that is, to carry out prospecting work and (if the authority is associated with an injection lease) to construct monitoring plant and carry out monitoring work.

Clause 69 makes it a condition of a supplementary authority that any prospecting work is carried out in accordance with the relevant program of work and that any rehabilitation work is carried out in accordance with the relevant program of site rehabilitation.

Division 2 Research permits
Clause 70 provides that any person may, with the consent of the Minister, apply for a research permit, and deals with the manner and form in which such an application must be made.

Clause 71 sets out the criteria that must be satisfied before a research permit may be granted, principally that the applicant must have the resources and expertise to carry out prospecting work.

Clause 72 provides that a research permit lasts for 5 years, but may be renewed from time to time and cancelled at any time.

Clause 73 describes the authority conferred by a research permit.

Clause 74 applies Divisions 1, 2 and 6 of proposed Part 7 to a research permit, provisions that deal with the imposition of conditions, renewals and other machinery matters.

Division 3 Environmental assessment permits
Clause 75 enables the Minister to issue an environmental assessment permit, authorising its holder to undertake assessments of the likely environmental effect of activities carried out under a greenhouse gas authority.

Part 7 Greenhouse gas authorities generally
Division 1 General conditions applicable to all authorities

Clause 76 provides that a greenhouse gas authority is subject to both statutory conditions (those imposed by the Act or the regulations) and administrative conditions (those imposed by the Minister).

Clause 77 lists a number of standard administrative conditions that may be imposed.

Clause 78 imposes a condition requiring the discovery of petroleum to be notified to the Director-General.

Clause 79 imposes a condition requiring the discovery of a reservoir (that is, a geological formation that is potentially suitable for the permanent storage of greenhouse gases) to be notified to the Director-General.

Clause 80 imposes a condition requiring the holder of a greenhouse gas authority, as soon as the work under the authority has come to an end, to remove from the land any building, structure or work that the holder has constructed (unless the landowner consents to it remaining on the land).

Clause 81 enables a condition to be imposed requiring certain reports to be furnished to the Director-General, and making provision with respect to the information contained in the reports so provided.

Division 2 Renewals

Clause 82 enables the holder of a greenhouse gas authority to apply for renewal of the authority, and deals with the manner and form in which such an application must be made.

Clause 83 sets out the criteria that must be satisfied before a greenhouse gas authority may be renewed.

Clause 84 makes provision for where some only of the holders of a greenhouse gas authority apply for its renewal.

Clause 85 ensures that a greenhouse gas authority continues to have effect until any application for its renewal has been determined.

Clause 86 provides that the renewal of a greenhouse gas authority takes effect on the day on which it is granted.

Clause 87 provides that a greenhouse gas authority may be renewed as to part only of the land over which it is in force.

Clause 88 enables applications for the renewal of a greenhouse gas authority and any associated supplementary authority to be dealt with as a single transaction.

Division 3 Transfers

Clause 89 enables the holder of a greenhouse gas authority to apply for approval to the transfer of the authority, and deals with the manner and form in which such an application must be made.

Clause 90 sets out the criteria that must be satisfied before approval to the transfer of a greenhouse gas authority may be given.

Clause 91 provides for the registration of transfers, and for a transfer to take effect on registration.

Clause 92 enables a person to lodge a caveat against the registration of a transfer.

Clause 93 enables applications for approval to the transfer of a greenhouse gas authority and any associated supplementary authority to be dealt with as a single transaction.

Division 4 Cancellations
Clause 94 sets out the grounds on which a greenhouse gas authority may be cancelled, including circumstances in which a supplementary authority needs to be granted over the same land or the same land is required for a public purpose (such as to enable a mining or petroleum title to be granted).

Clause 95 sets out the procedure to be followed in relation to the cancellation of a greenhouse gas authority.

Clause 96 states when cancellation of a greenhouse gas authority takes effect, and the effect of cancellation.

Clause 97 sets out the circumstances in which compensation may be payable by the Crown as a consequence of the cancellation of a greenhouse gas authority (such as when the land is required for a public purpose) and specifies that compensation is payable only for improvements that have been made by the holder of the cancelled authority and that the amount of compensation payable is to be determined by the Minister.

Division 5 Legal and equitable interests
Clause 98 provides that a legal or equitable interest in a greenhouse gas authority may not be created except by instrument in writing.

Clause 99 provides for the registration of legal and equitable interests in a greenhouse gas authority. Registered interests have priority over unregistered interests and earlier registered interests have priority over later registered interests.

Clause 100 provides for the registration of an interest in the name of a person to whom the interest has devolved by operation of law.

Clause 101 provides for the establishment of a Register of Interests.

Division 6 Miscellaneous
Clause 102 requires all relevant application fees to have been paid before an application for a greenhouse gas authority may be dealt with.

Clause 103 enables the Minister to ask for further information from an applicant before determining the applicant's application for a greenhouse gas authority.

Clause 104 enables an application for a greenhouse gas authority to be withdrawn.

Clause 105 requires the applicant for a greenhouse gas authority to be notified of the Minister's decision on the application.

Clause 106 specifies the land over which a greenhouse gas authority may be granted and the land over which a greenhouse gas authority may not be granted.

Clause 107 provides that any required security deposit must have been lodged before a greenhouse gas authority may be granted.

Clause 108 provides that a greenhouse gas authority must be in an approved form, and must contain specified information.

Clause 109 abolishes the need for development consent under the *Environmental Planning and Assessment Act 1979* for the use of land for the work and activities carried out under a greenhouse gas authority.

Clause 110 provides that the rights conferred by a greenhouse gas authority may not be exercised in certain locations (such as commons, racecourses, cricket grounds and recreation areas) except with the Minister's consent.

Clause 111 provides for the establishment of a Register of Greenhouse Gas Authorities.

Part 8 Access arrangements
Division 1 Preliminary

Clause 112 sets out the matters for which an access arrangement may provide. The matters set out are in addition to any other matters that the parties to such an arrangement may wish to include.

Clause 113 requires an access arrangement determined by an arbitrator to make provision for the payment of compensation to the owner of the land in respect of which the arrangement is made.

Clause 114 enables the owner of the land in respect of which an access arrangement is made to require the arrangement to make provision for the payment of the owner's legal costs in relation to the arrangement.

Clause 115 enables the owner of the land in respect of which an access arrangement has been made to refuse access to the land if the holder of the greenhouse gas authority contravenes the arrangement, and provides for an arbitrator to assist in deciding how the contravention should be remedied.

Clause 116 provides that an access arrangement does not affect any right of way to which the holder of an injection lease or associated supplementary authority is entitled in connection with any injection site or monitoring site.

Clause 117 provides that, in certain circumstances, an access arrangement is not required in respect of a native title holder.

Division 2 Access arrangements agreed between parties
Clause 118 sets out the procedure by which the holder of a greenhouse gas authority should negotiate an access arrangement with the owner of land.

Clause 119 requires the holder of a greenhouse gas authority to ensure that all persons having registered interests in the land concerned (that is, interests that are registered or recorded by the Registrar-General) are notified of the making of an access arrangement in relation to the land.

Division 3 Access arrangements determined by arbitration

Clause 120 states that if the holder of a greenhouse gas authority and the owner of land are unable to agree on an access arrangement, they can instead agree on the appointment of a person to arbitrate an access arrangement between them.

Clause 121 sets out the procedure by which a member of the Arbitration Panel can be appointed to arbitrate an access arrangement when the holder of a greenhouse gas authority and the owner of land are unable to agree on an appointment.

Clause 122 requires an arbitrator to appoint a time and place for conducting an arbitration hearing into the question of access to land, and to conduct a hearing at the time and place so appointed.

Clause 123 entitles the holder of a greenhouse gas authority and the owner of land to appear, and to be represented, at an arbitration hearing.

Clause 124 requires an arbitrator to attempt to resolve matters by conciliation and, if successful, to determine an access arrangement in accordance with the results of the conciliation.

Clause 125 sets out the procedure to be followed at an arbitration hearing.

Clause 126 provides that, at the conclusion of a hearing, an arbitrator must make an interim determination and, if appropriate, must prepare an interim access arrangement. Such an arrangement becomes a final arrangement if no further application is made to the arbitrator for a continuation of the arbitration hearing.

Clause 127 requires an arbitrator to continue an arbitration hearing if asked to do so by any of the parties to the hearing.

Clause 128 provides that, at the conclusion of a continued hearing, an arbitrator must make a final determination and, if appropriate, must prepare a final access arrangement.

Clause 129 states when an access arrangement takes effect, and describes the nature of its effect.

Clause 130 entitles a party to an arbitration to apply to the Land and Environment Court for a review of the arbitrator's determination, and provides that the Court's decision on the application is to be given effect to as if it were the arbitrator's decision.

Clause 131 requires each party to an arbitration hearing to bear their own costs, and requires the holder of the greenhouse gas authority to bear the arbitrator's costs.

Clause 132 enables the parties to an arbitration hearing to withdraw from arbitration.

Clause 133 protects the arbitrator from personal liability in respect of matters arising from an arbitration hearing.

Division 4 Variation of access arrangements and changes in parties
Clause 134 sets out the procedure for varying or terminating an access arrangement.

Clause 135 makes provision with respect to a change in the ownership of land the subject of an access arrangement.

Part 9 Security deposits
Clause 136 defines certain words and expressions used in the proposed Part.

Clause 137 enables a security deposit condition to be imposed on a greenhouse gas authority.

Clause 138 prescribes the requirements that may be included in a security deposit condition.

Clause 139 prescribes the form in which a security deposit may be given.

Clause 140 prescribes the circumstances in which, and the purposes for which, the Minister may use a security deposit.

Clause 141 specifies when a security deposit condition ceases to have effect, and provides for the return of any unspent money.

Part 10 Royalty
Clause 142 requires the holder of an injection lease to pay royalty on the quantity of greenhouse gases injected into the leased reservoir.

Clause 143 empowers the regulations to set the rate of royalty and the manner in which the quantity of greenhouse gases injected is to be calculated.

Clause 144 requires the holder of an injection lease to furnish periodic returns.

Clause 145 prescribes how and when royalty is to be paid.

Part 11 Compensation
Division 1 Compensation under greenhouse gas authorities

Clause 146 defines certain words and expressions used in the proposed Division and in proposed Division 3, including ***compensable loss***.

Clause 147 entitles an owner of land to compensation for any compensable loss suffered by the owner as a consequence of the exercise of the rights conferred by a greenhouse gas authority or by an access arrangement agreed or determined in respect of that authority.

Clause 148 enables an existing agreement between the holder of a prospecting licence and the owner of land to continue to have effect between them if the holder of the prospecting licence subsequently obtains an assessment lease.

Clause 149 enables an existing agreement between the holder of a prospecting licence or assessment lease and the owner of land to continue to have effect between them if the holder of the prospecting licence or assessment lease subsequently obtains an injection lease.

Clause 150 entitles the owner of land to additional compensation in relation to each injection site and monitoring site located on the land.

Division 2 Compensation under environmental assessment permits
Clause 151 defines certain words and expressions used in the proposed Division and in proposed Division 3, including ***compensable loss***.

Clause 152 entitles an owner of land to compensation for any compensable loss suffered by the owner as a consequence of the exercise of the rights conferred by an environmental assessment permit.

Division 3 Compensation assessment procedures
Clause 153 sets out the procedure to be followed by the Land and Environment Court in making an assessment of compensation.

Clause 154 enables the Land and Environment Court to make additional assessments of compensation in certain circumstances.

Clause 155 enables the Land and Environment to direct the holder of the greenhouse gas authority concerned to notify the Court of the name and address of any owner of land who may be entitled to compensation.

Part 12 Powers of enforcement
Division 1 Powers of Director-General

Clause 156 confers on the Director-General a general power to give directions to the holder of a greenhouse gas authority.

Clause 157 confers on the Director-General a power to direct the holder of an injection lease to take, or refrain from taking, specified action to deal with a serious situation.

Clause 158 confers on the Director-General a power to direct the holder of a greenhouse gas authority to suspend operations in certain circumstances.

Clause 159 enables the Director-General to take whatever action is necessary to fulfil the requirements of a direction under the proposed Division if the direction has not been complied with, and to recover the costs of doing so from the person to whom the direction was given.

Division 2 Powers of inspectors
Clause 160 defines the purposes for which a power conferred by the proposed Division may be exercised.

Clause 161 empowers an inspector to enter premises. Residential premises may only be entered pursuant to a search warrant.

Clause 162 enables an inspector to obtain a search warrant under the *Law Enforcement (Power and Responsibilities) Act 2002*.

Clause 163 sets out the powers that an inspector may exercise in premises that have been lawfully entered.

Clause 164 empowers an inspector to inspect and test any plant, vehicle or thing.

Clause 165 enables an inspector to be accompanied by persons to assist the inspector in the exercise of his or her functions under the proposed Division.

Clause 166 requires an inspector to avoid causing damage, and entitles a person who suffers damage as a consequence of what an inspector has done to receive compensation.

Clause 167 enables the Director-General to require the owner or occupier of land to provide specified assistance and facilities to an inspector.

Clause 168 enables an inspector to demand production of relevant information or records.

Clause 169 enables an order made by an inspector under the proposed Division to be revoked or varied by the Director-General, by the inspector or by any other inspector.

Part 13 Offences
Division 1 Indictable offences

Clause 170 makes it an offence to interfere with or damage injection plant or monitoring plant.

Clause 171 makes it an offence to interfere with the carrying out of injection work or monitoring work.

Clause 172 makes it an offence for the holder of an injection lease to fail to report a serious situation as required by proposed section 47 or to fail to comply with a direction given in relation to a serious situation pursuant to proposed section 157.

Division 2 Summary offences
Clause 173 makes it an offence to carry out prospecting work on any land otherwise than pursuant to a greenhouse gas authority.

Clause 174 makes it an offence for the holder of a greenhouse gas authority to contravene any condition to which the authority is subject.

Clause 175 makes it an offence to carry out prospecting work otherwise than in accordance with an access arrangement.

Clause 176 makes it an offence for a person not to pay any royalty required by Part 10.

Clause 177 makes it an offence for a person not to comply with a direction given under the proposed Act (other than a direction given under proposed section 157).

Clause 178 creates a number of offences in relation to mandatory audits.

Clause 179 makes it an offence not to comply with an order given by an inspector in relation to the production of information or records.

Clause 180 makes it an offence to obstruct, hinder or resist an inspector.

Clause 181 makes it an offence to impersonate an inspector.

Clause 182 makes it an offence to prevent the holder of a greenhouse gas authority from doing anything that the proposed Act authorises the holder to do.

Clause 183 makes it an offence to furnish false or misleading information in connection with any application, or in purported compliance with any requirement, under the proposed Act.

Part 14 Legal proceedings
Division 1 Legal proceedings generally

Clause 184 requires offences referred to in Division 1 of proposed Part 13 to be dealt with on indictment, and those referred to in Division 2 of that Part to be dealt with summarily, either by the Local Court or by the Land and Environment Court.

Clause 185 requires certain matters to be taken into consideration by a court when determining the penalty to be imposed in relation to the offence under proposed section 172 of failing to notify, or to comply with a direction concerning, a serious situation.

Clause 186 provides that if a corporation contravenes a provision of the proposed Act, or the regulations under the proposed Act, then any director or other person concerned in the management of the corporation is taken to have contravened the same provision if he or she knowingly authorised or permitted the contravention.

Clause 187 provides that, in proceedings for an offence in which there is a defence of reasonable excuse, the burden of proving a reasonable excuse lies on the defendant.

Clause 188 provides that a person cannot refuse to provide information pursuant to a requirement under the proposed Act on the ground that the information may incriminate the person, but in that event the information cannot be used to prosecute the person unless the information was false or misleading.

Clause 189 establishes a penalty notice regime for the purposes of the proposed Act.

Clause 190 provides that a continued contravention of a requirement under the proposed Act gives rise to a continuing offence, punishable for each day that the contravention continues.

Clause 191 provides that legal proceedings against a person do not affect, and are unaffected by, any other action that may be taken against the person under the proposed Act.

Clause 192 provides for the issue of evidentiary certificates for use in legal proceedings.

Division 2 Appeals and injunctions
Clause 193 enables an appeal to be made to the Land and Environment Court against certain decisions of the Minister under the proposed Act.

Clause 194 enables the Land and Environment Court to issue an injunction ordering a person to comply with a direction under Division 1 of Part 12.

Clause 195 enables the Land and Environment Court to issue an order to remedy or restrain a breach of the proposed Act or the regulations.

Division 3 Supplementary orders in connection with offences
Clause 196 defines certain words and expressions for the purposes of the proposed Division.

Clause 197 provides that multiple orders in respect of an offence against the proposed Act may be made under the proposed Division, and that the power to make such an order is in addition to any other action that may be taken for the offence.

Clause 198 enables a court that finds a person guilty of an offence against the proposed Act to order the offender to pay the costs of investigating the offence.

Clause 199 enables a court that finds a person guilty of an offence against the proposed Act to order the offender to pay the costs of dealing with any harm to the environment arising from the commission of the offence, and the costs of dealing with any loss or damage to property so arising.

Clause 200 enables the Land and Environment Court to order an offender whom a court has previously found guilty of an offence against the proposed Act to pay the costs of dealing with any harm to the environment that has subsequently arisen from the commission of the offence, and the costs of dealing with any loss or damage to property that has so arisen.

Clause 201 provides for the enforcement of orders made under proposed sections 198, 199 and 200.

Clause 202 enables the Land and Environment Court to order an offender to pay, as an additional penalty, an amount representing any monetary benefit that the offender has gained from the commission of the offence.

Clause 203 enables a court that finds a person guilty of an offence against the proposed Act to make a number of ancillary orders against the offender.

Part 15 Administration
Clause 204 provides for the establishment of a Greenhouse Gas Safety Fund, into which money is to be paid by the holders of injection leases and from which money is to be used for the long-term monitoring of greenhouse gases following the closure of the injection sites from which those gases have been injected into an approved reservoir.

Clause 205 provides for the establishment of an Arbitration Panel from which arbitrators may be appointed for the purposes of proposed Division 3 of Part 8.

Clause 206 provides for the establishment of expert advisory panels to assist the Minister in the exercise of the Minister's functions under the proposed Act.

Clause 207 provides for the appointment of inspectors for the purposes of the proposed Act.

Clause 208 provides for the delegation of functions by the Minister and the Director-General.

Clause 209 provides for the resolution of disputes between public authorities in relation to matters arising under the proposed Act.

Clause 210 establishes a Ministerial Corporation for the purposes of the proposed Act.

Clause 211 enables the Ministerial Corporation to acquire land for the purposes of the proposed Act, particularly land on which any permanent monitoring plant is situated and easements to facilitate access to any such land.

Clause 212 provides that certain records received by the Director-General must be kept permanently, and may not be disposed of.

Clause 213 makes provision with respect to the recognition of native title in connection with the administration of the proposed Act.

Clause 214 requires the proposed Act to be administered in accordance with the principles of ecologically sustainable development set out in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

Clause 215 requires the annual report prepared for the Department under the *Annual Reports (Departments) Act 1985* to include a report on the Minister's work and activities under the proposed Act.

Part 16 Miscellaneous
Clause 216 provides that the proposed Act binds the Crown.

Clause 217 enables the Minister to impose fees and charges for the purposes of the proposed Act.

Clause 218 provides for compensation under the proposed Act that is payable by the Crown to be paid out of money appropriated by Parliament.

Clause 219 specifies how documents may be served on a person for the purposes of the proposed Act.

Clause 220 sets out how any requirement under the proposed Act for the newspaper publication of a matter is to be complied with.

Clause 221 protects certain persons from personal liability in connection with the exercise of their functions under the proposed Act.

Clause 222 provides a general immunity to landowners for matters arising on their land as a result of the exercise of functions under the proposed Act by any other person.

Clause 223 provides that greenhouse gases are not waste, and their injection into an approved reservoir is not a scheduled activity and does not constitute pollution of land, for the purposes of the *Protection of the Environment Operations Act 1992*.

Clause 224 declares that a greenhouse gas authority is not personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth.

Clause 225 enables the Governor the make regulations for the purposes of the proposed Act.

Clause 226 provides for the review of the proposed Act in 5 years.

Schedule 1 Amendment of Acts

Schedule 1.1 amends the *Criminal Procedure Act 1986* so as to require an indictable offence under proposed Division 1 of Part 13 of the proposed Act to be dealt with summarily unless the prosecutor or accused elects otherwise.

Schedule 1.2 amends the *Environmental Planning and Assessment Act 1979* so as to ensure that an injection lease under the proposed Act cannot be refused if it is necessary for carrying out an approved project under that Act and is to be substantially consistent with an approval under Part 3A of that Act.

Schedule 1.3 amends the *Fines Act 1996* in relation to the penalty notice regime established by proposed section 189 of the proposed Act.

Schedule 1.4 amends the *Land and Environment Court Act 1979* so as to assign proceedings under the proposed Act to the appropriate jurisdictions under that Act.

Schedule 1.5 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* in relation to the search warrants referred to in proposed section 162 of the proposed Act.

Schedule 1.6 amends the *Mine Health and Safety Act 2004* so as apply the provisions of that Act to activities carried out under the proposed Act.

Schedule 1.7 amends the *National Parks and Wildlife Act 1974* so as to provide that the restrictions that apply to the carrying out of mining activities under the *Mining Act 1992* extend to the carrying out of activities under the proposed Act.

Issues Considered by the Committee

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

Issue: Self – Incrimination

14. The Committee notes that proposed sections 179(3) and 188 of the Bill provide that a person is not excused from furnishing information or producing a document during the investigation of an offence alleged to have been committed under the Bill on the grounds that doing so might incriminate the person.

15. Historically, the common law has recognised a privilege against self-incrimination in which individuals have the right (within certain limitations) to not do or say anything that might be used as evidence against them in criminal proceedings. The Committee recognises that the right against self-incrimination as a longstanding principle and would ordinarily raise its concerns to any abrogation or variation of that right.

16. However, the Committee notes that the requirement for an individual to furnish information or produce a document that might incriminate them is tempered by section 188 which further provides that any information furnished or document produced is, in fact, not admissible in evidence against the person in most criminal proceedings. The only criminal matters that such material could be tendered into evidence are offences relating to the provision of false and misleading information, or forgery matters.

17. In the circumstances set out by the Bill, the Committee is of the view that the proposed provisions do not erode the privilege against self-incrimination. As such, the Committee does not consider these provisions to unduly trespass on individual rights and liberties.

18. Historically, the common law has recognised a privilege against self-incrimination in which individuals have the right (within certain limitations) to not do or say anything that might be used as evidence against them in criminal proceedings. The Committee recognises that the right against self-incrimination as a longstanding principle and would ordinarily raise its concerns to any abrogation or variation of that right.

19. In the circumstances set out by the Bill, the Committee is of the view that the proposed provisions do not erode the privilege against self-incrimination. As such, the Committee does not consider these provisions to unduly trespass on individual rights and liberties.

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

Issue: Commencement by Proclamation

20. The Committee notes that the Bill 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.

21. The Committee also appreciates that this Bill seeks to establish and implement a scheme for the storage of greenhouse gases and understands that many administrative arrangements need to be finalised before the Bill can commence operation. This includes the drafting of regulations and license application forms, the setting of fees and the formation of expert advisory panels, amongst other things.

22. Given these considerations, the Committee does not regard the commencement by proclamation provision to be an inappropriate delegation of power in this instance.

23. Considering the various administrative arrangements that need to take place before this Bill can commence operation, the Committee does not regard the commencement by proclamation provision to be an inappropriate delegation of power in this instance.

The Committee makes no further comment on this Bill.

11. LIQUOR AMENDMENT (DRINKING AGE) BILL 2010*

Date Introduced:	25 November 2010
House Introduced:	Legislative Council
Minister Responsible:	Reverend the Hon Fred Nile MLC
Portfolio:	Christian Democratic Party (Fred Nile Group)

Purpose and Description

1. This Bill amends the *Liquor Act 2007* to raise the minimum drinking age from 18 years to 21 years.

2. It will amend the definition of "minor" to mean anyone under the age of 21 years.

3. The Bill amends section 4 (definitions), to omit the term "18 years" from the definition of "adult" in section 4 (1) and to insert instead "21 years". In sections 38 (4) (g), 114 (3) (a) and (6) (a), 117 (3) (b), 124 (3) (a), 126 and 152 (2), the Bill seeks to omit "18 years" wherever occurring and insert "21 years".

Background

4. This Bill has been influenced by research conducted by Professor Ian Hickie, an Australian Medical Research Fellow with the Brain and Mind Research Institute at the University of Sydney. Professor Hickie published the research paper, "Alcohol and The Teenage Brain: Safest to keep them apart."

5. According to the Second Reading speech:

> That report contains valuable information which in the past has not been available either to this State Parliament or to the Federal Parliament. Information is available now because of the new highly sensitive brain imaging techniques that have been developed. In the past well-meaning scientists believed that brain development could be affected only before birth and in early childhood. Scientists assumed that the brain was fully developed after that stage and that there was no need to be concerned about any exposure to alcohol or to other substances. The view that was commonly held was that the critical period for the non-consumption of alcohol was before birth and early childhood. However, that view has been dramatically changed as a result of this research.

6. The Second Reading speech also stated that: "Since 2000 the greatest increase in alcohol-related hospital admissions has been among the 18- to 24-year-olds, with an overall increase of 130 per cent".

7. The Second Reading speech referred to Professor Jon Currie, director of addiction medicine and mental health at St Vincent's Hospital, Victoria, as supporting the concept of raising the drinking age. The speech quoted Professor John Toumbourou of Deakin University and the Murdoch Children's Institute, who said:

> "In countries or states where it has been introduced there has been a 15% reduction in deaths and harm related to alcohol ... Where the reverse has occurred, such as in Australia where some states dropped the drinking age from 21 to 18 in the 1970s, there has been an equivalent rise in deaths and harm ..."

The Bill

8. The object of this Bill is to amend the *Liquor Act 2007* to raise the minimum drinking age from 18 years to 21 years. The Bill makes consequential amendments to provisions relating to adult supervision of minors, the sale or supply of liquor to minors and associated defences, and refusing entry to licensed premises.

9. Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act 3 months after the date of assent (unless it is commenced sooner by proclamation).

Schedule 1 amends the *Liquor Act 2007* to give effect to the object set out in the overview above.

Issues Considered by the Committee

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

Issue: Personal liberties – Schedule 1 [1], [2] and [3] – omitting "18 years" and inserting instead "21 years":

10. The Committee notes that the object of this Bill is to amend the *Liquor Act 2007* to raise the minimum drinking age from 18 years to 21 years. It also makes consequential amendments to provisions relating to adult supervision of minors, the sale or supply of liquor to minors and associated defences, and refusing entry to licensed premises.

11. The Committee holds concerns that this Bill will be removing existing rights and liberties such as those associated with the legal drinking age, that of legal consumption and purchase of alcohol and entry to and consumption of alcohol on licensed premises, which are currently enjoyed by people who are of and over 18 years of age.

12. The Committee is of the view that it may be an undue trespass on individual rights and liberties to authorise the state to take away existing rights and liberties currently enjoyed by persons of or over 18 years and under 21 years of age, in the context of the *Liquor Act* without compelling justification and that it may potentially be a form of discrimination against a person on the ground of the age of the person between the age of 18 years and under 21 years old, in light of the fact that persons who have attained the age of 18 years are treated as adults, capable of forming an opinion and giving consent, and are also eligible to vote.

13. The Committee believes that the rights and liberties currently associated with the legal drinking age, while not absolute, should only be removed by compelling public harm minimisation justifications and only to the extent necessary to achieve the objective while leaving the rights and liberties of individuals as intact as possible. Accordingly, the Committee refers this Bill to Parliament for consideration as to whether it trespasses unduly on individual rights and liberties; whether there are sufficient compelling public harm minimisation justifications, and whether the extent to achieve the objective is necessary without causing trespass to personal rights and liberties that is undue.

The Committee makes no further comment on this Bill.

12. LOCAL GOVERNMENT AMENDMENT (CONFISCATION OF ALCOHOL) BILL 2010*

Date Introduced:	26 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Mr Peter Besseling MP
Portfolio:	Independent

Purpose and Description

1. This Bill amends the *Local Government Act 1993* to provide for the confiscation of alcohol in alcohol prohibited areas.

2. Section 632A of the *Local Government Act 1993* (the principal Act), authorises police officers and certain local council employees to confiscate alcohol from persons who are drinking in an alcohol-prohibited area. This term is currently defined as a public place (for example, a public beach or public park), that is situated in the precinct or area to which a precinct liquor accord, or a community event liquor accord under the *Liquor Act 2007* applies and in which the drinking of alcohol is prohibited by a local council by notice under section 632 of the principal Act.

3. This Bill removes section 632A (4) (a) that restricts the type of alcohol-prohibited area to which the confiscation and tip-out powers apply, which is situated in the precinct to which a precinct liquor accord within the meaning of the Liquor Act applies or in the area to which a community event liquor accord applies.

4. The object of the Bill is to amend the definition of "alcohol prohibited area" so that the power to confiscate and tip out alcohol may be exercised in an area in which the drinking of alcohol is prohibited by a notice under section 632 of the principal Act, regardless of whether that area is situated in the precinct or area to which a precinct or community event liquor accord applies under the *Liquor Act 2007*.

Background

5. Section 632A of the *Local Government Act 1993* provides for the confiscation of alcohol in certain alcohol-prohibited areas:

> (1) A police officer or an enforcement officer may seize any alcohol (and the bottle, can, receptacle or package in which it is contained) that is in the immediate possession of a person in an alcohol prohibited area if the officer has reasonable cause to believe that the person:
>
> (a) is drinking;
>
> (b) is about to drink; or
>
> (c) has recently been drinking alcohol in the alcohol prohibited area.

(2) Any alcohol or thing seized under this section is, by virtue of the seizure, forfeited:

(a) if seized by a police officer to the State; or

(b) if seized by an enforcement officer to the council that employs the officer.

(3) Any alcohol seized under this section may:

(a) be disposed of immediately by tipping it out of the bottle, can, receptacle or package in which it is contained; or

(b) be otherwise disposed of in accordance with directions given by the Commissioner of Police or the council (as the case requires).

6. To simplify the legislation, and to clarify the responsibilities of law enforcement officers and the broader community, confiscation and tip-out powers are proposed to be extended to include all alcohol-prohibited areas.

7. The Agreement in Principle speech explained that:

> Alcohol-prohibited areas differ from alcohol-free zones. Alcohol-free zones already provide for confiscation and tip-out powers over alcohol, but are restricted to being established over a public road or part of a public road, or a public place that is a car park or part of a car park. Under the current legislation as it relates to the town of Port Macquarie, police have the power to confiscate or tip out alcohol in the car park that lies in front of the Town Green but are unable to do so once the person has moved onto the grassed area and into the alcohol-prohibited area. Current laws enable that absurd situation, but this bill would address the discrepancy. However, a general lack of understanding and a great deal of confusion remains in the community surrounding the differences between alcohol-prohibited areas and alcohol-free zones. I urge the Government to consider consolidating legislation at a future date.

8. The Agreement in Principle further described that:

> Communities across the State are struggling to deal with the effects of alcohol-fuelled violence and anti-social behaviour whether through the pubs and clubs, domestic issues or, more worryingly, in public places where often large groups gather to drink excessively. This has been particularly evident in coastal communities that encourage beautiful public areas along our coastline and large public beaches that attract locals and tourists alike.

The Bill

9. Section 632A of the *Local Government Act 1993* (the principal Act) authorises police officers and certain local council employees to confiscate alcohol from persons who are drinking in an alcohol prohibited area. This term is currently defined as a public place (eg a public beach or public park) that is situated in the precinct or area to which a precinct liquor accord, or a community event liquor accord, under the *Liquor Act 2007* applies and in which the drinking of alcohol is prohibited by a local council by notice under section 632 of the principal Act. The power to confiscate alcohol from persons drinking in an alcohol prohibited area includes the power to tip out the alcohol from the thing in which the alcohol is contained.

10. The object of this Bill is to amend the definition of alcohol prohibited area so that the power to confiscate and tip out alcohol may be exercised in an area in which the drinking of alcohol is prohibited by a notice under section 632 of the principal Act regardless of whether that area is situated in the precinct or area to which a precinct or community event liquor accord under the *Liquor Act 2007* applies.

11. 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 amends the *Local Government Act 1993* in the manner described in the above overview.

Issues Considered by the Committee

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

Issue: Oppressive Official Powers – Clause 3 – Amendment of *Local Government Act 1993* No 30 – Section 632A Confiscation of alcohol in alcohol prohibited areas:

12. The proposed amendment omits the definition of ***alcohol prohibited area*** in section 632A (4) of the *Local Government Act 1993* and instead, inserts: ***alcohol prohibited area*** means a public place in which the drinking of alcohol is prohibited by a notice under section 632.

13. The object of this Bill is to amend the definition of alcohol prohibited area so that the power to confiscate and tip out alcohol may be exercised in an area in which the drinking of alcohol is prohibited by a notice under section 632 of the *Local Government Act* regardless of whether that public place (eg a public beach or public park) is situated in the precinct or area to which a precinct liquor accord, or a community event liquor accord area under the *Liquor Act 2007*.

14. Under section 136A of the *Liquor Act 2007*, for the purposes of the Act, a precinct liquor accord or a community liquor accord is a set of measures, approved by the Director-General under that Division 2 of the Act, which aims to do either or both of the following:

> (a) to minimise or prevent alcohol-related violence or anti-social behaviour, or other alcohol-related harm, in the precinct or area to which the relevant liquor accord applies,
>
> (b) to protect and support the good order or amenity of any such precinct or area in connection with issues arising from the presence of, or any proposed increase in the number of, licensed premises in that precinct or area.

15. The Committee is concerned with widening the scope of the definition of 'alcohol prohibited area' as proposed by clause 3 of this Bill, which will extend the power to confiscate and tip out alcohol beyond to an area that is not situated in the precinct or area to which a precinct liquor accord or a community liquor accord applies.

16. The Committee is concerned that this may not only undermine or weaken the aims of Division 2 of Part 8 of the *Liquor Act 2007* with regard to measures for minimising alcohol-related violence or anti-social behaviour, or to support the good order or amenity of such areas in connection with the presence of or proposed increase of licensed premises in the precinct or area, but, in particular, the power to confiscate alcohol will be extended to outside or beyond a precinct or area covered by a precinct liquor accord or a community liquor accord. This may potentially impact more adversely and disproportionately on members of marginalised groups such as those who may tend to use public space or be more highly visible in public place, including young people, Aboriginal people, people who are homeless, and those with mental health, drug and/or alcohol related problems [1].

17. The Committee has already raised similarly based concerns in the context of the then Liquor Legislation Amendment Bill 2008 reported in *Digest 14 of 2008*.

18. Therefore, the Committee refers clause 3 of this Bill to Parliament for consideration as to whether it may trespass unduly on personal rights and liberties arising from its potential to disproportionately affect individuals of marginalised or disadvantaged groups (such as young people, Aboriginal people, people who are homeless, and those with mental health, drug and/or alcohol related problems).

The Committee makes no further comment on this Bill.

[1] See research and publications by Boyd Hamilton Hunter, *Factors Underlying Indigenous Arrest Rates*, Australian National University, Canberra, published by the NSW Bureau of Crime Statistics and Research, 2001, NSW Attorney General's Department. Also, Richard Garside, 'Are Anti-social Behaviour Strategies Anti-Social?', Centre for Crime and Justice Studies, Kings College, London at http://www.crimeandsociety.org.uk/articles/file2.html

13. LONG SERVICE CORPORATION BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Paul Lynch MP
Portfolio:	Industrial Relations

Purpose and Description

1. This Bill reconstitutes the Building and Construction Industry Long Service Payments Corporation as the Long Service Corporation; to confer on the reconstituted Corporation additional functions with respect to the contract cleaning industry; and for other purposes.

2. This Bill is cognate with the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Bill 2010.*

3. Administrative, education and compliance services will be integrated within a reconstituted Long Service Payments Corporation, to be called the Long Service Corporation.

Background

4. The portable long service leave scheme for contract cleaning workers will be administered by the Long Service Corporation, which is also responsible for the existing building and construction portable long service scheme, with the advice and guidance of a tripartite industry committee.

5. Consistent with current arrangements, the chief executive officer of the New South Wales Compensation Authorities Staffing Division would be appointed as chief executive officer. The Long Service Payments Corporation currently has responsibility for administering the Building and Construction Industry Long Service Payments Scheme. Both industry schemes will operate side by side.

6. The Bill provides the Long Service Corporation with sufficient powers and authority to manage the day-to-day operational aspects of the scheme. For consistency, the provisions are largely derived from the powers and authorities the corporation already has with respect to administering the building and construction portability scheme. The Long Service Corporation will be guided by a tripartite industry advisory committee comprising employer, worker and government representatives.

7. The Industry Committee will be made up of nine members, including a chairperson, two representatives from Unions New South Wales, two representatives from the Liquor, Hospitality, Miscellaneous Workers Union, New South Wales Branch, two representatives from the Building Services Contractors Association and two representatives from the Australian Cleaning Contractors Association. The Bill provides the Industry Committee with an identical role and function to the building and

construction industry committee, including appellate powers if a worker or employer disputes a decision made by the corporation.

The Bill

8. This Bill is cognate with the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Bill 2010*.

9. The object of this Bill is to reconstitute the Building and Construction Industry Long Service Payments Corporation as the Long Service Corporation (the ***Corporation***) and to confer on the reconstituted Corporation additional functions with respect to the contract cleaning industry under the proposed *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*.

10. Outline of provisions

Part 1 Preliminary:

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

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

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

Part 2 Constitution and management of Corporation:

Clause 4 constitutes the Corporation.

Clause 5 makes the Corporation a NSW Government agency, which has the effect of conferring on the Corporation the status, privileges and immunities of the Crown.

Clause 6 makes the Corporation subject to the control and direction of the Minister (except in relation to the contents of any report or recommendation made by it to the Minister).

Clause 7 confers on the Chief Executive Officer of the Corporation responsibility for the day-to-day management of the affairs of the Corporation.

Clause 8 enables the Corporation to delegate its functions, other than the power of delegation.

Part 3 Functions of the Corporation:

Clause 9 sets out the functions of the Corporation. In addition to its existing functions with respect to long service leave under the *Building and Construction Industry Long Service Payments Act 1986*, the Corporation will be responsible for administering the proposed scheme for portability of long service leave under the proposed *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*.

Clause 10 sets out the powers of the Corporation with respect to purchasing and leasing of premises, contracts and other matters.

Clause 11 sets out the borrowing powers of the Corporation. The Corporation may also borrow under and in accordance with the *Public Authorities (Financial Arrangements) Act*

1987 (the effect of the amendment to the *Public Finance and Audit Act 1983* in Schedule 2.3 is to make the Corporation an authority for the purposes of the *Public Authorities (Financial Arrangements) Act 1987*).

Part 4 Finance:

Clause 12 provides for the Corporation to maintain, administer and control the Building and Construction Industry Long Service Payments Fund.

Clause 13 provides for the establishment of the Contract Cleaning Industry Long Service Leave Fund. Long service leave levies payable under the proposed *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* and money borrowed for the purposes of that Act are to be paid into the Fund. Long service payments provided for by that Act will be paid from the Fund.

Clause 14 specifies the financial year of the Corporation.

Clause 15 provides for the investment of money in the Funds.

Clause 16 provides for actuarial investigation of the Funds.

Clause 17 provides that no duty is payable in respect of certain transactions of the Corporation.

Part 5 Miscellaneous:

Clause 18 provides for the use of the seal of the Corporation.

Clause 19 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 20 provides for the review of the proposed Act in 5 years.

Schedule 1 Savings, transitional and other provisions:

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

Schedule 2 Amendment of Acts:

Schedule 2 amends the Acts specified in the Schedule.

Issues Considered by the Committee

11. 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.

14. NATIONAL BROADBAND NETWORK CO-ORDINATOR BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Paul Lynch MP
Portfolio:	Energy

Purpose and Description

1. This Bill facilitates and accelerates the rollout of the National Broadband Network (NBN) in New South Wales by establishing a NSW NBN Co-ordinator; and for other purposes.

2. The coordinator's main role will negotiate access to all New South Wales Government owned infrastructures that will be used in the NBN rollout. The infrastructure includes not only power poles but microwave towers and road, rail and river bridges.

3. Part 2 of the Bill establishes the New South Wales NBN Co-ordinator who will be responsible for facilitating and accelerating the rollout of the National Broadband Network (NBN) in New South Wales. The coordinator will have the functions of liaising with and coordinating the activities of government agencies in relation to their involvement with the rollout of the National Broadband Network in New South Wales.

4. The coordinator will be the State Government coordinator for negotiations with NBN Co. The coordinator will also be able to enter into contracts on his or her own behalf with NBN Co.

5. Part 3 of the Bill provides for the establishment of a Government Chief Executives Committee, to provide advice on the exercise of functions by the coordinator. The Director General of the Department of Services, Technology and Administration or the director general's nominee will be the presiding member of the committee. Directors General, or their nominees, of the Department of Premier and Cabinet, Industry and Investment, and Transport NSW will also be on the committee, as well as the Secretary of the Treasury or the secretary's nominee.

6. The Government Chief Executives Committee will issue guidelines in relation to consultations the coordinator should conduct when carrying out official functions. The committee may prepare protocols for government agencies in relation to developing and implementing agreements with NBN Co regarding the rollout of the National Broadband Network in New South Wales.

7. Part 4 requires government agencies to facilitate and assist the rollout of the National Broadband Network in New South Wales. The Bill requires agencies to cooperate with the coordinator in relation to providing access to government assets, and to

notify the coordinator of any proposed exercise of the agency's functions that may adversely impact on the coordinator's functions.

8. The Bill authorises and empowers government agencies to exercise any of their functions for the purpose of facilitating and assisting the rollout of the National Broadband Network, particularly to comply with a request of the coordinator. It will allow the coordinator to request government agencies to agree to the appointment of the coordinator as agent for a government agency in its dealings with NBN Co, including authorising the coordinator to enter into contracts and arrangements with NBN Co on behalf of the government agency.

9. The Bill also provides for ministerial powers to support the coordinator in resolving, on behalf of the New South Wales Government, any contractual or other disputes. It allows the Minister to direct agencies to comply with a request made by the coordinator for the purposes of facilitating the rollout of the National Broadband Network. Such directions will only be made after consultation with the Chief Executives Committee and, in the case of State-owned corporations, with the shareholding Ministers.

10. This Bill will apply only to the rollout of the National Broadband Network (NBN) in New South Wales. Once the network has been constructed, the legislation will be repealed. The Bill provides a mechanism under which the functions of the coordinator are kept under review. Once the coordinator is satisfied that the Act is no longer required, he or she will provide a certificate to that effect and the Governor can repeal the Act.

Background

11. This *National Broadband Network Co-ordinator Bill 2010* aims to facilitate and accelerate the rollout of the National Broadband Network (NBN) in New South Wales. The NBN Co, an Australian Government owned company, has already commenced construction of the national telecommunications network for the high-speed delivery of communications throughout Australia. According to the Agreement in Principle speech:

> NBN Co is currently working in a number of priority sites—known as first and second release sites—across the country, including some within New South Wales. The National Broadband Network is to be rolled out across Australia over the next eight years.

12. The Agreement in Principle speech explained that:

> From the beginning, NBN Co foreshadowed its need to access assets with the potential to facilitate the rollout. This has been demonstrated in NBN Co's keenness to access New South Wales Government owned assets for the rollout of the National Broadband Network in the first release sites in Armidale and Minnamurra-Kiama Downs. This translated into the successful execution of facilities access agreements between Country Energy and Integral Energy with NBN Co.

The Bill

13. The object of this Bill is to facilitate and accelerate the rollout of the National Broadband Network in New South Wales. For that purpose, the Bill:

(a) establishes a NSW NBN Co-ordinator to co-ordinate the activities of government agencies in their involvement with the rollout of the National Broadband Network, and

(b) establishes a NSW NBN Chief Executives Committee to advise the NBN Co-ordinator and issue guidelines and protocols regarding the rollout of the National Broadband Network, and

(c) requires State government agencies to co-operate with the NBN Co-ordinator in facilitating and assisting the rollout of the National Broadband Network.

14. Outline of provisions

Part 1 Preliminary:

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

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

Clause 3 sets out the objects of the proposed Act, which are as follows:

(a) to facilitate and accelerate the rollout of the National Broadband Network in New South Wales,

(b) to facilitate the use of existing infrastructure owned by State government agencies for the purposes of the National Broadband Network,

(c) to establish a NBN Co-ordinator to co-ordinate the activities of government agencies in their involvement with the rollout of the National Broadband Network and provide for its functions,

(d) to require State government agencies to co-operate with the NBN Co-ordinator in facilitating and assisting the rollout of the National Broadband Network,

(e) to establish a Chief Executives Committee to advise the NBN Co-ordinator and review the exercise of certain powers under the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act. The National Broadband Network is defined to mean the national telecommunications network for the high-speed delivery of communications constructed, or being constructed, by NBN Co. NBN Co is NBN Co Limited (ACN 136 533 741) and includes any of its related bodies corporate (within the meaning of the Corporations Act 2001 of the Commonwealth). The NBN Co-ordinator is defined as the NSW NBN Co-ordinator appointed under the proposed Act. A government agency is defined to include a public authority, a NSW Government agency, a Division of the Government Service and a State owned corporation, but does not include the NSW Police Force, the Independent Commission Against Corruption or the Ombudsman's Office.

Part 2 NSW NBN Co-ordinator: clauses 5 to 6.

Part 3 NSW NBN Chief Executives Committee: clauses 7 to 8.

Part 4 Co-ordination of State government agencies in rollout of National Broadband Network: clauses 9 to 12.

Part 5 Miscellaneous: clauses 13 to 18.

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.

15. PARLIAMENTARY ELECTORATES AND ELECTIONS FURTHER AMENDMENT BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Kristina Keneally MP
Portfolio:	Premier

Purpose and Description

1. The object of this bill is to amend the *Parliamentary Electorates and Elections Act 1912* to enable persons with impaired vision or with certain other disabilities and persons who may have difficulty voting by reason of location to vote by telephone or by means of a computer linked to the internet.

2. The bill also makes other miscellaneous amendments relating to the conduct of State Parliamentary elections.

3. The Bill also makes miscellaneous amendments to the *Government Information (Public Access) Act 2009* to allow for the conclusive presumption of overriding public interest against disclosure to preserve the secrecy of technology assisted voting.

Background

4. The Joint Standing Committee on Electoral matters recommended in its report on the 2007 State election that the New South Wales Electoral Commission examine ways to allow vision-impaired electors to cast a secret ballot.

5. Braille ballot papers, electronic voting kiosks and Internet voting have been identified as the most common examples of voting for the visibility impaired.

6. In 2008, the local government regulations were amended to permit the use of Braille ballot papers for the visually impaired at local government elections. Over 5,000 vision-impaired persons were offered the option of registering for Braille ballot papers at those election, however only 52 eligible electors exercised that option. As a result, the cost of drafting and printing each Braille ballot came to $478 per vote.

7. Meanwhile, other alternative approaches such as the use of purpose-built electronic voting kiosks at polling places – which was used at the 2007 Federal election – cost over $2,500 per vote. The Commonwealth Joint Standing Committee on Electoral Matters subsequently recommended that e-voting trials be discontinued due to high costs and low rates of participation.

8. Preliminary work done by the NSW Electoral Commission indicated that Internet voting, which would involve voters using a personal computer with assistive features to cast a vote, would be a more promising and less expensive option. Internet voting

has been used successfully in public elections in the Netherlands, France, the United Kingdom, Denmark, Finland and Spain.

9. The Electoral Commissioner's Internet Voting (or iVote) report was tabled in Parliament in September 2010. In the iVote report, the Electoral Commissioner estimated if iVoting was adopted for the next State election, around 10,000 electors would vote using the system. Of these 10,000 people, approximately 70 per cent would be vision-impaired electors and 25 per cent would be expected to be people with other disabilities. Approximately 5 per cent would be able-bodied people living in remove parts of New South Wales. As a result, this Bill establishes the use of iVote to be in place for the next State election with the procedures to be set out by the Electoral Commissioner.

10. This Bill also makes miscellaneous amendments enabling the updating of electoral information to be made online, lowering the age of registration to vote and requiring certain decisions made by the Electoral Commissioner to be published on its website, rather than in the Gazette.

11. Lastly, the Bill makes miscellaneous amendments to the *Government Information (Public Access) Act 2009* to protect the secrecy of a technology assisted ballot and confidentiality of the investigative functions of the Electoral Commissioner.

The Bill

12. Outline of Provisions

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

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

Schedule 1 Amendment of *Parliamentary Electorates and Elections Act 1912* No 41 relating to technology assisted voting

Schedule 1 inserts proposed Division 12A (proposed sections 120AA–120AM) into Part 5 (Conduct of elections) of the Elections Act.

The proposed Division provides that the Electoral Commissioner will be able to approve procedures (***the approved procedures***) to enable eligible electors to vote at a State Parliamentary election by means of technology assisted voting, being a method of voting where the eligible elector votes by means of a networked electronic device, such as by using a computer linked to the internet or by using a telephone.

The ***eligible electors*** able to use this method are defined to be those electors who meet any of the following eligibility requirements:

> (a) the elector's vision is so impaired, or the elector is otherwise so physically incapacitated or so illiterate, that he or she is unable to vote without assistance,
> (b) the elector has a disability (within the meaning of the *Anti-Discrimination Act 1977*) and because of that disability he or she has difficulty voting at a polling place or is unable to vote without assistance,
> (c) the elector's real place of living is not within 20 kilometres, by the nearest practicable route, of a polling place,

(d) the elector will not throughout the hours of polling on polling day be within New South Wales. (However, technology assisted voting will not be available for this class of electors until at least one year after the 2011 State Parliamentary elections).

The Electoral Commissioner will also be able, by order published on the NSW legislation website, to set additional requirements for electors or any class of electors to be eligible for technology assisted voting. The regulations under the Elections Act will be able to exclude classes of electors from designation by the Electoral Commissioner.

The procedures approved by the Electoral Commissioner for technology assisted voting must provide:

(a) for an eligible elector to register before voting by means of technology assisted voting, and
(b) for the making of a record of each eligible elector who has voted by means of technology assisted voting, and
(c) for the authentication of the eligible elector's vote, and
(d) for the secrecy of the eligible elector's vote, and
(e) that any vote cast in accordance with the approved procedures be securely transmitted to the Electoral Commissioner and securely stored by the Electoral
(f) for the production of a printed ballot paper at the close of the poll, for the purposes of the scrutiny, for each vote transmitted to the Electoral Commissioner showing the vote cast by the eligible elector, and
(g) for the bundling and sealing of those ballot papers in packages and the distribution of those sealed packages to the relevant returning officers.

The proposed Division also provides for the following:

(a) the independent auditing, before and after each Assembly general election, of the information technology used under the approved procedures,
(b) that scrutineers appointed by candidates may observe the production of the printed ballot papers and bundling and sealing of those ballot papers in accordance with the approved procedures and any other element of the technology assisted voting process that is approved by the Electoral Commissioner for scrutiny,
(c) that votes cast by eligible electors and transmitted to the Electoral Commissioner in accordance with the approved procedures are to be counted with the postal votes for that election,
(d) that it is an offence for any person who becomes aware of how an eligible elector, voting in accordance with the approved procedures, voted to disclose that information to any other person except in accordance with the approved procedures,
(e) that it is an offence for a person to make any statement (whether orally, in writing or by means of electronic communication) that the person knows to be false or misleading in a material particular for the purposes of or in connection with making an application for registration for technology assisted voting or casting a vote by means of technology assisted voting,
(f) that it is an offence for a person, without reasonable excuse, to destroy or interfere with any computer program, data file or electronic device used, or

intended to be used, by the Electoral Commissioner for or in connection with technology assisted voting,
(g) that approvals by the Electoral Commissioner for the purposes of the proposed Division must be in writing and published on the Commission's internet website,
(h) that regulations may be made under the Elections Act that make provision for or with respect to enabling eligible electors to vote in elections by means of technology assisted voting,
(i) that the Electoral Commissioner may determine that technology assisted voting is not to be used at a specified election,
(j) the review of the performance of technology assisted voting at the 2011 State Parliamentary election and the investigation by the Electoral Commissioner of the extension of technology assisted voting to all electors outside the State and other electors for subsequent State Parliamentary elections.

Schedule 2 Miscellaneous amendments to *Parliamentary Electorates and Elections Act 1912* No 41

Schedule 2 [1] provides that "approved forms" are electoral papers for the purposes of the Elections Act. As a consequence the following sections of the Elections Act will apply to approved forms:

(a) section 176C (Signature to electoral paper),
(b) section 176D (Untrue statements in forms),
(c) section 176E (Witnessing electoral papers),
(d) section 176F (Forging or uttering electoral papers).

See also the related amendment in **Schedule 2 [18]**.

Schedule 2 [2] provides that the Electoral Commissioner is not required to vote at any election of a member of the Legislative Assembly or any periodic Legislative Council election.

Schedule 2 [3] provides that a returning officer for an electoral district is ineligible to vote at any election of a member of the Legislative Assembly for that district.

Schedule 2 [4] amends various provisions of the Elections Act to provide that certain decisions are to be made public on the Electoral Commission's internet website rather than in the Gazette. Those decisions are as follows:

(a) section 21AR—notice of any appointment or termination of an appointment of a returning officer,
(b) section 84 (2)—the appointment or abolition of a polling place,
(c) section 98 (3)—the appointment or abolition of a polling place outside the electoral district,
(d) section 114P (6)—the appointment of places (within or outside the State) and the hours for pre-poll voting,
(e) section 114ZN (2)—the declaration of institutions (such as convalescent homes, hospitals or similar institutions) for the purposes of declared institution pre-poll voting.

Schedule 2 [5], [6] and [10] make amendments, consistent with the *Commonwealth*

Electoral Act 1918 of the Commonwealth, to provide that 16 year olds may enrol under the Elections Act. Such persons may not vote until they attain 18 years of age.

Schedule 2 [7] repeals certain provisions of the Elections Act that provide that an elector is not entitled to vote at an election for a district unless the real place of living of the elector was, at some time within 3 months immediately preceding polling day for that election, within that district. It is noted that section 22 of the Elections Act provides that a person is not entitled to be enrolled for a district unless the person lives at an address in that district and the person has lived at that address for at least one month before the enrolment. **Schedule 2 [16] and [17]** make consequential amendments.

Schedule 2 [8] and [9] make amendments to enable the Electoral Commissioner to make changes to electoral rolls kept under the Elections Act as a consequence of any change to any roll kept by the Australian Electoral Commission under the *Commonwealth Electoral Act 1918* of the Commonwealth.

Schedule 2 [11] makes an amendment consequent on the enactment of proposed Division 12A (see Schedule 1). The amendment also makes law revisions to include references to Divisions 5A and 18 and remove a reference to repealed Division 3.

Schedule 2 [12] makes a law revision amendment.

Schedule 2 [13] and [14] make amendments to provide that the Electoral Commissioner may specify the manner in which the random order of names on ballot papers for Legislative Council elections is to be determined. The provisions currently assume a physical ballot with procedures to be prescribed by the regulations under the Elections Act. The methods that may be specified in the future may include determination by electronic means. **Schedule 2 [15]** makes a consequential amendment.

Schedule 2 [18] amends various provisions of the Elections Act to enable the Electoral Commissioner to approve forms for the purposes of that Act rather than requiring those forms be prescribed by the regulations under that Act.

Schedule 2 [22] makes a consequential amendment.

Schedule 2 [19] makes an amendment to enable an elector to cast certain provisional pre-poll votes when voting at a pre-poll voting place outside the elector's district.

Schedule 2 [20] enables the Electoral Commissioner to determine that various provisions of the Elections Act that enable a person to simultaneously enrol and vote do not apply at specified pre-poll voting places outside New South Wales.

Schedule 2 [21] makes an amendment to enable an elector, when voting at a declared institution within the elector's district, to cast a provisional vote on the ground that the elector claims that the elector's name was wrongly omitted from the roll.

Schedule 2 [23] makes an amendment to enable an elector to cast certain provisional votes (not being provisional votes that enable a person to simultaneously enrol for the first time and vote or transfer enrolment and vote) when voting at a declared institution outside the elector's district. The amendment also inserts a provision to make it clear that the votes of

persons voting at declared institutions outside the electors' districts are to be treated as absent votes for the purposes of the scrutiny.

Schedule 2 [24] renames "electoral information" in section 138 of the Elections Act as "election information" to prevent confusion with the term used in section 46 of that Act.

Schedule 2 [25] and [26] make amendments to Schedules 4 and 4A to the Elections Act to change the words of instructions contained in the sample ballot papers set out in those Schedules.

Schedule 2 [27] enables regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

Schedule 3 Amendment of *Government Information (Public Access) Act 2009* No 52
Schedule 3 [1] amends Schedule 1 to the *Government Information (Public Access) Act 2009* to provide that it is to be conclusively presumed for the purposes of that Act that there is an overriding public interest against disclosure of information the disclosure of which is prohibited by any of the following sections of the Elections
Act:

> (a) 120AG (Secrecy relating to technology assisted voting)—that prohibits the disclosure of information of how electors voted using technology assisted voting and prohibits the disclosure of the source code and other software that relates to such voting,
> (b) 135 (Violation of secrecy by officers)—that prohibits the disclosure by election officials and scrutineers of information of how electors voted,
> (c) 154AE (Votes from Antarctica not to be disclosed)—that prohibits the disclosure of information of how an elector voted under the special provisions relating to Antarctic voters.

Schedule 3 [2] amends Schedule 2 to the *Government Information (Public Access) Act 2009* to provide that information relating to the investigative or prosecuting functions of the Election Funding Authority is "excluded information" for the purpose of that Act. Section 43 of that Act prevents an access application from being made to an agency for excluded information of the agency. Also, Schedule 1 to that Act provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of excluded information.

Issues Considered by the Committee

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

Issue: Exclude Judicial Review

13. Proposed section120AC provides that the Electoral Commissions will be able to approve procedures to facilitate voting by eligible electors at an election by means of technology assisted voting. The term 'eligible electors' is to be defined as an individual with a disability that impairs them from voting or an individual who lives at a considerable distance from a polling station.

14. This section provides that procedures must be established by the Electoral Commissioner with respect to the registration of an eligible elector, the recording of their vote, the authentication of their vote and the provision of safeguards to ensure their vote remains secret. Additional procedures must be established to allow for the scrutiny of such votes and their transport to the Electoral Commissioner.

15. Meanwhile, proposed section 120AC(6) provides that the approval of procedures under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal except on the grounds that the approval exceeds the jurisdictional limit specified for the approval of such procedures.

16. The Committee recognises the importance of establishing procedures to enable individuals who are otherwise impaired from voting to be able to exercise their democratic franchise. The Committee also appreciates that the Electoral Commissioner is the most appropriate authority to establish such procedures.

17. However, the Committee is concerned that the Bill will prevent any court or tribunal – including the Court of Disputed Returns – from scrutinising the processes to be established by the Electoral Commissioner for technology assisted voting. In its place, the Bill provides for an internal audit function to take place both before and after each general election to ensure that the technology assisted voting facility properly reflects the votes cast.

18. The Committee notes that it is plausible that a challenge to the Court of Disputed Returns may be lodged from a vote, or class of votes, cast through the use of technology assisted voting. Despite this possibility, the Court of Disputed Returns would be prevented by the Bill from challenging, reviewing or calling into question the procedures that gave rise to the vote.

19. Given the Electoral Commissioner is charged with functions to ensure electoral processes are sufficiently scrutinised and conducted with transparency, the Committee does not consider it appropriate that relevant courts or tribunals are denied the ability to oversight the procedures that give rise to technology assisted voting, if the need arises.

20. The Committee recognises the importance of establishing procedures to enable individuals who are otherwise impaired from voting to be able to exercise their democratic franchise. The Committee also appreciates that the Electoral Commissioner is the most appropriate authority to establish such procedures.

21. However, the Committee is concerned that the Bill will prevent any court or tribunal – including the Court of Disputed Returns – from scrutinising the processes to be established by the Electoral Commissioner for technology assisted voting.

22. Given the Electoral Commissioner is charged with functions to ensure electoral processes are sufficiently scrutinised and conducted with transparency, the Committee does not consider it appropriate that relevant courts or tribunals are denied the ability to oversight the procedures that give rise to technology assisted voting, if the need arises. As such, the Committee refers this matter to Parliament for its further consideration.

The Committee makes no further comment on this Bill.

16. PLUMBING BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Virginia Judge MP
Portfolio:	Fair Trading

Purpose and Description

1. The objects of the Bill are to regulate the carrying out of plumbing and drainage work, including by prescribing the standards and requirements that must be complied with in carrying out such work, and to provide for a single plumbing regulator to oversee the regulation of plumbing and drainage work regardless of where the work is carried out in the State.

Background

2. According to the Agreement in Principle Speech: At present, there are more than 100 separate bodies responsible for regulating on-site plumbing and drainage work in New South Wales under seven separate legislative frameworks, each requiring compliance with different standards. These bodies include Sydney Water Corporation, Hunter Water Corporation and more than 100 councils, county councils, and local water utilities.

3. Over time each of these regulators has imposed multiple requirements for plumbing and drainage work on top of the New South Wales Code of Practice for Plumbing and Drainage, the current standard to which plumbing and drainage work must comply. In short, the system is complex and fragmented, creating confusion and adding to costs for plumbers, builders, homeowners and others.

4. In June 2009 the Government endorsed the findings of the Better Regulation Office's review of the State's plumbing regulatory framework. This review recommended that NSW Fair Trading become the single regulator in New South Wales for both the on-site regulation of plumbing and drainage work and the licensing of plumbers. The review also recommended that New South Wales adopt the performance-based Plumbing Code of Australia as a single and consistent plumbing standard across the State.

5. The reforms in the Plumbing Bill 2010 will streamline and enhance the regulation of on-site plumbing and drainage in New South Wales and will apply nationally consistent standards across the State.

6. New South Wales Fair Trading, which already licenses plumbers under the Home Building Act 1989, will become the single regulator for onsite plumbing and drainage work in New South Wales. This will improve compliance and enforcement by linking plumbers' licences directly to the work they perform. Separating the role of regulator from the water utility operators also has the advantage of ensuring competitive

neutrality in situations where there is a potential for the entry of further competitors in the provision of water, sewerage or recycled water services.

The Bill

7. Outline of Provisions

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

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

Clause 3 defines certain words and expressions used in the proposed Act. In particular, the terms ***plumbing regulator*** and the ***responsible person*** for plumbing and drainage work are defined. The ***plumbing regulator*** is the Director-General of the Department of Services, Technology and Administration. The ***responsible person*** for plumbing and drainage work is the person who:

(a) is carrying out the plumbing and drainage work in the person's capacity as the holder of an appropriate licence under the *Home Building Act 1989*, or
(b) if the person carrying out the work is doing the work on behalf of the holder of an appropriate licence under the *Home Building Act 1989*, the holder of the licence.

Clause 4 defines the term ***plumbing and drainage work*** for the purposes of the proposed Act.

Part 2 Plumbing and drainage work
Division 1 General requirements for plumbing and drainage work

Clause 5 provides that the responsible person for plumbing and drainage work must ensure the work complies with certain standards and other requirements.

Clause 6 provides that the responsible person for plumbing and drainage work must ensure the fittings used in the work are fittings that have been authorised by the plumbing regulator.

Division 2 Notice of work for plumbing and drainage work
Clause 7 provides that a person must not carry out plumbing and drainage work unless the responsible person for the work has given the plumbing regulator notice of the work. The requirement to give notice does not apply in certain circumstances such as if the work is done in an emergency.

Clause 8 provides that if the responsible person for plumbing and drainage work becomes aware, in the course of carrying out that work, that an existing plumbing installation, sanitary plumbing system, drainage installation or sanitary drainage system is defective, the responsible person must notify the owner and occupier of the land. If the defective installation or system poses an imminent risk to public health or safety the responsible person must also notify the plumbing regulator.

Division 3 Inspection of plumbing and drainage work
Clause 9 provides for the inspection of plumbing and drainage work by the plumbing regulator. Before, or as soon as practicable after, completing plumbing and drainage work the responsible person for the work must notify the plumbing regulator when the work will be ready for inspection. The plumbing regulator then advises the responsible person of a period during which the work must be available for inspection and the responsible person must ensure the work is ready for inspection during that period and be present for the inspection during that period.

Clause 10 provides that the plumbing regulator may issue directions to the responsible person for plumbing and drainage work requiring the responsible person to fix any defects in the work.

Division 4 Obligation to supply certificates and plans
Clause 11 provides that the responsible person for plumbing and drainage work must, after completing the work, give a certificate of compliance for the work to the plumbing regulator and the owner of the premises on which the work was done. The certificate certifies that the plumbing and drainage work complies with the standards and other requirements of section 5 of the proposed Act.

Clause 12 provides that after completing work on a sanitary drainage system, the responsible person for the work must supply a plan of the work to the owner of the land and either the plumbing regulator or the local council for the area in which the work has been carried out.

Division 5 Obligation of land owners and occupiers
Clause 13 provides that if the owner or occupier of land has control of a water service or sewerage installation located on the land the owner or occupier must take all reasonable steps to ensure the service or installation does not threaten public health or safety.

Part 3 Plumbing regulator
Clause 14 provides that the plumbing regulator may, by order published on the regulator's website, authorise a fitting for plumbing and drainage work.

Clause 15 provides that the plumbing regulator may exempt a person, or a class of persons, from certain requirements of the proposed Act including the requirement to give certain notices or to use only authorised fittings for plumbing and drainage work.

Clause 16 provides that the plumbing regulator may, at any reasonable time, inspect a service pipe that is connected to a water main or any drain connected to a sewer main.

Clause 17 provides that the plumbing regulator may delegate any of the regulator's functions to a local council or to any other person the regulator considers has the necessary skills, knowledge or experience to exercise the function. The council may subdelegate a function delegated to the council to the general manager of the council or a person engaged as a contractor by the council.

Part 4 Entry on to land and other powers
Clause 18 provides that a person (an ***authorised person***) authorised by the plumbing regulator may, for the purposes of enabling the regulator to exercise the regulator's

functions, enter premises during daytime hours or at a time when business is carried out at the premises.

Clause 19 provides that the power to enter premises does not apply to any part of the premises being used for residential purposes unless the occupier of that part of the premises has given consent or the entry is authorised by a search warrant.

Clause 20 provides that power to enter premises may not be exercised by a person unless the person has in the person's possession a written authority issued by the plumbing regulator and produces the authority if required to do so by the owner or occupier of the premises. This restriction does not apply if the premises are entered under a search warrant.

Clause 21 provides that before an authorised person enters premises the plumbing regulator must give the owner or occupier of the premises written notice of the intention to enter. This requirement does not apply in certain circumstances such as if the entry is with the consent of the owner or occupier, the entry is for the purposes of carrying out an inspection of plumbing and drainage work for which the regulator has been given notice by the responsible person or the entry is required because of a serious risk to health or safety.

Clause 22 provides that an authorised person may use reasonable force to enter premises, if authorised to do so by the plumbing regulator.

Clause 23 provides that if an authorised person uses force to enter premises or enters the premises in an emergency the authorised person must advise the plumbing regulator of that fact.

Clause 24 provides for the powers an authorised person may exercise after entering premises, including, for example, inspecting any article, matter or thing on the premises, taking samples and measurements and requiring any person at the premises to give the authorised person reasonable help or to answer questions or otherwise furnish information.

Clause 25 provides that an authorised person must do as little damage as possible in exercising a function under the proposed Part.

Clause 26 provides for the plumbing regulator to recover the costs of entering and inspecting premises from the owner or occupier of the premises, or the responsible person for the plumbing and drainage work the subject of the inspection.

Clause 27 provides that the plumbing regulator must pay compensation for any damage caused by an authorised person unless the damage arises from work that reveals there has been a contravention of the proposed Act or any other Act or regulations.

Clause 28 provides for the application for, and issuing of, search warrants to enter premises and search for evidence of a contravention of the proposed Act or regulations made under that Act.

Clause 29 provides that a person must not hinder or obstruct an authorised person in exercising the authorised person's functions.

Part 5 Legal proceedings

Division 1 Appeals

Clause 30 provides for appeals to the Land and Environment Court against certain decisions of the plumbing regulator.

Division 2 Injunctions
Clause 31 provides power for the Land and Environment Court to grant an injunction restraining a person from engaging in plumbing or drainage work that constitutes or may constitute a serious risk to public health or safety or a serious risk to the public.

Division 3 Penalty notices
Clause 32 provides for the issuing of penalty notices.

Clause 33 provides that the prosecution or conviction of a person for an offence does not prevent the plumbing regulator taking civil proceedings in relation to the same matter.

Division 4 Proceedings
Clause 34 provides that proceedings for an offence against the proposed Act are to be dealt with summarily before the Local Court or the Land and Environment Court.

Clause 35 provides for a certificate signed by the plumbing regulator to be prima facie evidence of the matters stated in it.

Division 5 Liability for offences
Clause 36 provides that it is an offence for a person to provide false or misleading documents under the proposed Act.

Clause 37 provides that a person who aids or abets a person to commit an offence is guilty of the same offence and liable to be punished accordingly.

Clause 38 provides that if a corporation contravenes a provision of the proposed Act or the regulations made under that Act each person who is a director of the corporation or who is concerned in its management is taken to have contravened the provision.

Part 6 Miscellaneous
Clause 39 provides that a person must not disclose information obtained in connection with the administration or execution of the proposed Act except in certain circumstances.

Clause 40 provides for the plumbing regulator to share information with local councils, network utility operators and the Department of Health.

Clause 41 provides that persons exercising functions under the proposed Act do not incur personal liability for acts done or omitted to be done in good faith under that Act.

Clause 42 provides for the continuing effect of directions given under the proposed Act or regulations made under that Act.

Clause 43 provides for the service of notices and directions under the proposed Act.

Clause 44 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 45 provides for the review of the proposed Act in 2 years.

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

Schedule 2 Amendment of legislation
Schedule 2 amends the Acts and regulations specified in the Schedule.

Schedule 3 Additional amendments to other legislation
Schedule 3 amends the Act and regulation specified in the Schedule.

Issues Considered by the Committee

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

Issue: Clause 2 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 Clause 2 provides for the Bill to be proclaimed on a day or days to be appointed by proclamation.

9. The Committee is advised that time is needed to complete the entire regulatory framework surrounding the Bill.

10. The Committee accepts that the Bill must commence on proclamation as time is needed to complete the entire regulatory framework surrounding the Bill

The Committee makes no further comment on this Bill.

17. PUBLIC HEALTH BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Carmel Tebbutt MP
Portfolio:	Health

Purpose and Description

1. This Bill deals with public health. Part 1 deals with preliminary matters and for the first time, includes an objectives clause setting out the objects of the legislation. The stated objects are: to protect, promote and improve public health; to control the risks to public health; to promote the control of infectious diseases; to prevent the spread of infectious diseases; and to recognise the role of local government in protecting public health.

2. For the Minister to respond immediately to a public health emergency, clauses 7 and 8 require that an order is to be published in the Government Gazette as soon as practicable after it is made. The provisions also allow for an order relating to a public health emergency that is not a state of emergency to be made for up to 90 days, rather than the 28 days provided for by the current Act. The Administrative Decisions Tribunal will continue to be able to review the making of such an order. Where a state of emergency has been declared, any order by the Minister that relies on the state of emergency has effect for the duration of the state of emergency unless earlier revoked.

3. Division 1 of part 3 of the Bill relates to safety measures for drinking water, and corresponds generally to the provisions of part 2B of the current Act. The Bill strengthens provisions relating to the safe supply of drinking water. Under section 10M of the current Act, regulations could be made requiring a supplier of drinking water to establish and adhere to a quality assurance program designed to ensure that the drinking water it supplies is safe to drink. However, clause 25 of the Bill requires suppliers of drinking water to establish and adhere to a quality assurance program that complies with guidelines approved by the Chief Health Officer. The change aims to provide for a more flexible and responsive approach to drinking water safety issues. The Chief Health Officer may also exempt a supplier of drinking water from the requirement to develop a quality assurance program, and would do so if satisfied that the supplier is already subject to appropriate regulatory requirements.

4. The Bill includes water carriers in the definition of "supplier of drinking water". A water carrier is a person who delivers drinking water by the tanker load. These regulatory controls ensure that the tankers used to transport water are fit for purpose, that water is tested for safety, and that proper records are kept so that recipients of water may be contacted in the event that the water they have received is identified as the source of a public health risk.

5. Part 3 of the Bill contains provisions streamlining the enforcement powers of authorised officers in relation to environmental health premises: that is premises containing regulated systems, public swimming pools and spa pools, and premises in which skin penetration procedures are undertaken. Under the Bill, authorised officers will be empowered to issue improvement notices requiring occupiers of environmental health premises to comply with prescribed requirements.

6. In situations where premises or the activities undertaken on those premises pose a serious risk to public health, the Director General of Health or the general manager of a local government authority will be able to issue a prohibition order. A prohibition order will prevent a regulated system from being operated, a public swimming pool or spa pool from being open to the public, or skin penetration procedures being performed at the premises until a clearance certificate has been issued. The powers to issue improvement notices and prohibition orders are similar to enforcement powers already incorporated in the *Food Act 2003*, the *Protection of the Environment Operations Act 1997* and the *Occupational Health and Safety Act 2000*.

7. Part 4 of the Bill relates to disease control and notification, and corresponds generally to parts 3 and 7 of the current Act. This part contains provisions relating to the duty of medical practitioners, pathology laboratories and hospitals to notify the Director General of Health of instances of certain diseases and medical conditions. There are also provisions dealing with the power of authorised medical practitioners to make public health orders. Proposed section 62 (6) (a) provides that in making a public health order, an authorised medical practitioner must take into account the principle that any restriction on the liberty of a person should be imposed only if it is the most effective way to prevent risk to public health. The proposed wording differs from that in the current Act, which provides that a public health order may only be made if it is the only effective way to ensure that the health of the public is not endangered.

8. Part 5 carries over provisions from the current Act relating to sexually-transmitted infections, vaccine-preventable diseases and diseases notifiable by hospital chief executive officers. The main change relates to the offence provisions concerning sexually-transmitted infections. The current Act provides in section 13 that it is an offence for a person who has a sexually-transmitted infection to have sexual intercourse with another person unless the second person has been informed of the risk of contracting the infection and has voluntarily agreed to the risk. This Bill provides in clause 79 (3) that a person charged with such an offence will have a defence if he or she satisfies a court that he or she took reasonable precautions to prevent the transmission of the sexually-transmitted infection.

9. Part 5 also contains new provisions relating to the reporting of deaths associated with anaesthesia or sedation. Prior to the commencement of the *Coroners Act 2009* all such deaths were reported to the Coroner, and subsequently notified by the Coroner to the Special Committee Investigating Deaths Under Anaesthesia [SCIDUA]. However, changes to the reporting of deaths to the Coroner under the *Coroners Act 2009* mean that not all deaths occurring while under or as a result of or within 24 hours after the administration of sedation of anaesthesia will be reported to the Coroner and therefore notified to the Special Committee Investigating Deaths Under Anaesthesia.

10. Part 7 of the Bill relates to miscellaneous health services, such as health services provided by unregistered health practitioners, and carries generally over provisions

found in part 2A of the current Act. Part 8 relates to enforcement and has consolidated the powers of authorised officers to undertake inspections and compliance activities. Part 9 relates to general administration of the Act and other miscellaneous provisions and includes provisions relating to the appointment of authorised officers and public health officers who will be responsible for coordinating activities in relation to public health within particular areas.

Background

11. The Bill revises and updates the public health legislation in New South Wales and follows on from an extensive review of public health legislation. The current *Public Health Act* was introduced in 1991.

12. In February 2010, the Department of Health released the consultation draft Public Health Bill for public consultation. Specific consultation with local government was essential due to the role that local government plays in public health. Over 90 submissions were received.

13. Local government is to take a primary role in the day-to-day regulation of environmental health premises, such as premises containing regulated systems, public swimming pools, and premises conducting skin penetration procedures.

14. Part 2 of the Bill corresponds generally to part 2 of the current Act, and is concerned with ensuring that an effective and rapid response occurs when serious public health threats arise. Part 2 of the current Act grants the Minister for Health emergency powers to make orders dealing with public health risk that arise during a declared state of emergency. However, the current provisions contain administrative requirements that impede the ability of the Minister to respond effectively to emergency situations. For example, sections 4 and 5 of the current Act require that any order of the Minister dealing with a public health risk must be published in the Government Gazette before it takes effect. Section 5 of the current Act, which relates to the power of the Minister to make orders to deal with a public health emergency that is not a declared state of emergency, requires the Minister to consult with the Premier before such orders are made and limits the application of such orders to 28 days.

15. The review of the Public Health Act recognised that some of the current administrative requirements with making emergency orders do not provide clarity to any subsequent emergency action, with the potential to slow the response and the effectiveness of that response. Amendment of the relevant provisions aims to improve flexibility while ensuring that the appropriate balance with protecting liberties and freedoms, including freedom of movement and assembly. For example, the requirement that an order be published in the Government Gazette before it takes effect may result in unnecessary delays in responding to public health emergencies, such as the outbreak of a pandemic.

16. The limitation of orders to 28 days may be inappropriately short, particularly when dealing with a serious infectious disease outbreak.

17. The emergency powers under the current Public Health Act have only rarely been used, with two orders having been made in the last decade: one relating to severe

acute respiratory syndrome [SARS] and the other relating to H1N1 influenza [swine flu].

18. The safety and reliability of the drugs and techniques used in anaesthesia and sedation have improved over recent decades. Accordingly, the Bill includes provisions in division 3 of part 5 requiring health practitioners to notify the Director-General when they become aware that a patient has died while under, as a result of or within 24 hours after the administration of sedation or anaesthesia. It is expected that the Director-General's role in this regard will be delegated to SCIDUA. This will ensure that SCIDUA can continue its function of reviewing anaesthesia- and sedation-related deaths. This situation has been in place for the past 12 months by way of regulation under the current Act.

19. Part 6 carries over provisions dealing with public health registers, such as the Pap Test Register. Part 6 will include new provisions allowing public health registers to be established for a range of public health purposes, such as facilitating care and treatment and follow-up of persons who have been exposed to diseases, identifying sources of infection and monitoring the outcomes of population health interventions. The information on these registers will be anonymous unless the individual gives consent to the inclusion of identifying details. The Agreement in Principle speech stated that the Office of the Privacy Commissioner has reviewed the provisions and has indicated its support.

The Bill

20. The objects of this Bill are as follows:

(a) to promote, protect and improve public health,

(b) to control the risks to public health,

(c) to promote the control of infectious diseases,

(d) to prevent the spread of infectious diseases,

(e) to recognise the role of local government in protecting public health.

The Bill repeals and re-enacts the *Public Health Act 1991* (the existing Act), consequent on the review of that Act by the Department of Health. The Bill also modifies the provisions contained in the existing Act as follows:

(a) a statement of the responsibilities of local government authorities in relation to environmental health is included,

(b) the requirement for the Premier’s approval before the Minister for Health (the Minister) may take action to deal with a risk to public health has been removed and the period for which a public health risk area declaration may be in force has been extended from 28 days to 90 days,

(c) the Director-General of the Department of Health (the Director-General), rather than the Minister is to have the power to order the closure of premises in order to protect public health,

(d) the requirement that the Minister must have reasonable grounds for suspecting that water is polluted before taking action against polluted drinking water or other polluted water that is likely to cause a risk to public health has been removed,

(e) the Chief Health Officer of the Department of Health (the Chief Health Officer) is to have the function of deciding whether boil water advices should be issued,

(f) the Director-General is to have additional power to give directions relating to air-conditioning and other regulated systems if offences are committed in relation to such systems, including directions requiring training to be undertaken and prohibiting persons from carrying out functions relating to such systems,

(g) public water utilities and their staff (and members of NSW Health Service) are to have protection from liability arising from the provision of information or advice concerning drinking water, if the advice is given in good faith for the purpose of executing the proposed Act,

(h) provisions previously contained in regulations and relating to public swimming pools and spa pools have been incorporated in the proposed Act and the Director-General is to have additional power to give directions about pools that are or are likely to be a risk to public health,

(i) provisions previously contained in regulations and relating to skin penetration procedures are incorporated in the proposed Act and the Director-General is to have additional power to give directions about persons found guilty of related offences,

(j) a medical practitioner is required to report particulars of death from a scheduled condition if the medical practitioner suspects a death was caused by the condition (rather than if the practitioner believes on reasonable grounds that it was so caused),

(k) the threshold for exercise of the Director-General's power to give mandatory directions relating to scheduled diseases and other conditions is lowered from a requirement to hold a reasonable belief that a person may have a certain disease or condition to a suspicion that the person has such a disease or condition and any such direction will be required to have regard to certain sensitivities of the person concerned,

(l) a medical practitioner is required to provide a person with information concerning a sexually transmitted infection if the medical practitioner suspects that the person has the infection (rather than if the medical practitioner believes on reasonable grounds that the person has the infection),

(m) a health practitioner must notify the chief executive officer of a hospital if the practitioner suspects that a patient or former patient at the hospital has or has had a notifiable disease (rather than if the practitioner believes on reasonable grounds that a patient has such a disease),

(n) the chief executive officer of a hospital must notify the Director-General if the officer suspects that a patient or former patient has or has had a notifiable disease (rather than if the officer believes on reasonable grounds that a patient or former patient has or has had such a disease),

(o) deaths after the administration of an anaesthetic or sedative drug, after treatment in a hospital or outside a hospital, are to be notified to the Director-General,

(p) powers of entry for enforcement powers have been expanded, consistent with powers contained in the *Smoke-free Environment Act 2000*, and consolidated,

(q) public health inspectors (called authorised officers in the proposed Act) will have the power to require persons to provide information and to request the name and address of persons suspected of contravening the proposed Act or regulations under that Act,

(r) there is a new offence of impersonating an authorised officer,

(s) offences, to be prescribed by the regulations, may be dealt with by the issue of penalty notices,

(t) the cost of complying with certain public health directions under the proposed Act may be recovered as a debt owed to the Crown by any person subject to the direction who fails to comply with it,

(u) maximum penalties for offences have been increased and continuing penalties have been imposed in appropriate cases,

(v) provision is made for the appointment of public health officers for parts of the State,

(w) the State or an authority of the State is excluded from liability for negligence or breach of duty (including a statutory duty) arising from the exercise of or failure to exercise a function under the proposed Act.

The proposed Act also contains provisions of a savings and transitional nature, consequent on the repeal of the existing Act, and also makes consequential amendments to other Acts.

21. Outline of provisions

Part 1 Preliminary

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 states the objects of the proposed Act.

Clause 4 states the responsibilities of local government authorities (as defined in the proposed Act) in relation to public health.

Clause 5 contains definitions for the purposes of the proposed Act.

Clause 6 provides for the proposed Act to bind the Crown.

Part 2 General public health: clauses 7 to 12

Part 3 Environmental health

Division 1 Safety measures for drinking water: clauses 13 to 25

Division 2 Legionella control: clauses 26 to 33

Division 3 Control of public swimming pools and spa pools: clauses 34 to 37

Division 4 Control of skin penetration procedures: clauses 38 to 39

Division 5 Improvement notices and prohibition orders: clauses 40 to 50

Part 4 Scheduled medical conditions:

Division 1 Preliminary: clause 51 defines the scheduled medical conditions.

Division 2 General precautions: clauses 52 to 53

Division 3 Notification and treatment of Category 1, 2 and 3 conditions and other conditions: clauses 54 to 59

Division 4 Public health orders for Category 4 and 5 conditions: clauses 60 to 76

Part 5 Other disease control measures and notifications:

Division 1 Sexually transmitted infections: clauses 77 to 80

Division 2 Notifiable diseases: clauses 81 to 83

Division 3 Notification of certain deaths: clause 84

Division 4 Vaccine preventable diseases: clauses 85 to 88

Part 6 Public health registers:

Division 1 Preliminary: clause 89 contains definitions of terms used in this proposed Part.

Division 2 The Pap Test Register: clauses 90 to 93

Division 3 Right to anonymity: clauses 94 to 96

Division 4 Other public health and disease registers: clauses 97 to 98

Part 7 Miscellaneous health services:

Division 1 Provision and promotion of health services: clause 99

Division 2 Provision of health services for which no registration is required: clause 100

Division 3 Provision of health services by health practitioners who are de-registered or subject to prohibition orders: clauses 101 to 103

Division 4 Nursing homes: clause 104

Part 8 Enforcement of Act:

Division 1 General inspections and inquiries: clauses 105 to 109

Division 2 Power to demand information: clauses 110 to 112

Division 3 Offences: clauses 113 to 120

Part 9 Administration:

Division 1 Public health officers: clauses 121 to 125

Division 2 Authorised officers: clauses 126 to 127

Part 10 Miscellaneous: clauses 128 to 136

Schedule 1 Scheduled medical conditions: sets out the 5 categories of scheduled medical conditions.

Schedule 2 Notifiable diseases

Schedule 3 Vaccine preventable diseases

Schedule 4 Amendment of Acts

Schedule 5 Savings, transitional and other provisions

Issues Considered by the Committee

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

Issue: Standard of proof – Clause 61 (1) of Division 4 of Part 4 – [Director-General may direct persons to undergo medical examination]; Clause 82 of Division 2 of Part 5 – [Health practitioners to make hospital CEO aware of notifiable diseases]; and Clause 83 of Division 2 of Part 5 – [Hospital CEO to notify Director-General of notifiable diseases]:

22. Proposed section 61 (1) applies if the Director-General:

    (a) suspects on reasonable grounds that person may have a Category 4 or 5 condition and may, on that account, be a risk to public health, and

    (b) considers that the nature of the suspected condition is such as to warrant medical examination.

23. Proposed section 61 enables the Director-General to require a person to undergo a medical examination if the Director-General reasonably suspects that the person is suffering from a Category 4 or 5 condition. Schedule 1 contains the list of scheduled medical conditions and definitions of Categories 1, 2, 3, 4 and 5.

24. The Committee notes the threshold for the exercise of the Director-General's power to give mandatory directions relating to scheduled diseases and other conditions is lowered from a requirement to hold a reasonable belief that a person may have a certain disease or condition to a suspicion that the person has such a disease or condition.

25. Proposed section 82 reads that: A health practitioner who is providing professional care or treatment at a hospital and who suspects that:

    (a) a patient at the hospital has a notifiable disease, or

    (b) a former patient has had a notifiable disease while a patient at the hospital,

    has a duty, and is authorised, to ensure that the chief executive officer of the hospital is made aware of that fact.

26. Proposed section 82 requires a medical practitioner to notify the chief executive officer of a hospital if the medical practitioner suspects that a patient who is, or has been, receiving treatment at the hospital is or was suffering from a notifiable disease. Schedule 2 contains the list of notifiable diseases.

27. The Committee notes that a health practitioner must notify the CEO of a hospital if the practitioner suspects (rather than the currently higher threshold of requiring the practitioner to believe on reasonable grounds) that a patient or former patient at the hospital has or has had a notifiable disease.

28. Proposed section 83 provides that (1): If the chief executive officer of a hospital suspects that:

(a) a patient at the hospital has a notifiable disease, or

(b) a former patient has had a notifiable disease while a patient at the hospital, the chief executive officer must, as soon as practicable, provide the Director-General with such information as may be prescribed by the regulations in relation to the patient or former patient. Maximum penalty: 50 penalty units.

29. Proposed section 83, therefore, requires the chief executive officer of a hospital to provide the Director-General with information concerning persons suffering from a notifiable disease who are, or have been, patients at the hospital.

30. The Committee notes that the CEO of a hospital must notify the Director-General if the officer suspects (rather than the currently higher threshold of requiring the officer to believe on reasonable grounds) that a patient or former patient has or has had a notifiable disease.

31. The Committee holds some concerns regarding these provisions that have lowered the threshold for the standard of proof from belief on reasonable grounds to one of suspicion. Clause 61 enables the Director-General to require a person to undergo a medical examination if the Director-General reasonably suspects that the person is suffering from a Category 4 or 5 condition. Clause 82 requires a medical practitioner to notify the chief executive officer of a hospital if the medical practitioner suspects that a patient who is, or has been, receiving treatment at the hospital is or was suffering from a notifiable disease. Similarly, clause 83 requires the chief executive officer of a hospital to provide the Director-General with information concerning persons suffering from a notifiable disease who are, or have been, patients at the hospital if the officer suspects that a patient or former patient has or has had a notifiable disease.

32. Giving consideration to the public health reasons, the Committee refers the above clauses to Parliament and asks whether the compelling public health interests may outweigh concerns regarding any potential trespass on individual rights and liberties that might arise from the lowering of the standard threshold from a belief on reasonable grounds to one of suspicion.

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:

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

> "The Act deals with a range of public health matters and includes broad powers to deal with public health emergencies, functions and powers relating to disease control and notification, and powers to control and limit public health risks associated with certain industries and practices...Local government is to take a primary role in the day-to-day regulation of environmental health premises, such as premises containing regulated systems, public swimming pools, and premises conducting skin penetration procedures…"

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

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

The Committee makes no further comment on this Bill.

18. PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT AMENDMENT BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Paul Lynch MP
Portfolio:	Industrial Relations, Public Sector Reform

Purpose and Description

1. This Bill amends the *Public Sector Employment and Management Act 2002* to make further provision in relation to appointments to positions in the Public Service.

2. The first amendment relates to section 19. At present, when a position in a public service department is advertised internally, only staff who are either permanent officers or departmental temporary employees of two years standing can apply for the position. A greater pool of applicants will enhance the merit principle and ensure the best person available in the agency is appointed to the position.

3. The Bill expands the pool of applicants available for internally advertised positions within a department to include staff in the special employment division associated with that department who are employed as either ongoing or permanent employees, and also temporary employees who have been employed continuously for at least two years.

4. The second amendment is to section 22 of the *Public Sector Employment and Management Act 2002*. This removes the statutory bar prohibiting a public servant from challenging matters relating to either an appointment or a failure to appoint to a public service position on discrimination or victimisation grounds. The amendment will apply to future appointments only. Grounds for discrimination in the *Anti-Discrimination Act 1977* include age, carers' responsibilities, disability, race, sex, transgender, marital or domestic status, and homosexuality. Victimisation is where an employee who has suffered detrimental action for being a member or official of an industrial organisation may bring proceedings under section 213 of the *Industrial Relations Act 1996*.

Background

5. Section 22 of the *Public Sector Employment and Management Act 2002* will remain to protect the appointment of persons from outside the public service. People who commit to work in the New South Wales public service and resign from their current private sector position will not lose their new public service job based on a challenge brought by a public servant.

The Bill

6. The object of this Bill is to amend the *Public Sector Employment and Management Act 2002*:

(a) to enable members of staff of a Special Employment Division of the Government Service to be appointed on merit to internally advertised vacant positions in a Department that is associated with the Special Employment Division, and

(b) to provide that the existing prohibition on bringing proceedings in relation to Public Service appointments does not prevent proceedings from being brought in relation to an appointment based on discrimination or victimisation grounds.

7. Outline of provisions

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

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

Schedule 1 Amendment of *Public Sector Employment and Management Act 2002*:

Schedule 1 [1]–[3] will enable persons who are employed in a Special Employment Division of the Government Service to be eligible for appointment to a position in an associated Department in the case where that position has not been advertised. A Department is taken to be associated with a Special Employment Division if the Department Head is also the Division Head of the Special Employment Division. These Divisions are currently listed in Part 3 of Schedule 1 to the Act and generally comprise groups of staff who are not part of a Public Service Department but who are employed under Chapter 1A of the Act in connection with a statutory corporation that in most cases also has Public Service staff assigned to it. A member of staff of a Special Employment Division will not be eligible to be appointed on merit to a vacant Departmental position that has not been advertised if the member of staff is employed on a casual basis or is a short-term temporary employee.

Section 22 of the Act currently prevents any legal proceedings (other than promotion and disciplinary appeals under the *Industrial Relations Act 1996*) from being brought in relation to appointments to positions in the Public Service. **Schedule 1 [4]** provides that this prohibition on bringing proceedings does not prevent a public servant from bringing proceedings under Part 9 of the *Anti-Discrimination Act 1977* (which relates to discrimination complaints), or under the provisions of the *Industrial Relations Act 1996* relating to freedom from victimisation, in relation to the appointment of another public servant to a position in the Public Service. **Schedule 1 [6]** makes it clear that the proposed amendment only applies in relation to future appointments.

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

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

19. ROAD TRANSPORT DRIVER LICENSING BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Borger MP
Portfolio:	Roads

Purpose and Description

1. The object of the Bill is to amend the *Road Transport (Driver Licensing) Act 1998* to increase the number of demerit points required to be accumulated before unrestricted licence holders are subject to licence suspensions and other sanctions, as follows: from 12 to 13 in the case of a driver other than a professional driver; from 12 to 14 in the case of a professional driver.

Background

2. According to the Agreement in Principle Speech, these amendments are in recognition of the evolving nature of enforcement methods and the fact that New South Wales has the strongest safety regime and Demerit Points Scheme in the nation. As the NRMA has stated, if we keep coming up with new ways to catch drivers without giving something back to motorists, the public's confidence in the demerit system may wane.

3. The Demerit Points Scheme has been amended on several occasions to address particular matters of public interest. However, it has been some years since key aspects of the scheme's overall operation were comprehensively reviewed or amended. It is important to note that the number of demerit-based offences has progressively grown over the years to a current level of approximately 600 demerit offences, which is substantially more than other jurisdictions. By comparison, the number of demerit-based offences in Queensland is approximately 347, in South Australia approximately 263, and in Victoria approximately 184. In the last decade obviously licence suspensions have increased. In some cases, licence suspensions are for very good reasons. But we need to ensure fairness in the system, fairness for drivers, and fairness for professional drivers.

The Bill

4. Outline of provisions

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

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

Schedule 1 Amendment of *Road Transport (Driver Licensing) Act 1998* No 99
Schedule 1 [1] increases from 12 or more to 13 or more the number of demerit points that may be incurred over a 3-year period before the RTA must suspend an unrestricted driver licence or not issue a licence in the case of an unlicensed driver. For a licence holder who is a professional driver, the number of demerit points will be 14 or more (currently professional drivers may only incur the same number of demerit points as other drivers). The number of demerit points remains the same for restricted driver licences (being 4 or more demerit points for a learner licence or provisional P1 licence, and 7 or more demerit points for a provisional P2 licence).

Schedule 1 [2] updates the tables setting out the periods of automatic suspension or licence ineligibility for accumulating demerit points to reflect the new demerit point amounts.

Schedule 1 [3] makes consequential amendments.

Schedule 1 [4] inserts proposed section 18A. The new section enables the RTA to request a person to submit information (including in the form of a statutory declaration) about the person's work so that the RTA can determine whether the person is a professional driver (and eligible for the higher demerit points limit). A person who does not provide the requested information may be treated as if they were not a professional driver for demerit points purposes. A request for the information can be made in connection with licence application procedures or by a written notice to the person.

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

Schedule 1 [6] defines a ***professional driver*** as a person whose primary work is personally driving a motor vehicle on roads in or outside of the State. The regulations may also prescribe additional classes of persons as professional drivers and exclude any class of persons from being professional drivers.

Issues Considered by the Committee

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

Issue: Clause 2 - Commencement by Proclamation

5. The Committee notes that Clause 2 specifies that the Bill 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.

6. The Committee sought comment on this issue from the Minister's Office and was informed that it was due to the fact that the Roads and Transport Authority was still assessing the internal system changes necessary to implement the scheme.

7. The Committee has sought comment on why the Bill is to commence on proclamation rather than assent from the Minister for Roads' Office. It has received the response that the Roads and Traffic Authority are still assessing the internal system changes necessary to implement the new demerit point system. The Committee accepts the explanation and thanks the Minister's Office for its response.

The Committee makes no further comment on this Bill.

20. RURAL FIRES AMENDMENT BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Steve Whan MP
Portfolio:	Emergency Services

Purpose and Description

1. The object of this Bill is to provide for the designation of neighbourhood safer places, being places identified by the Commissioner of the NSW Rural Fire Service as places where it may be safe to shelter from a bush fire.

Background

2. The amendments outlined in this bill have arisen from the New South Wales response to the recommendations of the Victorian Bushfires Royal Commission The bill will formalise the responsibility of the New South Wales Rural Fire Service to issue public warnings about bushfires, increase the level of representation on the New South Wales Bush Fire Coordinating Committee and grant statutory recognition to neighbourhood safer places. Some of the most significant recommendations of the Victorian Bushfires Royal Commission's findings relate to the delivery of information during a bushfire. Accurate and timely information can assist people in making informed decisions about the actions they need to take in the face of a bushfire threat.

The Bill

3. Outline of provisions.

Clause 1 sets out the name of the proposed Act.

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

Schedule 1 Amendment to the *Rural Fires Act 1997*
Schedule 1 [5] inserts proposed Part 3A (proposed sections 62B-62H). The proposed Part provides for the designation of neighbourhood safer places and for the removal of such delegations.

The Commissioner may, by notice in writing to the owner or occupier of land or a building, designate the land or building to be a neighbourhood safer place. In the case of land owned or occupied by a person other than a public authority, such a designation may only be made with the consent of the owner or occupier concerned.

Issues Considered by the Committee

4. 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.

21. STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL 2010

Date Introduced: 24 November 2010
House Introduced: Legislative Assembly
Minister Responsible: The Hon Eric Roozendaal MLC
Portfolio: Treasury

Purpose and Description

1. This Bill is intended to make miscellaneous amendments to certain State revenue legislation

2. In particular, the Bill will amend the *Duties Act 1997* to extend certain concessions under that Act and to provide for new concessions and for law revision purposes.

3. The Bill also amends the *First Home Owner Grant Act 2000* to increase the first home owner grant cap and the *Land Tax Management Act 1956* to extend certain land tax concessions under that Act.

4. Lastly, the Bill amends the *Payroll Tax Act 2007* to make further provision with respect to liability for payroll tax in respect of shares or options granted to employees or employers.

Background

5. Firstly, the amendments to the *Payroll Tax Act 2007* are necessary because of changes made by the Commonwealth Government in the 2009-10 budget to the method of taxing employee share schemes. These changes rely on provisions of the *Commonwealth Income Tax Assessment Act 1936* to determine when a grant of shares and options becomes liable for payroll tax, and determining their taxable value, and these amendments align the *Payroll Tax Act 2007* with the recent Commonwealth changes.

6. These amendments are designed to ease the compliance burden on taxpayers because they will use one set of rules for employers to meet their Commonwealth and State Tax liabilities.

7. Secondly, the amendments to the *Land Tax Management Act 1956* will extend a concession applying on the death of land owner from one year to two years.

8. Lastly, the *First Home Owner Grant Act 2000* is to be amended to comply with requirements of the Intergovernmental Agreement on Federal Financial Relations. The grant is currently capped at $750,000, and homes valued above that amount are not eligible for the grant. The intergovernmental agreement requires the cap to be not less than 1.4 times the capital city median house price, and that figure must be reviewed annually. The Bill implements this obligation by increasing the cap to $835,000 for transactions on and after 1 January 2011.

9. The amendments contained in this Bill have been the subject of consultation with the professional and industry bodies, including the Financial Services Council, the Institute of Chartered Accountants and CPA Australia, the Law Society of New South Wales, the Property Council of Australia and the Taxation Institute of Australia.

The Bill

10. Outline of Provisions

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

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of *Duties Act 1997* No 123 Duties concessions

Schedule 1 [1] extends an existing duty concession that applies to certain transfers of dutiable property that are made as a consequence of the retirement of a trustee or the appointment of a new trustee. Duty of $50 will be charged on such a transfer that is made to a trustee of a self managed superannuation fund if the Chief Commissioner is satisfied that the transfer is not part of a scheme for conferring an interest on a new trustee or other person to the detriment of the beneficial interest or potential beneficial interest of any person. An existing duty concession does not apply to such a transfer because generally in self managed superannuation funds the trustees will be beneficiaries under the trust. **Schedule 1 [15]** inserts a definition of ***self managed superannuation fund*** in the Dictionary.

Schedule 1 [4] extends an existing duty concession that applies to certain transfers of dutiable property that are made in connection with a person changing superannuation funds. The amendment provides for payment of duty at the concessional rate of $500 on a transfer of marketable securities from the trustee of a superannuation fund, or a custodian of the trustee of a superannuation fund, made in exchange for the issue of units in a pooled superannuation trust to a trustee of the pooled superannuation trust where the transfer is made in connection with changing superannuation funds.

Schedule 1 [3] makes it clear that the same concessions that apply to a transfer made in connection with a person changing superannuation funds also apply in respect of an agreement to transfer that is made in that regard. **Schedule 1 [6]** makes it clear that duty will be charged on both the agreement and the transfer at the concessional rate of $500 (or the ad valorem rate, if lower). **Schedule 1 [5]** is a consequential amendment.

Schedule 1 [7] provides for a concession in respect of a transfer of, or an agreement to transfer, dutiable property that is made to the custodian of the trustee of a self managed superannuation fund by the sole member of that superannuation fund. Duty is charged at the concessional rate of $500.

Schedule 1 [7] also provides that the concessional rate for transfers to a self managed superannuation fund does not apply if, as a result of the transfer, the fund ceases to be a complying superannuation fund.

Schedule 1 [11] updates a provision that exempts from duty an application to register a motor vehicle that is made by a war veteran entitled to a pension under the *Veterans' Entitlements Act 1986* of the Commonwealth, so that the provision extends to other defence

force officers entitled to similar benefits under the *Military Rehabilitation and Compensation Act 2004* of the Commonwealth.

Other amendments

Schedule 1 [10] clarifies that debt interests are to be disregarded in determining whether a person has a significant interest in a landholder, in the same way as they are disregarding in determining whether a person has an interest in a landholder.

Schedule 1 [9] is a consequential amendment.

Schedule 1 [14] removes the definition of ***mortgage*** from the Dictionary to the *Duties Act 1997* because it is inconsistent with changes made to the concessional provisions applying to mortgage-backed securities and asset-backed securities by the *State Revenue Legislation Amendment Act 2010*.

Schedule 1 [8] updates a reference to the *Pharmacy Practice Act 2006*, which has been replaced by the *Health Practitioner Regulation National Law (NSW)*.

Schedule 1 [2] ensures that a duty concession that applies when there is a change in custodians of a trust applies even if the trustee of the trust has changed since the retiring custodian was appointed.

Schedule 1 [12] enables savings and transitional regulations to be made as a consequence of the proposed amendments.

Schedule 1 [13] provides for transitional matters.

Schedule 2 Amendment of *First Home Owner Grant Act 2000* No 21
Schedule 2 [1] increases the eligibility cap for the first home owner grant from $750,000 to $835,000. The increase applies in respect of eligible transactions occurring on or after 1 January 2011 (see **Schedule 2 [3]**). **Schedule 2 [2]** enables savings and transitional regulations to be made as a consequence of the amendment.

Schedule 3 Amendment of *Land Tax Management Act 1956* No 26
Currently, a trust established by will is not a special trust for land tax purposes for the period of 12 months after the death of the testator. **Schedule 3 [1]** extends that period to 2 years and removes the Chief Commissioner's discretion to approve longer periods in particular cases.

Schedule 3 [2] extends the period during which land used as a principal place of residence by the owner of the land continues, after the death of the owner, to be exempt from land tax from 12 months to 2 years.

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

Schedule 3 [4] provides that the amendments apply only in respect of a death occurring on or after 1 January 2010 and to the assessment of land tax liability in respect of the 2011 land tax year and subsequent land tax years.

Schedule 4 Amendment of *Payroll Tax Act 2007* No 21

Schedule 4 [2] provides that a grant of a share or an option to an employee by an employer, in respect of services performed by the employee, constitutes wages for the purposes of Division 4 of Part 3 of the *Payroll Tax Act 2007* (the ***principal Act***) only if the share or option is an ESS interest and is granted to the employee under an employee share scheme (within the meaning of section 83A–10 of the *Income Tax Assessment Act 1997* of the Commonwealth). A grant of a share or an option to an employee by an employer that is not an ESS interest under an employee share scheme will be taxable as a fringe benefit under Division 2 of Part 3 of the principal Act. **Schedule 4 [7] and [8]** make consequential amendments to make it clear that the grant of a share or option by a company to one of its directors (who is not an employee of the company) is to be taxed under Division 4 of Part 3 of the principal Act, or as a fringe benefit, even if it is not an ESS interest granted under an employee share scheme.

An employer can elect to treat either the date on which a share or an option is granted to an employee or the vesting date for the share or option as the date on which the wages are taken to be paid for the purposes of payroll tax. **Schedule 4 [3]** sets out the circumstances in which a share or option is taken to be ***granted*** to a person for the purpose of determining when payroll tax is payable. The provision replaces a reference to a repealed provision of the *Income Tax Assessment Act 1936* of the Commonwealth which set out those circumstances. **Schedule 4 [4]** provides that the vesting date of a share or option is taken to be the date at the end of 7 years after the grant of the share or option, if it has not occurred before that date.

The principal Act currently provides that the value of shares or options is to be determined in accordance with provisions of the *Income Tax Assessment Act 1936* of the Commonwealth that have been repealed. **Schedule 4 [6]** provides that the value of shares or options is either the market value or the amount determined in accordance with new provisions in the *Income Tax Assessment Act 1997* of the Commonwealth. The employer may elect the method by which the value of the share or option is determined in any return lodged by the employer. **Schedule 4 [5]** is a consequential amendment.

Schedule 4 [1] removes a reference in the definition of ***share*** in the principal Act to a provision of the *Income Tax Assessment Act 1936* of the Commonwealth that has been repealed. As a result, a "stapled security" will have its ordinary meaning for the purposes of the definition, as it does in other legislation.

Schedule 4 [9] enables savings and transitional provisions to be made as a consequence of the proposed amendments.

Schedule 4 [10] inserts savings and transitional provisions that:

(a) validate any decision made by an employer before the commencement of the proposed amendments to treat the grant of a share or an option as a fringe benefit for the purposes of payroll tax (rather than as a share or option under Division 4 of Part 3 of the principal Act) if that decision would have been validly made had the proposed amendments been in force, and

(b) allow for certain shares or options to continue to be treated as shares or options to which Division 4 of Part 3 (as amended by the proposed Act) applies, even if, as a result of the amendments, the shares or options

should be treated as fringe benefits under Division 2 of that Part, if the shares or options were granted before 1 July 2011 (the commencement date for the proposed amendments).

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Issues Considered by the Committee

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

Issue: Retrospectivity

11. Schedule 1 [1] of this Bill is to commence, retrospectively, on 1 July 2010. It is incumbent on the Committee to identify those provisions in legislation that are to commence retrospectively. It is generally the Committee's view that Bills should commence on assent or on a specified date after the date of assent so that all affected individuals are aware of changes made to their rights and responsibilities before they occur.

12. The Committee notes that many of the changes foreshadowed by the amendments are of a machinery or technical nature which would not adversely affect the rights and liberties of individuals.

13. However, clause 7 of the Bill proposes to amend section 62A of the *Duties Act 1997* which changes the duty payable for transfers to self managed superannuation funds, including the provision that $500 is chargeable on certain transfers. The Committee is concerned with the retrospective application of this provision given it will likely cause a financial burden to individuals who had not planned for or considered that such charges would be payable at the time of transaction.

14. Further, clause 30 of the amendment Bill, which seeks to amend the *Payroll Tax Act 2007,* provides that anything done or omitted to be done by an employer in connection with the assessment and payment of payroll tax, in respect of a month occurring after June 2009 and before July 2011, that would have been validly done or omitted to be done had the amendments made to this Act by the *State Revenue Legislation Further Amendment 2010* been in force, is taken to have been validly done or omitted.

15. Once again, the Committee would ordinarily comment on provisions in Bills that seek to have to retrospective effect, like the provision set out in clause 30, as it will be operation for the period June 2009 – July 2010.

16. However, the effect of this provision is simply to validate a decision by an employer to treat the grant of a share or an option to an employee that is not an employee share scheme interest as a fringe benefit under the *Payroll Tax Act 2007* and to determine the value of fringe benefits in accordance with the later provisions.

17. As this provision simply seeks to validate the decisions of an employer with respect to fringe benefits, and does not create any new responsibilities or restrict individual rights with retrospective effect, the Committee does not find any cause for concern with this particular provision.

18. Schedule 1 [1] of this Bill is to commence, retrospectively, on 1 July 2010. It is incumbent on the Committee to identify those provisions in legislation that are to commence retrospectively.

19. The Committee notes that many of the changes foreshadowed by the amendments are of a machinery or technical nature which would not adversely affect the rights and liberties of individuals.

20. However, clause 7 of the Bill proposes to amend section 62A of the *Duties Act 1997* which changes the duty payable for transfers to self managed superannuation funds, including the provision that $500 is chargeable on certain transfers. The Committee is concerned with the retrospective application of this provision given it will likely cause a financial burden to individuals who had not planned for or considered that such charges would be payable at the time of transaction. As such, the Committee refers this matter to Parliament for its further consideration.

The Committee makes no further comment on this Bill.

22. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Kristina Keneally MP
Portfolio:	Premier

Purpose and Description

1. This Bill repeals certain Acts and instruments and to amend certain other Acts and instruments in various respects and for the purpose of effecting statute law revision; and to make certain savings.

2. Schedule 1 makes three amendments to various items of legislation that were requested by the New South Wales Ombudsman to assist the transition of the Child Death Review Team from the Commission for Children and Young People to the Ombudsman.

3. Amendments to legislation in the portfolio of the Minister for Youth will enable the convenor of the Child Death Review Team to determine the remuneration and allowances to which expert advisers appointed by the convenor are entitled. An uncommenced provision will be repealed as that amendment may unnecessarily limit the capacity of the convenor to provide certain confidential information about child deaths to the Ombudsman. The *Community Services (Complaints, Reviews and Monitoring) Act 1993* will be amended to return the basis of reporting of the Ombudsman's work and activities under the Act in relation to child deaths to calendar years rather than financial years.

4. Schedule 1 amends the *Motor Vehicles Taxation Act 1988* to simplify the circumstances in which a pensioner will be exempt from the need to pay tax on the registration of a motor vehicle. The classes will be broadened for pensioners eligible for an exemption or remove various requirements relating to proof of eligibility.

5. The cooperatives legislation will be amended by schedule 1 to insert savings and transitional provisions and make minor consequential amendments to implement the national personal property securities scheme that is due to commence next year.

6. Amendments are also made by schedule 1 to the strata schemes legislation. The amendments will enable easements and covenants to be created over lots in a strata scheme on registration of a strata plan of consolidation, rather than just on registration of the original plan for a strata scheme or a strata plan of subdivision.

7. The *Heritage Act 1977* will be amended by schedule 1 to enable regulations to provide for a scheme for the maintenance of moveable objects that are listed on the State Heritage Register and of buildings or works that are listed on that register as ruins. Neither of these are covered by the Act's current scheme for the maintenance and repair of listed items.

8. Schedule 1 also amends the *Conveyancing Act 1919* to extend the circumstances in which a court may determine the amount payable under a mortgage and arrange for its discharge on the application of the person entitled to redeem the mortgaged land. These will now include the circumstance where either the mortgagee is deceased and is without a personal representative or unlikely to have a personal representative or it is uncertain who the personal representative is.

9. Schedule 1 makes amendments to the *Independent Commission Against Corruption Act 1988* to implement various recommendations of the Joint Parliamentary Committee on the Independent Commission Against Corruption. These include: requiring a public authority within three months of receiving a copy of a recommendation by the commission to take action to reduce the likelihood of corrupt conduct occurring; to inform the commission of whether it proposes to implement any plan of action in response to the recommendation, and, if so, of the plan. A public authority that notifies the commission of a plan of action must then inform the commission of any progress it makes in implementing the plan on a 12-monthly basis.

10. These amendments will increase the term of office of an assistant commissioner of the Commission from five years to seven years, and increase the maximum period for which a person may hold office as an assistant commissioner from terms totalling not more than five years to terms totalling not more than seven years.

11. Amendments made to the *Adoption Act 2000* by schedule 1 will enable a principal officer of an accredited adoption service provider to delegate to appropriately qualified employees of the service provider or of an affiliated foster care service, the principal officer's function under the Act of preparing reports about adoptions. This is consistent with the current power of the Director General to delegate his or her function under the Act of preparing such reports.

12. Delegation is also the subject of a schedule 1 amendment to the *Public Sector Employment and Management Act 2002*. Currently, the State Contracts Control Board may delegate its functions under the Act to an authorised person, being a member or subcommittee of the board, a member of staff of a division of the government service, a statutory body or officer or any other person or body approved by the Minister. The proposed amendment will allow such a delegate to sub-delegate a delegated function to another authorised person if authorised by the terms of the board's delegation to do so.

13. Amendments to the *Community Relations Commission and Principles of Multiculturalism Act 2000* will expand the number of commissioners from 11 to 15. The requirement for a quorum will be amended so that commissioners granted leave by the commission will not be included in the "majority" of members required for a quorum.

14. The last schedule 1 matter is the amendments to the *Plant Diseases Act 1924*. These will extend the definition of "disease" in the Act to include any bacterium, fungus or viroid that causes an abnormal or unhealthy condition in plants and will enable the Governor to declare, by proclamation, any such bacterium, fungus or viroid to be a disease for the purposes of the Act.

Background

15. The Agreement in Principle speech explained that:

> Schedule 1 contains policy changes of a minor and non-controversial nature, which are considered too inconsequential to warrant the introduction of a separate amending bill. That schedule contains amendments to 30 Acts and three regulations.

16. The Agreement in Principle further explained that:

> Schedule 2 deals with matters of pure statute law revision consisting of minor technical changes to legislation that the Parliamentary Counsel considers are appropriate for inclusion in the bill. Examples of amendments in schedule 2 are those arising out of the enactment or repeal of other legislation, those correcting numbering and those updating terminology. Schedule 3 contains amendments that relate to the official notification of the making of certain statutory instruments on the New South Wales legislation website maintained by the Parliamentary Counsel. Schedule 4 repeals a number of Acts and instruments and provisions of Acts that are redundant or of no practical utility, including those that contain only amendments that have commenced. The repeals extend to the *Residential Parks Amendment (Statutory Review) Act 2005*, which contains only formal provisions and uncommenced amendments that have been superseded by proposed national reforms.

17. Schedule 2 also repeals a number of Acts whose existing provisions are consolidated in the *National Parks and Wildlife Act 1974* without any change to their effect.

18. The Agreement in Principle speech also stated that:

> The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts and statutory instruments concerned or at the end of the schedule concerned. If any amendment causes concern or requires clarification, it should be brought to the Government's attention. If necessary, we will arrange for a briefing to provide additional information on the matters raised. If any particular matter of concern cannot be resolved following a briefing and is likely to delay the passage of the Bill, the Government is prepared to consider withdrawing the matter from the Bill.

The Bill

19. The objects of this Bill are:

> (a) to make minor amendments to various Acts and statutory instruments (Schedule 1), and
>
> (b) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedules 2 and 3), and
>
> (c) to repeal certain Acts and instruments and provisions of Acts and to make consequential and minor ancillary amendments to Acts (Schedule 4), and
>
> (d) to make other provisions of a consequential or ancillary nature (Schedule 5).

20. 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.

Clause 3 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

Schedule 1 Minor amendments:

Schedule 1 makes amendments to the following Acts and statutory instruments:

Adoption Act 2000 No 75

Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 No 13

Commission for Children and Young People Act 1998 No 146

Community Relations Commission and Principles of Multiculturalism Act 2000 No 77

Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2

Community Welfare Act 1987 No 52

Conveyancing Act 1919 No 6

Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11

Co-operative Housing and Starr-Bowkett Societies Regulation 2005

Co-operatives Act 1992 No 18

Co-operatives Regulation 2005

Environmental Planning and Assessment Act 1979 No 203

Fines Act 1996 No 99

Gas Supply Act 1996 No 38

Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

Heritage Act 1977 No 136

Independent Commission Against Corruption Act 1988 No 35

Independent Pricing and Regulatory Tribunal Act 1992 No 39

Institute of Sport Act 1995 No 52

Law Enforcement and National Security (Assumed Identities) Act 2010 No 73

Law Enforcement (Controlled Operations) Act 1997 No 136

Licensing and Registration (Uniform Procedures) Act 2002 No 28

Mining Act 1992 No 29

Mining Regulation 2010

Motor Vehicles Taxation Act 1988 No 111

Plant Diseases Act 1924 No 38

Public Sector Employment and Management Act 2002 No 43

Residential Tenancies Act 2010 No 42

Retirement Villages Act 1999 No 81

Road Transport (Driver Licensing) Act 1998 No 99

Strata Schemes (Freehold Development) Act 1973 No 68

Strata Schemes (Leasehold Development) Act 1986 No 219

Subordinate Legislation Act 1989 No 146

The amendments to each Act and statutory instrument are explained in detail in the explanatory note relating to the Act or statutory instrument concerned set out in Schedule 1.

Schedule 2 Amendments by way of statute law revision:

Schedule 2 amends certain Acts and instruments for the purpose of effecting statute law revision. The amendments to each Act and instrument are explained in detail in the explanatory note relating to the Act or instrument concerned set out in Schedule 2.

Schedule 3 On-line notification of the making of statutory instruments:

Schedule 3 amends certain Acts and a statutory instrument in relation to the official notification of the making of certain statutory instruments on the NSW legislation website that is maintained by the Parliamentary Counsel. The nature of the amendments contained in Schedule 3 is explained in detail in the explanatory note at the end of the Schedule.

Schedule 4 Repeals:

Part 1 of Schedule 4 repeals a number of Acts and statutory instruments and provisions of Acts.

Part 2 of Schedule 4 consolidates provisions (of possible ongoing effect) that deal with a similar subject matter and that are currently contained in a number of separate Acts by transferring them into the *National Parks and Wildlife Act 1974*. The transfer of these provisions enables the repeal of those Acts by clause 4 of the Schedule.

Section 30A of the *Interpretation Act 1987* ensures that the transfer of a provision of an Act to another Act does not affect the operation (if any) or meaning of the provision.

Part 3 of Schedule 4 transfers into the *Interpretation Act 1987* a provision previously contained in Statute Law (Miscellaneous Provisions) Acts that enabled the restoration of

Acts and instruments repealed by those Acts, and extends the operation of the provision to repeals by any future Act or instrument that provides for its application.

Schedule 5 General savings, transitional and other provisions

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:

21. The Committee notes that the proposed Act under clause 2 (1) commences on 7 January 2011, except as provided by (2). Clause 2 (2) reads: the amendments made by the Schedules to this Act commence on the day or days specified in those Schedules in relation to the amendments concerned. If a commencement day is not specified, the amendments commence on 7 January 2011. The Committee notes from the explanatory notes that where amendments will commence on a day or days to be appointed by proclamation, the reasons relate to the commencement of the *Personal Property Securities Act 2009* of the Commonwealth along with the national personal property securities scheme which is due to commence next year, or those that are consequential on amendments made to other Acts.

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

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

The Committee makes no further comment on this Bill.

23. THREATENED SPECIES CONSERVATION AMENDMENT (ECOLOGICAL CONSULTANTS ACCREDITATION SCHEME) BILL 2010*

Date Introduced:	24 November 2010
House Introduced:	Legislative Council
Minister Responsible:	Hon Ian Cohen MLC
Portfolio:	The Greens

Purpose and Description

1. This Bill amends the *Threatened Species Conservation Act 1995* to provide for an accreditation scheme in respect of persons who prepare or carry out species impact statements and other ecological assessments and surveys.

2. Provisions of the Bill seek to introduce a new part 8A into the *Threatened Species Conservation Act 1995* to implement an ecological consultant accreditation scheme. Proposed section 138 requires ecological consultants preparing ecological assessments to have accreditation under part 8A.

3. Proposed division 1 defines ecological assessments as:

> (a) an environmental assessment, or part of an environmental assessment, carried out for the purposes of compliance with the environmental assessment requirements under Part 3A of the Planning Act that relates to biodiversity values or the impact of a project on biodiversity values,
>
> (b) an environmental impact statement, or part of an environmental impact statement, prepared for the purposes of compliance with Part 4 or 5 of the Planning Act that relates to biodiversity values or the impact of a development or activity on biodiversity values,
>
> (c) any other assessment, or part of an assessment, prepared to assist a consent authority in deciding under the Planning Act whether something is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats.

4. The above is consistent with section 5A of the Planning Act. The definition of "ecological assessments" continues as:

> (d) a species impact statement referred to in Division 2 of Part 6,
>
> (e) any survey or assessment of biodiversity values or of the impact of a proposal on biodiversity values prepared or carried out for the purposes of this Act (such as for use in connection with biodiversity certification under Part 7AA of the biobanking scheme under Part 7A).

5. Ecological assessments will be required to be conducted by accredited ecological consultants. However, an employee who prepares an ecological assessment under the supervision of an accredited ecological consultant does not have to be accredited under that part.

6. Proposed division 2 sets out the process of accreditation. The criteria for accreditation will be specified by regulations and in consultation with the industry.

7. The director general must provide a written response to an applicant letting the applicant know whether he or she has been granted or denied accreditation. Where accreditation has been denied, reasons must be given. If accreditation is granted, accreditation will run for three years, after which, applicants would need to apply for renewal. Renewal might be refused if it is deemed that they are no longer eligible, or there are grounds for suspension or revocation of accreditation. This decision must be provided in writing with reasons given for any refusal to renew. A person whose application for renewal is denied will be provided with an opportunity to make submissions.

8. Accreditation may be revoked or suspended by the director general in certain circumstances. These include situations where: the person is no longer eligible for accreditation; the person has not satisfied the continuing education requirements; the person has contravened provisions of the changes to the Act or regulations, or a condition of the accreditation, if it is recommended following peer review; if false or misleading information is provided; if an accreditation fee is not paid; or any other matter that may be prescribed by the regulations.

9. The Bill provides a right of appeal for ecological consultants through the Administrative Decisions Tribunal. A review by the tribunal may be applied for if the person does not agree with the decision not to grant accreditation, to refuse to renew accreditation, to impose, vary or revoke conditions of an accreditation, or to revoke or suspend accreditation completely.

10. Proposed division 3 establishes an accreditation panel to manage the accreditation of ecological consultants, make recommendations on eligibility criteria, and conduct peer review of ecological assessments of referred assessments.

11. There are provisions under proposed division 3 relating to the management and disclosure of pecuniary interests of those on the accreditation panel. Under proposed division 4, the accreditation panel will have a peer review function which will allow it to review ecological assessments that have been carried out and to make recommendations to the director general on its findings.

12. Offences will be introduced. It will become an offence for a person to prepare or carry out an ecological assessment, or indicate they are able to carry out an assessment, unless they are accredited. However, this will not apply to a person who is preparing or carrying out an assessment under the directions or supervision of an accredited ecological consultant. It will also be an offence to make false representations about being accredited.

Background

13. The aim of this Bill is to establish a comprehensive accreditation scheme for consultants who are involved in preparing ecological assessments and reviews. Ecological consultants' work provides technical information about biodiversity and ecosystem functions.

14. Professional regulatory accreditation could enhance knowledge sharing, capacity building and continuing professional development.

15. According to the Second Reading speech, section 113 of the *Threatened Species Conservation Act* will enable the Director General of the Department of Environment, Climate Change and Water [DECCW] to start an accreditation scheme for consultants undertaking species impact statements. However, the director general has never used this power, even though the discretion has been part of the Act for the past eight years.

16. The Second Reading speech explained about the role of peer review:

> This is important because it will allow any ecological consultant, consent authority or other person who is supported by an accredited ecological consultant to request a peer review of an assessment if they are not satisfied that the assessment was undertaken in accordance with industry best practice or any other matter that may be stipulated in regulations. This review will involve consideration of the methodology used, species identification, writing skills employed and the ability of the ecological consultant to develop and advise on appropriate management and mitigation measures. To protect consultants from mischievous requests for a peer review of their work the accreditation panel may refuse to conduct a peer review if it believes the request is frivolous or vexatious. It is hoped that the peer review function, when combined with the overall accreditation process, will help prevent "consultant shopping" whereby a proponent will deliberately choose an ecological consultant that is known to produce outcomes that will be in their favour.

The Bill

17. The object of this Bill is to amend the *Threatened Species Conservation Act 1995* (the ***Principal Act***) to establish an accreditation scheme for ecological consultants preparing or carrying out certain assessments, impact statements or surveys under the Principal Act, the *Fisheries Management Act 1994* or the *Environmental Planning and Assessment Act 1979* (the ***Planning Act***), and certain other documents and activities (***ecological assessments***).

    The Bill will make it an offence for a person to:

    (a) prepare or carry out an ecological assessment if the person is not an accredited ecological consultant (unless the person is acting in accordance with the directions of, or under the supervision of, an accredited ecological consultant), or

    (b) prepare or carry out an ecological assessment requiring specialist accreditation if the person has not obtained specialist accreditation in accordance with the scheme (unless the person is acting in accordance with the directions of, or under the supervision of, a specialist ecological consultant), or

(c) make representations, or cause or allow any representation to be made, that the person is accredited or has specialist accreditation under the scheme (unless the person is so accredited).

The Bill also:

(a) establishes the processes for the grant and renewal of accreditation, and

(b) enables the Director-General to impose, vary or revoke conditions in respect of accreditation or to revoke or suspend accreditation in certain circumstances, and

(c) establishes an accreditation panel to perform certain functions relating to accreditation, such as making certain recommendations to the Director-General and conducting peer reviews of any ecological assessment that has been prepared or carried out by an accredited ecological consultant, and

(d) establishes a process for the conduct by the accreditation panel of peer reviews of ecological assessments, so that the accreditation panel may make recommendations in respect of revocation or suspension of, or the imposition, variation or revocation of conditions on, a person's accreditation.

18. Outline of provisions

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

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

Schedule 1 Amendment of *Threatened Species Conservation Act 1995* No 101

Introduction of ecological consultant accreditation scheme

Schedule 1 [2] inserts a new Part 8A into the Principal Act, which establishes an accreditation scheme for any person who is engaged or employed to prepare or carry out an ecological assessment (an ***ecological consultant***). Currently, the Principal Act gives the Director-General of the Department of Environment, Climate Change and Water (the ***Director-General***) the power to institute arrangements for the accreditation of suitably qualified and experienced persons to prepare species impact statements or to undertake and prepare surveys and assessments for use in connection with certain requirements under the Principal Act, the *Fisheries Management Act 1994* and the Planning Act. The new Part replaces that scheme.

Accreditation of ecological consultants

Proposed section 138A allows the regulations to make provision for or with respect to eligibility for accreditation as an ecological consultant. It also provides that only natural persons are eligible for accreditation.

Proposed section 138B enables the regulations to specify that certain types of ecological assessment require the ecological consultant preparing or carrying it out to have specialist

accreditation. The regulations may also make provision for or with respect to eligibility for accreditation as a specialist ecological consultant.

Proposed section 138C requires the Minister to refer any proposed regulation relating to eligibility for accreditation to be referred to the accreditation panel for comment.

Proposed sections 138D–138J provide for the grant, renewal, revocation or suspension of accreditation. The Director-General may grant or renew accreditation subject to conditions, which the Director-General may impose, vary or revoke. The regulations may also impose conditions on accreditation or a class of accreditation. Accreditation remains in force for a fixed period of 3 years, unless sooner revoked. The regulations may make provision for an accreditation fee to be paid to the Director-General.

Proposed section 138K enables a person to apply to the Administrative Decisions Tribunal for a review of certain decisions made by the Director-General in respect of the person under the scheme.

Proposed section 138L provides that the Director-General is to keep a register of ecological consultants, in which the name, contact details and particulars of accreditation of all accredited ecological consultants and specialist ecological consultants are to be recorded. The register is to be made available for public inspection on the website of the Department. The Director-General must also cause the name of any ecological consultant whose accreditation has been suspended or revoked to appear in the register.

Establishment of accreditation panel

Proposed sections 138M–138P provide for the establishment of an accreditation panel. The functions of the accreditation panel include making recommendations to the Director-General regarding the eligibility of an applicant for accreditation (including specialist accreditation) and making recommendations following a peer review conducted by the accreditation panel of an ecological assessment. The accreditation panel may also make recommendations to the Minister regarding any regulation that makes provision for the eligibility of a person for accreditation (including specialist accreditation). The proposed sections also provide for the determination of the procedure of the panel and the disclosure of relevant interests by members of the panel.

Peer reviews of ecological assessments

The accreditation panel may conduct a peer review of any ecological assessment, following which the accreditation panel may make a recommendation to the Director-General that the accreditation of an ecological consultant be revoked or suspended, that conditions or further conditions be imposed on the ecological consultant's accreditation or that existing conditions on the accreditation be varied or revoked. **Proposed section 138Q** provides that any accredited ecological consultant or a consent authority may request the accreditation panel to conduct a peer review of any ecological assessment. A person who is not an accredited ecological consultant or consent authority, but whose request for peer review is supported by either an accredited ecological consultant or a consent authority, may also request a peer review. The request for peer review may only be made on the ground that the ecological assessment does not conform to industry best practice or on any other ground provided for by the regulations. **Proposed section 138R** provides for the conduct of a peer review. The

accreditation panel may refuse to carry out a peer review if it is of the opinion that the review request is frivolous or vexatious.

Offences

Proposed section 138S makes it an offence for an ecological consultant to prepare or carry out an ecological assessment unless he or she is accredited under Part 8A. It is also an offence if an ecological consultant who does not have specialist accreditation prepares or carries out an ecological assessment that requires specialist accreditation. The proposed section provides that a person is not guilty of an offence if the person prepares or carries out, or assists in preparing or carrying out, an ecological assessment under the supervision of, or in accordance with the directions of, a person who is duly accredited. This offence does not apply to a Minister or an officer of the Crown exercising functions under the Principal Act, the Planning Act or any other law, nor does it apply to any other person in such circumstances as may be prescribed by the regulations.

Proposed section 138T makes it an offence for a person to make or cause or allow any representation to be made that he or she is duly accredited under Part 8A unless that person is duly accredited.

The maximum penalty for each offence is 600 penalty units.

Responsibilities of ecological consultants

Under the scheme, an ecological consultant has the responsibility to avoid conflicts of interest. Although it is not an offence not to do so, it may be grounds for suspension or revocation of accreditation. The regulations may also make further provision with respect to the responsibilities of ecological consultants (**proposed sections 138U and 138V**).

Other amendments

Schedule 1 [1] and [4] repeal the existing provisions that relate to the Director-General's power to accredit persons to prepare species impact statements, assessments and surveys.

Schedule 1 [5] allows for regulations to be made that are of a savings or transitional nature. **Schedule 1 [6]** provides that the new provisions relating to the ecological consultants accreditation scheme will not apply to any ecological assessment that was submitted to a consent authority or other person before the commencement of the amendments. It also provides for the phasing-in of the offence contained in **proposed section 138S** and provides that the Minister must ensure that the making of a regulation under **proposed section 138A** is recommended within 6 months after the date of assent to the proposed Act.

Schedule 1 [3] makes a minor consequential amendment.

Issues Considered by the Committee

19. 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.

24. VOCATIONAL EDUCATION AND TRAINING (COMMONWEALTH POWERS) BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Verity Firth MP
Portfolio:	Education and Training

Purpose and Description

1. The objects of this Bill are as follows: to refer to the Commonwealth Parliament certain matters relating to vocational education and training (principally the registration and regulation of vocational education and training organisations and the accreditation of vocational education and training courses), and to repeal the existing vocational education and training legislation operating in New South Wales, to make consequential amendments to other legislation and to enact savings, transitional and other provisions.

Background

2. The proposed Act will form part of the new national vocational education and training regime being established under Commonwealth law. It is to be enacted for the purposes of section 51 (xxxvii) of the Commonwealth Constitution which enables State Parliaments to refer matters to the Commonwealth Parliament. At this stage some States (Victoria and Western Australia) have not agreed to refer power to the Commonwealth. The national VET legislation will, however, be applied on a more limited basis to those non-referring States pursuant to existing Commonwealth constitutional powers.

3. The proposed national VET legislation is the *National Vocational Education and* Training Regulator Bill 2010 and the *National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010* of the Commonwealth. The reference operates by reference to the text of that initial national VET legislation, a copy of which will be tabled in State Parliament, and will refer to the Commonwealth the matters to which the tabled text relates that are included within the legislative powers of State Parliaments (the ***initial reference***).

4. The proposed Act also provides for the referral of certain matters relating to vocational education and training to the Commonwealth Parliament in order to support future amendments to the national VET legislation (the ***amendment reference***). The amendment reference is limited to the express amendment of the national VET legislation so that it cannot be the source of power for other Commonwealth legislation.

5. The proposed Act also sets out certain exclusions (or “carve outs”) to the amendment reference to ensure that State legislation is not excluded or limited in areas the Commonwealth and the referring States have agreed will not be affected by the

referral (eg higher education, apprenticeships and the qualifications required for various occupations)

The Bill

6. Outline of provisions

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

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

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

Clause 4 provides, for the purposes of the initial reference, that the initial VET matters are the matters to which the tabled text relates to the extent that they are included within the legislative powers of the State.

Clause 5 provides, for the purposes of the amendment reference, that the continuing VET matters are each of the following:

(a) the registration and regulation of vocational education and training organisations,
(b) the accreditation or other recognition of vocational education and training courses or programs,
(c) the issue and cancellation of vocational education and training qualifications or statements of attainment,
(d) the standards to be complied with by a vocational education and training regulator,
(e) the collection, publication, provision and sharing of information about vocational education and training,
(f) investigative powers, sanctions and enforcement in relation to any of the Above. However, State law on the following matters are not to be limited or affected by the reference (the "carve outs"):
(a) primary or secondary education (including the education of children subject to compulsory school education),
(b) tertiary education that is recognised as higher education and not vocational education and training,
(c) the rights and obligations of persons providing or undertaking apprenticeships or traineeships,
(d) the qualifications or other requirements to undertake or carry out any business, occupation or other work (other than that of a vocational education and training organisation),
(e) the funding by the State of vocational education and training,
(f) the establishment or management of any agency of the State that provides vocational education and training.

Clause 6 refers to the Commonwealth Parliament the initial VET matters to the extent of making laws by enacting Acts in the terms, or substantially in the terms, of the tabled text.

The clause also refers to the Commonwealth Parliament each of the continuing VET matters to the extent of making express amendments to its national VET legislation.

Clause 7 makes it clear that the State Parliament envisages that the national VET legislation can be amended or affected by Commonwealth legislation enacted in reliance on other powers and that instruments under the national VET legislation may also affect that legislation otherwise than by express amendment.

Clause 8 deals with the termination of the period of the references. The clause enables the Governor, by proclamation, to fix a day on which the period of the references (or only the amendment reference) terminates.

Clause 9 makes it clear that the separate termination of the period of the amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

Clause 10 provides for the accuracy of a copy of the tabled text containing the proposed national VET legislation to be certified by the Clerk of the Legislative Assembly.

Schedule 1 Repeal
Schedule 1 repeals the existing New South Wales legislation on the referred matters, namely, the *Vocational Education and Training Act 2005*.

Schedule 2 Consequential amendment of other legislation
Schedule 2 amends various Acts as a consequence of the repeal of the existing State legislation and its replacement by the new national VET legislation.

Schedule 3 Savings, transitional and other provisions
Schedule 3 includes savings and transitional provisions consequent on the enactment of the proposed Act (including a power to make regulations of a savings and transitional nature). Provision is made with respect to the dissolution of the State Vocational Education and Training Accreditation Board, the construction of superseded legislative references, the provision of information and assistance to the new National VET Regulator and the continuation of pending proceedings.

Issues Considered by the Committee

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

Issue: Commencement by Proclamation

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

8. However, as the Bill is part of a national scheme the Committee does not consider the commencement by proclamation provision to be an inappropriate delegation of power in this instance.

9. As the Bill is part of a national scheme the Committee does not consider the commencement by proclamation provision to be an inappropriate delegation of power in this instance.

The Committee makes no further comment on this Bill.

25. WAGERING LEGISLATION AMENDMENT BILL 2010

Date Introduced:	24 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Kevin Greene MP
Portfolio:	Gaming and Racing

Purpose and Description

1. This Bill amends the *Racing Administration Act 1998* to make further provision for betting by bookmakers; to amend the *Unlawful Gambling Act 1998* to prohibit remote access betting facilities; to amend the *Betting Tax Act 2001* to provide for refunds in respect of certain betting tax paid by totalizator licensees; and for other purposes.

2. Item [8] of schedule 1 replaces section 18 of the *Racing Administration Act* to extend the scheme under which bookmakers are authorised to take bets on sporting events so as to permit them to take bets on any event or contingency declared by the Minister for Gaming and Racing. Definitions and references to sports betting bookmakers, sports betting authorities and sports betting events within the *Racing Administration Act* are replaced with references to betting event bookmakers, betting authorities and declared betting events.

3. Minor consequential amendments are made to the *Greyhound Racing Act 2009*, the *Harness Racing Act 2009* and the *Thoroughbred Racing Act 1996.* Amendments to the *Racing Administration Act* will carry forward the existing controls that apply to sports betting and will not enable wagering operators to have unfettered betting options. As with sports betting, the extended categories of events and contingencies on which New South Wales wagering operators will be able to operate will be restricted to those declared by the Minister for Gaming and Racing by order published in the Government Gazette.

4. The Minister already has the power to approve betting on cage fighting as this falls under the category of a sporting event. However, there is no intention to allow betting on such an activity. The Minister will retain the power to place conditions on approvals to operate on a declared betting event; to approve rules of betting; and to withdraw approvals if considered appropriate.

5. The Bill amends section 16 of the *Racing Administration Act* to enable bookmakers who hold telephone and electronic betting authorities, such as internet betting authorities, to accept or make bets at approved premises that are not on a licensed racecourse.

6. Item [6] of schedule 1 inserts a new section 16A to provide that a controlling body of racing (Racing New South Wales, Harness Racing New South Wales or Greyhound Racing NSW), may approve premises in New South Wales that are not on a licensed racecourse as premises on which a bookmaker may conduct telephone or electronic betting pursuant to an authority under section 16. A consequential amendment is made to section 9 (2) of the *Unlawful Gambling Act* to clarify that bookmakers may

only conduct betting while at a licensed racecourse when it is lawful for betting to take place or in the case of telephone or electronic betting, as permitted under section 16 of the *Racing Administration Act*.

7. Schedule 2 [8] inserts a new section 11A in the *Unlawful Gambling Act*, which provides that a person must not make a remote access betting facility available in a public place for use by persons frequenting that place.

8. Under this new section, "public place" means a place that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public—whether on payment of money, by virtue of membership of a club or other body, or otherwise—and, without limitation, includes the premises of a registered club under the *Registered Clubs Act 1976* and licensed premises under the *Liquor Act 2007*.

9. A remote access betting facility means any device, such as a computer terminal or telephone, that is for use primarily or exclusively for betting on any event or contingency or for facilitating betting on any event or contingency. The legislation does not capture computer terminals at internet cafes or providing access to public telephones.

10. The current legislative provisions that restrict bookmakers to offering face-to-face betting while fielding at race meetings or in a racecourse betting auditorium are retained.

11. The racing controlling bodies and the Office of Liquor, Gaming and Racing will retain their ability to monitor bookmaker internet and telephone betting operations.

12. Item [15] of schedule 1 amends section 26 I (4) of the *Racing Administration Act* to make it clear that the powers of the police and inspectors authorised under the Act to enter racecourses to inspect bookmaker records will extend to entering approved premises under section 16A.

13. Section 26I (7) is amended to expand the meaning of inspector to include a person designated by a controlling body to exercise the functions of an inspector under section 26I in respect of bookmakers authorised by the relevant controlling body.

14. The racing controlling bodies will be given the power under new section 16A (2) of the *Racing Administration Act* to place conditions on approvals under the section. This will provide them with the ability to require bookmakers to field at race meetings on a minimum number of occasions.

15. New section 16A (3) provides that approved premises for telephone and electronic betting may not be open to the public. To reduce the administrative burden on bookmakers, item [14] of schedule 1 deletes sections 26A to 26F of the *Racing Administration Act*. These sections provide for the constitution of a Bookmakers Revision Committee and the authorisation of bookmakers by that committee.

16. The Bill provides that an eligible overseas account customer must reside overseas for at least 11 months of the year. TAB Limited will be required to validate the overseas residence status every 12 months by providing the Government with an audited listing

of qualified overseas resident customers with applicable address and totalizator betting turnover details.

Background

17. Betting services are authorised to be conducted in New South Wales by licensees under the *Totalizator Act 1997* and by bookmakers who are required to be licensed by a New South Wales controlling body of racing (Racing New South Wales, Harness Racing New South Wales or Greyhound Racing NSW). TAB Limited, a wholly owned subsidiary of Tabcorp Holdings Limited, holds licences for the conduct of off-course and on-course totalizator betting in New South Wales. The licences include 15-year exclusivity periods, which expire on 22 June 2013. All New South Wales race clubs also hold on-course totalizator licences on the same basis as TAB Limited.

18. The first part of this reform will expand the types of events and contingencies on which New South Wales wagering operators may offer betting services.

19. The second part of this package is designed to assist New South Wales bookmakers by making it easier and more cost-effective for them to provide internet and telephone betting services to their account customers. Currently, bookmakers are restricted to providing betting services from a racecourse location. This includes face-to-face, internet and telephone betting while fielding at New South Wales race meetings and, in the case of internet and telephone betting only, at other times from a racecourse office.

20. Under the amendments, bookmakers will only be authorised to conduct internet and telephone betting using systems approved by the relevant racing controlling bodies and the Office of Liquor, Gaming and Racing within Communities NSW.

21. The final part of the reform relates to the TAB. Item [1] of schedule 3 inserts a new section 11 in the *Betting Tax Act* to enable a licensee under the *Totalizator Act*, TAB Limited to receive a refund of betting tax paid on totalizator investments by certain categories of account customers.

22. The Agreement in Principle speech explained that:

> The proposal involves reducing the totalizator commission tax from 19.11 per cent to 10 per cent in respect of bets placed by TAB Limited account customers with betting turnover of $3 million or over in each financial year, and in respect of all bets placed by account customers residing outside Australia. The tax refund will in turn be fully passed on by the TAB to these customers as an incentive to bet in the New South Wales totalizator system. The payment of rebates to customers with high betting turnover, known as premium customers, is a widespread practice by TABs throughout Australia, including TAB Limited. This has driven significant growth in betting turnover from this segment of the market. The tax refund proposal will not replace the existing TAB Limited rebate scheme; rather, it will supplement the scheme.
>
> …The bill includes a number of safeguards to ensure that New South Wales taxpayers are not disadvantaged by the scheme. First, the tax refund will apply for the 2010-11 and 2011-12 financial years only, with any extension to a later financial year to be prescribed by regulation. A formal review is to be undertaken in 2012 to assess the impact of the scheme prior to any extension being supported. In addition, there is a requirement that the refund on the taxes paid on premium and international customer investments will not reduce the total tax paid on those investments to below $11 million in each of the 2010-11—being on a pro rata basis in this first year, as the scheme will

not commence until the commencement of this part of the legislation—and the 2011-12 financial years. This arrangement will protect taxpayers if TAB Limited projections are not achieved. Finally, the amount of the tax refund payable to TAB Limited is to be determined by the Treasurer. The Treasurer will have the power to request TAB Limited to provide such information considered necessary to establish the appropriate tax refund entitlement. The refund will be paid retrospectively, after the end of each financial year, when the full amount of investments made by eligible customers and the amount of rebates paid by TAB Limited can be verified.

The Bill

23. The objects of this Bill are:

(a) to extend the scheme under which bookmakers are authorised to take bets on sporting events to permit authorised bookmakers to take bets on any event or contingency declared by the Minister, and

(b) to allow an authorised bookmaker to take telephone and electronic bets at premises, other than a licensed racecourse, that are approved for that purpose by the controlling body that authorised the bookmaker concerned, and

(c) to allow authorised bookmakers to take telephone and electronic bets at any time, and

(d) to prohibit persons from making remote access betting facilities available in a public place for use by the public, and

(e) to dissolve the Bookmakers Revision Committee, and

(f) to provide for the refund of part of the betting tax paid by a totalizator licensee on commissions taken by the licensee from investments made by certain investors in totalizators conducted by the licensee.

24. Outline of provisions

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

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

Schedule 1 Amendment of *Racing Administration Act 1998* No 114

Schedule 1 [8] extends the scheme under which bookmakers are authorised to take bets on sporting events to permit authorised bookmakers to take bets on any event or contingency declared by the Minister.

Schedule 1 [1], [2], [7], [9]–[13] and [15] make consequential amendments.

Schedule 1 [6] allows an authorised bookmaker to take telephone and electronic bets at premises (other than a licensed racecourse) that are approved for that purpose by the controlling body that authorised the bookmaker concerned. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [3] provides that a bookmaker can be authorised to take telephone or electronic bets at approved premises (as well as on a licensed racecourse as at present).

Schedule 1 [14] repeals provisions relating to the Bookmakers Revision Committee and State bookmakers authorities granted by that Committee as a consequence of the dissolution of that Committee by the proposed Act. **Schedule 1 [4]** makes a consequential amendment.

Schedule 1 [16] grants persons designated by a controlling body certain powers with respect to the inspection of documents and records relating to bets made with or by bookmakers authorised by that controlling body to carry on bookmaking.

Schedule 1 [17] provides for the making of regulations containing provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [18] inserts provisions of a savings and transitional nature consequent on the enactment of the proposed Act and dissolves the Bookmakers Revision Committee.

Schedule 2 Amendment of *Unlawful Gambling Act 1998* No 113

Schedule 2 [8] provides that it is an offence for a person to make a remote access betting facility available in a public place for use by persons frequenting that place. A remote access betting facility is a device (such as computer terminal or telephone) that is for use primarily or exclusively for betting on any event or contingency or for facilitating betting on any event or contingency.

The amendment does not prevent a person making a remote access betting facility available in a public place if that facility is used for betting or facilitating betting on a totalizator or betting activity conducted under the authority of a licence issued under the *Totalizator Act 1997*.

Schedule 2 [4] and [5] make it clear that betting by telephone or electronically with a licensed bookmaker or a bookmaker authorised in another jurisdiction are not prohibited forms of betting.

Schedule 2 [7] amends section 9 of the *Unlawful Gambling Act 1998* consequent on the amendment made by **Schedule 1 [3].**

Schedule 2 [1]–[3], [6] and [9] make amendments to the *Unlawful Gambling Act 1998* consequential on to the amendment made by **Schedule 1 [1].**

Schedule 2 [10] provides for the making of regulations containing provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 2 [11] inserts a provision of a transitional nature consequent on the enactment of the proposed Act.

Schedule 3 Amendment of *Betting Tax Act 2001* No 43

Schedule 3 [1] provides for a refund of a portion of the betting tax paid by a totalizator licensee on commissions taken by the licensee from investments made by eligible investors in totalizators conducted by the licensee. The eligible investors are investors who hold an account with the licensee and who are resident outside Australia for not less than 11 months

of the year or who each invest not less than $3 million in the year to which the refund relates.

Schedule 3 [2] provides for the making of regulations containing provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 3 [3] inserts a provision of a transitional nature consequent on the enactment of the proposed Act.

Schedule 4 Amendment of other Acts

Schedule 4 makes amendments to the *Greyhound Racing Act 2009*, *Harness Racing Act 2009*, *Thoroughbred Racing Act 1996* and *Totalizator Act 1997* consequent on the expansion of the events in respect of which bookmakers may take bets under the *Racing Administration Act 1998*.

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:

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

> The first part of this reform package will expand the types of events and contingencies on which New South Wales wagering operators may offer betting services. This will be facilitated by amendments to the Racing Administration Act 1998 and consequential amendments to the *Totalizator Act 1997* and the *Unlawful Gambling Act 1998*.
>
> Item [8] of schedule 1 to the Bill replaces section 18 of the *Racing Administration Act* to extend the scheme under which bookmakers are authorised to take bets on sporting events so as to permit authorised bookmakers to take bets on any event or contingency declared by the Minister for Gaming and Racing.
>
> Item [6] of schedule 1 to the Bill inserts a new section 16A to provide that a controlling body of racing, namely Racing New South Wales, Harness Racing New South Wales or Greyhound Racing NSW, may approve premises in New South Wales that are not on a licensed racecourse as premises on which a bookmaker may conduct telephone or electronic betting pursuant to an authority under section 16.

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

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

The Committee makes no further comment on this Bill.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

COURT SUPPRESSION AND NON-PUBLICATION ORDERS BILL 2010

Ministerial Correspondence

Date Introduced:	8 November 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General

Background

1. The Committee reported on this Bill in its Legislation Review *Digest* 15 of 2010.

2. The Committee resolved to write to the Attorney General seeking advice and clarification regarding the wide scope of the Bill in relation to the grounds on which a court may make a suppression order or non-publication order, particularly, any impact of the proposed Bill that may differ from current practices and whether such changes may unduly restrict any individual right or liberty.

Attorney General's Reply

3. By letter received 24 November 2010, the Attorney General provided the following reply.

4. With respect to the court's jurisdiction, the Attorney General explained that:

> "…the Bill does not seek to limit or otherwise affect the court's inherent jurisdiction. Nor does it limit or otherwise affect the operation of a provision in any other Act that prohibits or restricts publication or disclosure in connection with court proceedings".
>
> "Ultimately, the decision as to whether or not to grant a suppression or non-publication order will continue to be made by our courts at their discretion…"

5. With regard to the interests of vulnerable persons, the Attorney General clarified:

> "The addition of the ground that it is otherwise necessary in the public interest for the order to be made and that public interest significantly outweighs the public interest in open justice was also considered necessary by the SCAG working group to enable courts to consider applications for orders in relation to a broad range of circumstances that do not necessarily fit within the other grounds. For example, a court may wish to make an order to prevent undue hardship or distress to vulnerable persons, including children, who are neither a victim or witness, but who have a connection to a case, such as the sibling of a victim or witness. Some jurisdictions also currently allow for an order to be made to avoid offending public decency and morality, so this ground could also cover those circumstances".

> "Further, in drafting the Bill, great care has been taken to ensure that protections that are currently offered to vulnerable persons, such as victims in sexual assault cases and children who are involved in proceedings, are not diluted".

6. Concerning the primary objective of the administration of justice to safeguard the public interest in open justice, the Attorney General stated that:

> "Clause 6 of the Bill sets out a clear obligation on a court, when deciding whether or not to make a suppression or non-publication order, to take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice".
>
> "However, the wording of the provision makes it abundantly clear that the public interest in open justice is to remain a primary consideration and an order should not be made, even if it would spare victims distress, or protect public decency or morality, unless the interest in protection significantly outweighs the public interest in open justice".

7. In relation to the grounds for suppression or non-publication orders, the Attorney General responded that:

> "In terms of what a court may prohibit or restrict, clause 7 of the Bill provides that a court may prohibit or restrict information tending to reveal the identity or otherwise concerning any party to or witness in proceedings before the court, including any person who is related to or associated with that person. Further, a court may prohibit or restrict information that comprises evidence, or information about evidence, given in proceedings. Clause 8 of the Bill then goes on to set out the grounds on which order may be made by the court…"
>
> "The ground regarding the order being necessary to prevent prejudice to the proper administration of justice accords with the formulation recommended by the NSW Law Reform Commission in 2003 following their review of the law of contempt by publication. The addition of the ground regarding preventing prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security was considered to be important by the SCAG working group, and was supported by Attorneys-General nationally".

8. The following additional changes are included:

> "The Bill will replace section 72 of the *Civil Procedure Act 2005*, which provides that a court may make an order in relation to any information tending to reveal the identity of any party to or witness in proceedings if it is of the opinion that it is necessary to do so to secure the proper administration of justice in the proceedings. The Bill will also replace section 292 of the *Criminal Procedure Act 1986*, which provides that a court may prevent publication of evidence in proceedings against a person for a prescribed sexual offence, and section 302 of the *Criminal Procedure Act 1986*, which provides that a court may suppress publication of all or part of the evidence given before the court that is necessary to protect the safety and welfare of any protected confider".

9. The Attorney General also explained that the Bill is based on model provisions:

> "…that were developed by a Standing Committee of Attorneys-General (SCAG) working party, which comprised senior officers from the Commonwealth and each State and Territory government. Attorneys-General endorsed the model provisions at our May 2010 meeting and agreed to consider their implementation in each of our jurisdictions".
>
> "…in order for these provisions to be effective across Australia, all jurisdictions must adopt the same model provisions. If NSW were to part from the Commonwealth and

other States and Territories in relation to the scope of this legislation, including the agreed grounds for making an order, this could undermine the effectiveness of the legislation nationally".

Committee's Response

10. The Committee thanks the Attorney General for his reply.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

8 November 2010

Our Ref: LRC 3643

The Hon John Hatzistergos MLC
Attorney General
Level 33 Governor MacquarieTower
1 Farrer Place
Sydney NSW 2001

Dear Attorney General

Court Suppression and Non-Publication Orders Bill 2010

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee has reported its consideration of the Bill in its *Legislation Review Digest No 15 of 2010*.

At the deliberative meeting held on 8 November 2010, the Committee also resolved to write and seek your advice on clarification regarding the wide scope of the above proposed Act with respect to the grounds on which a court may make a suppression order or non-publication order in the interest of open justice and any undue trespass on individual rights and liberties.

In particular, the Committee would like to seek further clarification on what impact, if any, would the proposed Act bring that may differ from current practices, and whether such changes may unduly restrict any individual right or liberty.

Thank you for your attention on this matter. It would be appreciated if a response could be provided as soon as possible. If you have any queries, please contact Catherine Watson, Committee Manager, on 9230 2036 or email: Catherine.Watson@parliament.nsw.gov.au

Yours sincerely

Allan Shearan MP
Chair

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NEW SOUTH WALES

ATTORNEY GENERAL

Mr. Allan Shearan MP
Chair
Legislative Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

22 NOV 2010

Dear Mr. Shearan

I refer to your letter dated 8 November 2010 in relation to the Court Suppression and Non-publication Orders Bill 2010 (the Bill).

The Bill sets the statutory framework for the making of suppression and non-publication orders by our courts. In doing so, the Bill does not seek to limit or otherwise affect the court's inherent jurisdiction. Nor does it limit or otherwise affect the operation of a provision in any other Act that prohibits or restricts publication or disclosure in connection with court proceedings.

As you will be aware, the Bill is based on model provisions that were developed by a Standing Committee of Attorneys-General (SCAG) working party, which comprised senior officers from the Commonwealth and each State and Territory government. Attorneys-General endorsed the model provisions at our May 2010 meeting and agreed to consider their implementation in each of our jurisdictions.

Clause 6 of the Bill sets out a clear obligation on a court, when deciding whether or not to make a suppression or non-publication order, to take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

In terms of what a court may prohibit or restrict, clause 7 of the Bill provides that a court may prohibit or restrict information tending to reveal the identity or otherwise concerning any party to or witness in proceedings before the court, including any person who is related to or associated with that person. Further, a court may prohibit or restrict information that comprises evidence, or information about evidence, given in proceedings.

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Clause 8 of the Bill then goes on to set out the grounds on which order may be made by the court. These grounds are designed to assist our courts when making a determination in relation to granting, or not granting, such an order. The grounds are:

(a) where the order is necessary to prevent prejudice to the proper administration of justice
(b) where to order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security
(c) where the order is necessary to protect the safety of any person
(d) where the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in criminal proceedings involving an offence of a sexual nature, and
(e) where it is otherwise necessary in the public interest for the order to be made and that public interest significantly outweighs the public interest in open justice.

The Bill will replace section 72 of the *Civil Procedure Act 2005*, which provides that a court may make an order in relation to any information tending to reveal the identity of any party to or witness in proceedings if it is of the opinion that it is necessary to do so to secure the proper administration of justice in the proceedings.

The Bill will also replace section 292 of the *Criminal Procedure Act 1986*, which provides that a court may prevent publication of evidence in proceedings against a person for a prescribed sexual offence, and section 302 of the *Criminal Procedure Act 1986*, which provides that a court may suppress publication of all or part of the evidence given before the court that is necessary to protect the safety and welfare of any protected confider.

The ground regarding the order being necessary to prevent prejudice to the proper administration of justice accords with the formulation recommended by the NSW Law Reform Commission in 2003 following their review of the law of contempt by publication.

The addition of the ground regarding preventing prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security was considered to be important by the SCAG working group, and was supported by Attorneys-General nationally.

The addition of the ground that it is otherwise necessary in the public interest for the order to be made and that public interest significantly outweighs the public interest in open justice was also considered necessary by the SCAG working group to enable courts to consider applications for orders in relation to a broad range of circumstances that do not necessarily fit within the other grounds.

For example, a court may wish to make an order to prevent undue hardship or distress to vulnerable persons, including children, who are neither a victim or witness, but who have a connection to a case, such as the sibling of a victim or witness. Some jurisdictions also currently allow for an order to be made to avoid offending public decency and morality, so this ground could also cover those circumstances.

However, the wording of the provision makes it abundantly clear that the public interest in open justice is to remain a primary consideration and an order should not be made, even if it would spare victims distress, or protect public decency or morality, unless the interest in protection significantly outweighs the public interest in open justice.

At the same time, in order for these provisions to be effective across Australia, all jurisdictions must adopt the same model provisions. If NSW were to part from the Commonwealth and other States and Territories in relation to the scope of this legislation, including the agreed grounds for making an order, this could undermine the effectiveness of the legislation nationally.

Further, in drafting the Bill, great care has been taken to ensure that protections that are currently offered to vulnerable persons, such as victims in sexual assault cases and children who are involved in proceedings, are not diluted.

Ultimately, the decision as to whether or not to grant a suppression or non-publication order will continue to be made by our courts at their discretion, and the framework established by this Bill should greatly assist our judiciary in reaching a fair and balanced decision in each case.

Yours faithfully

(John Hatzistergos)

Appendix 1: Index of Bills Reported on in 2010

	Digest Number
Adoption Amendment (Same Sex Couples) Bill 2010*	10
Adoption Amendment (Same Sex Couples) Bill (No. 2) 2010*	11
Appropriation Bill 2010	9
Appropriation (Parliament) Bill 2010	9
Appropriation (Special Offices) Bill 2010	9
Australian Jockey and Sydney Turf Clubs Merger Bill 2010	15
Banana Industry Repeal Bill 2010	8
Building and Construction Industry Long Service Payments Amendment Bill 2009	1
Building and Construction Industry Security of Payment Amendment Bill 2010	17
Carers Recognition Bill 2010*	3
Carers Recognition Bill 2010*	5
Carers (Recognition) Bill 2010	5
Casino Control Amendment Bill 2010	2
Central Coast Water Corporation Amendment Bill 2010	13
Charter of Budget Honesty Amendment (Independent Election Costings) Bill 2010*	5
Children and Young Persons (Care and Protection) Amendment Bill 2010	17
Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010	10
Children and Young Persons (Care and Protection) Amendment (Homelessness Reporting Age) Bill 2010*	15
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	4
Children (Education and Care Services National Law Application) Bill 2010	16
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010	12
Coal Mine Health and Safety Amendment Bill 2010	4
Coastal Protection and Other Legislation Amendment Bill 2010	9
Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)	13
Community Justice Centres Amendment Bill 2010	13
Community Relations Commission and Principles of Multiculturalism Amendment Bill 2010	8
Companion Animals Amendment (Dogs in Outside Eating Areas) Bill 2010*	4
Companion Animals Amendment (Outdoor Dining Areas) Bill 2010	5
Constitution Amendment (Recognition of Aboriginal People) Bill 2010	12

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Contract Cleaning Industry (Portable Long Service Leave Scheme) Bill 2010	17
Court Information Bill 2010	4
Court Suppression and Non-publication Orders Bill 2010	15
Courts and Crimes Legislation Amendment Bill 2010	14
Courts and Crimes Legislation Further Amendment Bill 2010	17
Courts Legislation Amendment Bill 2010	9
Credit (Commonwealth Powers) Bill 2010	2
Crimes (Administration of Sentences) Amendment Bill 2010	2
Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010	9
Crimes (Sentencing Procedure) Amendment Bill 2010	17
Crimes (Serious Sex Offenders) Amendment Bill 2010	17
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	3
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	4
Crimes Amendment (Police Pursuits) Bill 2010	2
Crimes Amendment (Terrorism) Bill 2010	11
Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010	10
Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010	13
Dust Diseases Tribunal Amendment (Damages – Deceased's Dependents) Bill 2010*	16
Duties Amendment (NSW Home Builders Bonus) Bill 2010	10
Education Amendment (Ethics) Bill 2010	17
Election Funding and Disclosures Amendment Bill 2010	15
Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010	8
Electricity Supply Amendment (Solar Bonus Scheme) Bill 2010	15
Electronic Transactions Amendment Bill 2010	10
Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010*	17
Environmental Planning and Assessment Amendment (Development Consents) Bill 2010	5
Evidence Amendment Bill 2010	11
Fair Trading Amendment (Australian Consumer Law) Bill 2010	17
Fair Trading Amendment (Unfair Contract Terms) Bill 2010	9
Firearms Legislation Amendment Bill 2010*	8
Food Amendment Bill 2010	16
Game and Feral Animal Control Repeal Bill 2010*	10
Gas Supply Amendment Bill 2009	1

	Digest Number
Greenhouse Gas Storage Bill 2010	17
Health Legislation Amendment Bill 2010	8
Health Legislation Further Amendment Bill 2010	14
Health Services Amendment (Local Health Networks) Bill 2010	14
Home Building Amendment (Warranties and Insurance) Bill 2010	10
Housing Amendment (Community Housing Providers) Bill 2009	1
Industrial Relations Advisory Council Bill 2010	12
Industrial Relations Amendment (Non-operative Awards) Bill 2010	16
Industrial Relations Amendment (Public Sector Appeals) Bill 2010	9
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment Bill 2009	1
Jury Amendment Bill 2010	8
Law Enforcement and National Security (Assumed Identities) Bill 2010	10
Library Amendment (Arrangements for Mutual Provision of Library Services) Bill 2010*	16
Liquor Amendment (Drinking Age) Bill 2010*	17
Local Government Amendment (Confiscation of Alcohol) Bill 2010*	17
Local Government Amendment (Environmental Upgrade Agreements) Bill 2010	16
Long Service Corporation Bill 2010	17
Macedonian Orthodox Church Property Trust Bill 2010*	9
Marine Parks Amendment (Moratorium) Bill 2010*	8
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	5
Motor Accidents Compensation Amendment Bill 2010	13
National Broadband Network Co-ordinator Bill 2010	17
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010	2
National Park Estate (Riverina Red Gum Reservations) Bill 2010	5
National Park Estate (South-Western Cypress Reservations) Bill 2010	16
National Parks and Wildlife Amendment Bill 2010	2
National Parks and Wildlife Amendment (Adjustment of Areas) Bill 2010	12
National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010	8
Nature Conservation Trust Amendment Bill 2010	14
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	5
Occupational Licensing (Adoption of National Law) Bill 2010	14
Ombudsman Amendment (Removal of Legal Professional Privilege) Bill 2010*	10

	Digest Number
Paediatric Patient Oversight (Vanessa's Law) Bill 2010*	5
Parliamentary Budget Officer Bill 2010	14
Parliamentary Contributory Superannuation Amendment Bill 2010	10
Parliamentary Electorates and Elections Amendment Bill 2010	4
Parliamentary Electorates and Elections Further Amendment Bill 2010	17
Personal Property Securities Legislation Amendment Bill 2010	10
Planning Appeals Legislation Amendment Bill 2010	16
Plant Diseases Amendment Bill 2010	10
Plantations and Reafforestation Amendment Bill 2010	11
Plumbing Bill 2010	17
Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010	9
Police Regulation (Superannuation) Amendment Bill 2010	15
Privacy and Government Information Legislation Amendment Bill 2010	10
Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010	13
Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010	13
Public Health Bill 2010	17
Public Holidays Bill 2010	16
Public Sector Employment and Management Amendment Bill 2010	17
Radiation Control Amendment Bill 2010	15
Registrar-General Legislation (Amendment and Repeal) Bill 2010	4
Relationships Register Bill 2010	5
Residential Tenancies Bill 2010	8
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010	4
Road Transport (Driver Licensing) Amendment Bill 2010	17
Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010	13
Roads Amendment (Private Railways) Bill 2010	16
Rural Fires Amendment Bill 2010	17
Shop Trading Amendment Bill 2010	16
State Emergency and Rescue Management Amendment Bill 2010	16
State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010	5
State Revenue Legislation Amendment Bill 2010	9
State Revenue Legislation Further Amendment Bill 2010	17
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	Digest Number
Statute Law (Miscellaneous Provisions) Bill 2010	9
Statute Law (Miscellaneous Provisions) Bill 2010 (No 2)	17
Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010	10
Superannuation Administration Authority Corporatisation Amendment Bill 2010	16
Superannuation Legislation Amendment Bill 2010	9
Surrogacy Bill 2010	14
Sydney Olympic Park Authority Amendment Bill 2009	1
Terrorism (Police Powers) Amendment Bill 2010	10
Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Bill 2010	17
Totalizator Amendment Bill 2010	15
Trees (Dispute Between Neighbours) Amendment Bill 2010	5
University of Technology (Kuring-gai Campus) Bill 2010*	14
Veterinary Practice Amendment Bill 2010	13
Vocational Education and Training (Commonwealth Powers) Bill 2010	17
Wagering Legislation Amendment Bill 2010	17
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	3
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)	4
Water Management Amendment Bill 2010	16
Weapons and Firearms Legislation Amendment Bill 2010	4
Workers Compensation Amendment (Commission Members) Bill 2010	2
Workers Compensation Legislation Amendment Bill 2010	10

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1			
Casino Control Amendment Bill 2010	Minister for Gaming and Racing and Attorney General	08/03/10	18/03/10				2, 5
Civil Liability Legislation Amendment Bill 2008	Attorney General	28/10/08			12		
Contaminated Land Management Amendment Bill 2008	Minister for Climate Change and the Environment	22/09/08	03/12/08		10	1	
Court Suppression and Non-publication Orders Bill 2010	Attorney General	08/11/2010					15, 17
Credit (Commonwealth Powers)	Minister for Fair Trading	08/03/10					2
Crimes (Administration of Sentences) Amendment Bill 2008	Attorney General and Minister for Justice	2/12/07			15		
Crimes (Administration of Sentences) Amendment Bill 2009	Minister for Corrective Services	08/08/09				10	
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	06/02/09		9		
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07		1		2	
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1		
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning		12/06/08		8		
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7			
Home Building Amendment	Minister for Fair Trading		30/10/08		10, 13		
Liquor Legislation Amendment Bill 2008	Minister for Gaming and Racing	24/11/08	05/01/09		14	2	

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

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

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

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Court Suppression and Non-publication Orders Bill 2010	C			N	
Courts and Crimes Legislation Further Amendment Bill 2010	N, R				
Courts Legislation Amendment Bill 2010	N, R				
Credit (Commonwealth Powers) Bill 2010	N, R, C			N, R, C	
Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010	N, R		N, R	N	
Crimes (Sentencing Procedure) Amendment Bill 2010				N	
Crimes (Serious Sex Offenders) Amendment Bill 2010	N				
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	N			N	
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	N, R				
Crimes Amendment (Police Pursuits) Bill 2010	N, R				
Crimes Amendment (Terrorism) Bill 2010	N				
Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010	N, R				
Election Funding and Disclosures Amendment Bill 2010	N, R				
Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010				N	
Electricity Supply Amendment (Solar Bonus Scheme) Bill 2010	N, R				
Electronic Transactions Amendment Bill 2010				N	
Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010*	N, R	N		N	
Environment Planning and Assessment Amendment (Development Consents) Bill 2010			N, R		

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Evidence Amendment Bill 2010				N	
Fair Trading Amendment (Unfair Contract Terms) Bill 2010				N	
Food Amendment Bill 2010	N				
Game and Feral Animal Control Repeal Bill 2010	N, R				
Gas Supply Amendment Bill 2009				N	
Greenhouse Gas Storage Bill 2010	N			N	
Health Legislation Amendment Bill 2010	N, R			N, R	
Health Legislation Further Amendment Bill 2010				N	
Health Services Amendment (Local Health Networks) Bill 2010		N		N	
Home Building Amendment (Warranties and Insurance) Bill 2010	N				
Housing Amendment (Community Housing Providers) Bill 2009	N				
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment 2009				N	
Jury Amendment Bill 2010	N, R			N	
Liquor Amendment (Drinking Age) Bill 2010*	N, R				
Local Government Amendment (Confiscation of Alcohol) Bill 2010*	N, R				
Local Government Amendment (Environmental Upgrade Agreements) Bill 2010				N	
Macedonian Orthodox Church Property Trust Bill 2010*				N	
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	N, R				

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010				N	N
National Parks and Wildlife Amendment Bill 2010	N, R			N, R	
National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010				N	
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	N, R			N	
Occupational Licensing (Adoption of National Law) Bill 2010				N	
Ombudsman Amendment (Removal of Legal Professional Privilege) Bill 2010*	N				
Parliamentary Contributory Superannuation Amendment Bill 2010	N				
Parliamentary Electorates and Elections Further Amendment Bill 2010			N, R		
Personal Property Securities Legislation Amendment Bill 2010				N	
Planning Appeals Legislation Amendment Bill 2010				N	
Plantation and Reafforestation Amendment Bill 2010	N, R			N	
Plumbing Bill 2010				N	
Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010				N	
Police Regulation (Superannuation) Amendment Bill 2010	N, R				
Privacy and Government Information Legislation Amendment Bill 2010				N	
Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010	N, R			N	
Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010				N	
Public Health Bill 2010	N, R			N	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Public Holidays Bill 2010	N				
Relationships Register Bill 2010	N			N	
Residential Tenancies Bill 2010	N, R			N, R	
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010				N, R	
Road Transport (Driver Licensing) Amendment Bill 2010				N	
Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010				N	
Shop Trading Amendment Bill 2010	N				
State Emergency and Rescue Management Amendment Bill 2010				N	
State Revenue Legislation Further Amendment Bill 2010	N, R				
Statute Law (Miscellaneous Provisions) Bill 2010	N				
Statute Law (Miscellaneous Provisions) Bill 2010 (No 2)				N	
Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010	N, R				
Superannuation Legislation Amendment Bill 2010				N	
Surrogacy Bill 2010				N	
Sydney Olympic Park Authority Amendment Bill 2009	N, R			N	
Terrorism (Police Powers) Amendment Bill 2010				N	
Vocational Education and Training (Commonwealth Powers) Bill 2010				N	
Totalizator Amendment Bill 2010				N	

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

Key

R Issue referred to Parliament

C Correspondence with Minister/Member

N Issue Noted

Appendix 4: Index of correspondence on regulations

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