

PARLIAMENT OF NEW SOUTH WALES



# Legislation Review Committee

## LEGISLATION REVIEW DIGEST

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No 8 of 2010

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\* Denotes Private Member's Bill

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## FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

### 8A Functions with respect to Bills

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

### 9 Functions with respect to Regulations:

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

## GUIDE TO THE *LEGISLATION REVIEW DIGEST*

### Part One – Bills

#### Section A: Comment on Bills

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

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

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

### Part Two – Regulations

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

#### Regulations for the special attention of Parliament

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

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

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

#### Copies of Correspondence on Regulations

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

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

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

## Appendix 2: Index of Ministerial Correspondence on Bills

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

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

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

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

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

## SUMMARY OF CONCLUSIONS

### SECTION A: Comment on Bills

#### 1. Banana Industry Repeal Bill

10. The Legislation Review Committee has not identified any issues under s8A(1)(b) of the *Legislation Review Act 1987*.

#### 2. Community Relations Commission and Principles Of Multiculturalism Amendment Bill 2010

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

#### 3. Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010

Issue: Commencement by Proclamation

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

#### 4. Firearms Legislation Amendment Bill 2010\*

11. The Legislation Review Committee has not identified any issues under s8A(1)(b) of the *Legislation Review Act 1987*.

#### 5. Health Legislation Amendment Bill 2010

Issue: Privacy

20. The Committee notes that the amendments provided for in this Bill have the potential to impact on the privacy rights of individuals. However, the Committee also recognises that the disclosure of information provided for by these amendments are broadly in line with the Information Protection Principles of the *Privacy and Personal Information Protection Act 1998*.
23. The Committee recognises the importance of ambulance service officers to be able to perform their duties without threat or fear of harassment or violence. However, the Committee is concerned that the offence provisions of this amendment may differentially impact on individuals with mental health impairments and, as such, the maximum penalty provisions may appear disproportionate to the offence committed when considering the potential mental health concerns of the offender. The Committee refers this matter to Parliament for its consideration.



**Issue: Commencement by Proclamation**

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

**6. Jury Amendment Bill 2010**

**Issue: Right To Fair Trial – Clause 5 (1) and (2) – Persons holding particular office; and Clause 6 (1), (2), (3) and (4) – Persons employed or engaged in certain occupations in the public sector - Schedule 1 – Persons excluded from jury service:**

39. The Committee understands that juries need to be representative of society but the Committee is also aware that the accused person on trial needs to be judged by one's own peers in the form of a jury. According to Lord Devlin, "judgment by peers rather than by professionals is what the jury provides".
40. Therefore, the traditional argument against allowing lawyers, police officers and persons from related or similar occupations to serve on juries, seeks to ensure that such persons with specialist knowledge, training and experience in the legal system, law enforcement, criminal investigations, use of evidence, evidentiary rules and procedures, will not disproportionately influence or bias the outcomes of a jury's decision, which may adversely impact on the fair trial of the accused.
41. In 2007 the NSW Law Reform Commission recommended that if Australian lawyers should continue to be ineligible, then the class of ineligible lawyers should be confined to those currently practising in NSW. The Commission noted that this was effectively the case in all other Australian jurisdictions, except Victoria.
42. The Commission also noted that serving police officers are expressly ineligible in most Australian jurisdictions. Although it did note that the restriction on members of law enforcement or criminal investigation agencies other than police, and on retired police officers, was stricter in NSW than most Australian jurisdictions. Currently, Victoria is the only other State to exclude retired officers permanently. Tasmania excludes former police officers for 10 years, and WA excludes them for five years.

43. The Committee appreciates the focus and need to broaden the pool of eligible jurors but asks Parliament to consider whether this also needs to be balanced with the wider interest in protecting everyone's right to a fair trial, which includes an impartial jury. Accordingly, the Committee is concerned about removing the current ineligibility of police officers, Australian lawyers (regardless of any practice), judicial officers, a coroner, Crown Prosecutor, Public Defender, Director or Deputy Director of Public Prosecutions, the Ombudsman and Deputy Ombudsman among others, once the 3 year period has passed if such persons no longer hold such an office or are no longer employed or engaged in that occupation. The Committee considers that such persons, although they may no longer be engaged in such occupations or be holding such an office, could still retain their many years of specialist knowledge, training and experience, which may in turn, still influence the decision-making of juries if they served as a juror.
44. Therefore, the Committee asks Parliament to consider whether under Schedule 1, clause 5 (1) and (2) with regard to persons holding particular office; and clause 6 (1), (2), (3) and (4) with regard to persons employed or engaged in certain occupations in the public sector, may undermine the right to fair trial and form an undue trespass on personal rights and liberties.

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

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

## **7. Marine Parks Amendment (Moratorium) Bill 2010\***

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

## **8. National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010**

**Issue: Commencement by Proclamation**

14. The Committee recognises that administrative arrangements need to take place before the Act can commence operation, including the adoption of lease and license assessment criteria, and therefore has not identified any issues under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

## 9. Residential Tenancies Bill 2010

**Issue: Procedural Fairness – Part 5, Division 2 (Termination By Landlord) - Clauses 91 (2), 92 (3), 93 (4), 94 (2), And Part 5, Division 3 (Termination By Tenant) – Clauses 103 (4) and 104 (4):**

35. The Committee will be concerned about legislation that authorises decision-making and termination orders without the requirement of giving a termination notice beforehand (even if at short notice) to the affected person (whether the person is a tenant or a landlord).
36. The Committee appreciates that there may be special circumstances involving potential illegal purposes, or alleged threat, abuse, intimidation or harassment, hardship to the landlord, or breach of agreement by the landlord, or hardship to the tenant in a fixed term agreement. However, the Committee considers the right to procedural fairness may be undermined if there is no requirement to give a termination notice (even if it is short notice). This is particularly significant for the affected tenant under proposed section 91 (3) and proposed section 92 (2) as the termination order may specify that the order for possession takes effect immediately. This may potentially have the unintended effect of making a person homeless and undermines the right of a person to adequate housing especially if the person may not have received any termination notice beforehand.
37. Therefore, the Committee asks Parliament to consider whether clauses 91 (2), 92 (3), 93 (4), 94 (2) of Division 2 (Termination By Landlord) of Part 5 and clauses 103 (4) and 104 (4) of Division 3 (Termination By Tenant) of Part 5, may trespass unduly on personal rights and liberties including procedural fairness and right to notice.

**Issue: Retrospectivity – Clause 6 – Part 1, Division 2 – Application of Act:**

41. Therefore, the Committee does not consider the retrospective effect may trespass unduly on personal rights and liberties given the safeguards included in the savings, transitional and other provisions provided in Schedule 2.

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

43. The Committee also notes from the Agreement in Principle speech that this Bill involves some main changes in a significant reform package, and that it is the first comprehensive revamp of the laws in more than 20 years. This will likely involve appropriate administrative, community awareness and transitional arrangements to be made. The Committee considers that, in these circumstances, clause 2 may not give rise to an inappropriate delegation of legislative power.

**Issue: Henry VIII Clauses And Matters Which Should Be Regarded by Parliament - Clause 12 (1) of Part 1, Division 2 – Exemptions from operation of Act:**

**45. The Committee notes that allowing for regulations to effectively determine whether the operation of the Act or regulations could be exempt with regard to matters or definitions, which should also be regarded by Parliament, such as specified persons, agreement or premises, may delegate the power to make a fundamental component of the legislative scheme. Therefore, the Committee refers this to Parliament and asks Parliament to consider whether clause 12 (1) of Division 2 of Part 1, may constitute an inappropriate delegation of legislative power.**

# Part One – Bills

## SECTION A: COMMENT ON BILLS

### 1. BANANA INDUSTRY REPEAL BILL

Date Introduced:	2 June 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Steve Whan MP
Portfolio:	Primary Industries

#### Purpose and Description

1. The objects of this Bill are to repeal the *Banana Industry Act 1987* and to dissolve the Banana Industry Committee.

#### Background

2. NSW is the second largest banana producer in Australia, after Queensland, producing over \$17,000 tonnes of bananas in 2008 – 09. New South Wales' production is around 6.2% of the national total, which last year was around 270,000 tonnes. Nationally, the 'farmgate' value of the banana industry is estimated at over \$300 million.
3. The *Banana Industry Act 1987* established the Banana Industry Committee (the Committee) and allowed the Committee to levy banana growers to fund the provision of its services. These functions include pest and disease control, research, education and promotion. In recent years, the Committee's primary activity has been the implementation of a program to control the spread of banana bunchy top virus, although this responsibility has since been transferred to the Australian Banana Growers' Council, which operates on a national level.
4. The Act has been twice amended. First in 1997 and again in 2000. The 2000 amendment altered the functions of the Committee to comply with National Competition Policy principles and clarified the voting rights of banana growers in committee elections.
5. Since the commencement of the Act in 1987, the number of banana growers in NSW has declined from 1,000 to 400. As a result of this decline, the Committee now only generates \$47,000 in revenue from levies raised from banana growers, which it advises is insufficient to sustain an effective level of support for the industry. Meanwhile, the Australian Banana Growers' Council provides similar services on a national level and generates significantly more revenue in which it can tap into.
6. In this context, the Committee requested the former Minister for Primary Industries to undertake a review of the Act to assess its ongoing viability. This review took place in late 2009. Twenty-one submissions on the review were received and a report was published.

7. The review made a number of findings. Firstly, there was strong industry support for the Act to be repealed and for the Committee to be dissolved. Secondly, there was widespread opposition to paying the Banana Industry Committee charge on top of the additional national levy for the Australian Banana Growers' Council. Thirdly, the review found that the Committee's functions in relation to pest and disease control, promotion, research, development and education area a significant restriction on competition and that more effective measures exist to achieve the objectives of the Act. Fourthly, the review found widespread support for activities to be undertaken at a national level with nationwide application, such as the banana bunchy top virus eradication program run by the Australian Banana Growers' Council. On the basis of these findings, the review recommended the repeal of the Act and the dissolution of the Committee by the end of the 2010 financial year.
8. This Bill gives effect to those recommendations. In addition, the Bill makes consequential amendments to finalise the Committee's affairs by facilitating the transfer of funds from Committee to the Australian Banana Growers' Council for the benefit and development of the NSW banana industry, as well as vesting all remaining assets, liabilities and costs in the Crown.

## 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 on 1 July 2010.

**Clause 3** repeals the *Banana Industry Act 1987* and the *Banana Industry Regulation 2008*.

#### **Schedule 1 Amendment of *Agricultural Industry Services Act 1998 No 45***

**Schedule 1 [1]** amends Schedule 4 to the *Agricultural Industry Services Act 1998* to enable the making of regulations containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [2]** amends Schedule 4 to the *Agricultural Industry Services Act 1998* to provide for the dissolution of the Banana Industry Committee as a consequence of the repeal of the *Banana Industry Act 1987*. The amendment also transfers the assets, rights and liabilities of the Committee to the Crown and requires certain money to be paid to the Australian Banana Growers' Council Inc. or another person or body considered by the Minister to have functions that promote the development of the New South Wales banana industry or that otherwise benefit that industry.

#### **Schedule 2 Amendment of other legislation**

**Schedule 2.1, 2.2 and 2.3** amend the Parliamentary Electorates and Elections Amendment Act 2006, Public Authorities (Financial Arrangements) Regulation 2005 and Public Finance and Audit Act 1983 as a consequence of the repeal of the *Banana Industry Act 1987* and the *Banana Industry Regulation 2008* and the dissolution of the Banana Industry Committee.

## Issues Considered by the Committee

**10. The Legislation Review Committee has not identified any issues under s8A(1)(b) of the *Legislation Review Act 1987*.**

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

## 2. COMMUNITY RELATIONS COMMISSION AND PRINCIPLES OF MULTICULTURALISM AMENDMENT BILL 2010

Date Introduced:	2 June 2010
House Introduced:	Legislative Council
Minister Responsible:	Hon Kristina Keneally MP
Portfolio:	Premier

### Purpose and Description

1. This Bill amends the Community Relations Commission and Principles of *Multiculturalism Act 2000* in relation to the principles of multiculturalism and the functions of the Community Relations Commission; and for other purposes.
2. The Bill amends section 3 of the Act relating to the principles of multiculturalism in order to better express the Act's objectives. It also strengthens existing powers and introduces new provisions into the Act in order to better reflect the inclusive spirit of the Government's broader policy objectives relating to community relations.
3. It clarifies the commission's objectives as they relate to the promotion of social justice and community development.
4. It aims to strengthen the principles of multiculturalism in section 3 of the Act by elevating references to the "importance of shared values within a democratic framework" and a "unifying commitment to Australia" to the first part of the section.
5. The review found that certain provisions in section 12 of the Act no longer adequately equip the commission to secure its objective. Therefore, the Bill makes changes to section 12. Section 12 (d) currently sets as an objective of the commission the "enrichment of all sections of society through the benefits of cultural diversity". The Bill re-expresses section 12 (d) of the Act, linking the general goal of social enrichment with the commission's practical task of promoting the principles of multiculturalism. The Bill also amends section 12 (f) to better reflect the inclusive spirit of the Act and the Government's broader policy objectives relating to community relations.
6. The review recommended that section 13 of the Act should include a provision that clearly articulates, as a function of the commission, proactive strategies relating to community harmony. The Bill amends section 13 (1) (c) of the Act, adding to the existing functions of the commission the function of proactive research to identify potential issues relating to community harmony.
7. The Bill amends sections 13 (1) (f) and (1) (g) of the Act to give the commission the function of acting as a single coordination point, ensuring consistent cross-agency work in this area.



## Community Relations Commission and Principles Of Multiculturalism Amendment Bill 2010

8. It amends section 28 of the *Privacy and Personal Information Protection Act 1998* to exempt complying translation services of the commission from the Act, subject to requirements against the disclosure of private information other than where necessary in the course of providing these services. It also makes a matching amendment to section 17A of the *Health Records and Information Privacy Act 2002*.
9. The review noted that, while section 13 (1) (m) of the *Community Relations Commission and Principles of Multiculturalism Act* establishes an advisory function for the commission in relation to the Anti-Discrimination Board, the Act does not provide for the commission to make formal references to the board, nor is there an onus on the board to investigate those references. Therefore, this Bill amends the current provision under section 13 (1) (m) of the Act to formalise the commission's function in making references to the Anti-Discrimination Board. It similarly amends section 119 of the *Anti-Discrimination Act* to reflect this relationship between the commission and the board.
10. The Bill amends the schedule to the Act to restore the previous position that enabled the appointment of a public servant to act in the office of chairperson but without being a member of the commission or having a right to vote or preside at meetings.
11. It also seeks to address a conflict related to the commission's reporting status. The commission has been classified as a department under schedule 3 to the *Public Finance and Audit Act 1983*; however, it is also classified as a statutory body under section 6 (2) of its own Act. The commission's Act needs to refer to the *Annual Reports (Statutory Authorities) Act*, with the commission reclassified in the *Public Finance and Audit Act 1983* to come under the requirements of statutory authorities rather than a department. This Bill seeks to address the inconsistency by amending section 18(2).

## Background

12. This Bill amends the *Community Relations Commission and Principles of Multiculturalism Act 2000*. It ensures the functions of the commission include proactive research to identify potential issues relating to community harmony, and better facilitates the leadership role of the commission as a coordination point for whole-of-government responses to emerging issues relating to cultural diversity.
13. It implements the recommendations made by Ms Irene Moss, AO, from her review made in accordance with section 27 of the Act. The aim of the Moss review was to determine: whether the policy objectives of the Act remain valid and whether the terms of the Act remain valid for securing those objectives.
14. According to the Second Reading speech:

The Moss review found that some terms of the Act relating to the principles of multiculturalism would benefit from amendment in order to better articulate the ideals they seek to encapsulate. The review also found that some of the practical provisions of the Act should be modified in order to better facilitate the work of the commission. The Government accepted all the recommendations of the review, and the aim of this Bill is to implement those recommendations.
15. The Second Reading speech informed that:

Submissions endorsed the Act's key objectives, as currently articulated by the four principles of multiculturalism: a cohesive and harmonious society based on mutual respect and a shared commitment to Australia, opportunities for all individuals in society to contribute to and participate in civil society and the public decision-making process, equitable access to government services and programs, and maximisation of the cultural and economic benefits that diversity brings to the State. However, the issue of shared values was addressed by a number of submissions. Some submissions proposed that the principles of multiculturalism should be maintained as currently articulated in the Act while the value of a shared commitment to Australia, its laws and institutions, should be located earlier in the relevant section of the Act.

16. During the review, one submission raised the concern that the continuing provision of translation and interpreter services is currently made more difficult by provisions relating to the collection and disclosure of personal and health information under the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.
17. The review recommended that the public interest in maintaining the principles of multiculturalism as these relate to linguistic diversity, and in facilitating the legislated functions of the commission, outweighs the public interest in requiring the commission to fully comply with the respective provisions under the privacy and health records Acts.
18. Section 14 (3) of the Act requires that reports be provided to the Minister for Citizenship by the end of March every year. This deadline was considered by the Moss review as not entirely workable. The review observed that similar legislation in other Australian States offers more flexibility regarding the timing of the report to the Minister.

## The Bill

19. The object of this Bill is to amend the *Community Relations Commission and Principles of Multiculturalism Act 2000* (**the principal Act**) to incorporate certain recommendations arising from the statutory review of the principal Act. In particular, this Bill:
  - (a) restates the principles of multiculturalism and includes the principle that all individuals should demonstrate a unified commitment to Australia, its interests and future and should recognise the importance of shared values governed by the rule of law within a democratic framework, and
  - (b) clarifies the objectives of the Community Relations Commission (**the Commission**) and includes the objective of promoting the principles of multiculturalism, and
  - (c) expands the functions of the Commission to include researching matters related to the objectives of the Commission and the facilitation of consistency across Government agencies on issues associated with cultural diversity, and
  - (d) extends the time within which the Commission's annual report on the state of community relations is to be made.

This Bill also:

## Community Relations Commission and Principles Of Multiculturalism Amendment Bill 2010

- (a) authorises the appointment of an acting Chairperson during any absence of the Chairperson of the Commission, and
- (b) changes the audit and financial reporting obligations of the Commission.

**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, other than Schedule 2.4, on the date of assent to the proposed Act. Schedule 2.4 commences, or is taken to have commenced, on 30 June 2010.

**Schedule 1 Amendment of *Community Relations Commission and Principles of Multiculturalism Act 2000 No 77*:**

**Schedule 1 [1]** amends section 3 of the principal Act to restate the principles of multiculturalism and to include the following additional principle: All individuals in New South Wales, irrespective of their linguistic, religious, racial and ethnic backgrounds, should demonstrate a unified commitment to Australia, its interests and future and should recognize the importance of shared values governed by the rule of law within a democratic framework.

**Schedule 1 [2]–[4]** amend section 12 of the principal Act to recast certain objectives of the Commission to clarify the Commission's focus.

**Schedule 1 [5]–[8]** amend section 13 of the principal Act to provide that the functions of the Commission include researching matters relating to the Commission's objectives, providing a single coordination point for integrated responses to emerging issues associated with cultural diversity, facilitating consistency across authorities on issues associated with cultural diversity and the referral of certain matters to the Anti-Discrimination Board.

**Schedule 1 [9]** amends section 14 of the principal Act to extend, from March to April, the time within which the Commission is to provide its annual report on the state of community relations in New South Wales.

**Schedule 1 [10]** amends the note to section 18 of the principal Act as a consequence of the amendments to the *Public Finance and Audit Act 1983* made by **Schedule 2.4**.

**Schedule 1 [11]–[13]** amend Schedule 1 to the principal Act to provide for the appointment of an acting Chairperson during any absence of the Chairperson of the Commission.

**Schedule 1 [14]** amends clause 4 of Schedule 2 to the principal Act to provide that the Deputy Chairperson of the Commission is to preside at a meeting of the Commission in the absence of the Chairperson.

**Schedule 2 Amendment of other Acts:**

**Schedule 2.1** amends the *Anti-Discrimination Act 1977* to provide that the Anti-Discrimination Board may carry out investigations in relation to matters referred to it by the Commission.

**Schedule 2.2** amends the *Health Records and Information Privacy Act 2002* to provide that the Health Privacy Principles do not apply to information that is collected or held by the Commission only for the purpose of providing translation services. **Schedule 2.3** makes a similar amendment to the *Privacy and Personal Information Protection Act 1998*.

**Schedule 2.4** amends the *Public Finance and Audit Act 1983* to provide that the auditing and financial reporting requirements of the Commission are to change from those of a Department to those of a statutory body.

## Issues Considered by the Committee

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

### **3. ELECTRICITY AND GAS SUPPLY LEGISLATION AMENDMENT (RETAIL PRICE DISCLOSURES AND COMPARISONS) BILL 2010**

Date Introduced:	2 June 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Paul Lynch MP
Portfolio:	Energy

#### **Purpose and Description**

1. The object of this Bill is to establish a price disclosure and comparison scheme in relation to the supply of electricity and gas to small retail customers.

#### **Background**

2. Since 2002, all households and small businesses have been able to choose between being supplied electricity on regulated prices from their standard retailer, or entering into a negotiated contract with a retailer of their choice.
3. In its final determination on regulated retail electricity prices for 2010 to 2013, the Independent Pricing and Regulatory Tribunal (IPART) reported that small energy customers are finding it difficult to obtain prices for comparison purposes. It was identified that this difficulty was due to a lack of accurate, up-to-date and easily accessible information from energy retailers.
4. The IPART recommended that the Government introduce requirements for retailers to publish information on their prices and establish a price comparison service. The IPART considered these measures essential to facilitating greater competition and equipping consumers with the ability to make informed choices with respect to energy purchases.
5. This Bill gives effect to the IPART's recommendations by strengthening price disclosure requirements on energy retailers and by making this information easily accessible and free. The IPART will publish the price and contract information it receives from energy retailers on its website, allowing customers to inspect and compare competing energy offers. The price comparison will also be available through a telephone hotline that will be administered by the Government.
6. According to the Agreement in Principle speech, this Bill forms part of a suite of measures to be introduced by the Government to help customers manage their energy bills. Other reforms include an increase of the Government's energy rebate to \$145, in line with the energy price index, and the extension of the energy rebate to eligible households who hold a health care card.

7. This Bill is to take effect through amendments to the *Electricity Supply Act 1995* and the *Gas Supply Act 1996*.

## The Bill

### 8. Outline of Provisions

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

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

### Schedule 1 Amendments

**Schedule 1.1 [1]** amends the *Electricity Supply Act 1995* to require a retail supplier of electricity to provide its pricing information in relation to the supply of electricity to and by small retail customers, on its website, to any person on request and to the Independent Pricing and Regulatory Tribunal (the *Tribunal*). The retail supplier must provide its pricing information free of charge and in accordance with any guidelines that are issued by the Minister for Energy. The Tribunal is to publish the pricing information on its website in a form that enables small retail customers to meaningfully compare the tariffs and charges of different retail suppliers of electricity. A retail supplier of electricity is required to ensure that its pricing information is accurate and up to date and is also required to include a link on its website to the Tribunal's website. The Minister for Energy is to review the scheme as soon as possible after 1 July 2013 and a report on the outcome of the review is to be tabled in each House of Parliament before 1 July 2014. **Schedule 1.2 [1]** amends the *Gas Supply Act 1996* to impose similar requirements in relation to the disclosure of pricing information that relates to the supply of natural gas to small retail customers.

**Schedule 1.1 [2]** and **Schedule 1.2 [2]** enable regulations to be made under the *Electricity Supply Act 1995* and the *Gas Supply Act 1996* containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

## Issues Considered by the Committee

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

#### Issue: Commencement by Proclamation

9. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all.
10. The Committee notes that administrative arrangements may need to take place before the Bill can commence operation, such as establishing a price comparison hotline, together with preparing the publication of price comparison information on the IPART's website. In light of this fact, and given the Committee has not identified any other issues with this Bill, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

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

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

## 4. FIREARMS LEGISLATION AMENDMENT BILL 2010\*

Date Introduced: 3 June 2010  
House Introduced: Legislative Council  
Member Responsible: Hon Roy Smith MLC  
Portfolio: Private – Shooters Party

### Purpose and Description

1. The object of this Bill is to amend the *Firearms Act 1996* and the *Firearms Regulation 2006* as follows:
  - (a) to exempt air rifles from certain requirements under the Firearms Act (namely, registration and the need for a permit to acquire such firearms) and to allow minors under the age of 12 years to use air rifles under supervision at approved shooting ranges,
  - (b) to provide that an applicant is disqualified from being issued with a firearms licence or permit if the applicant has been the subject of an apprehended violence order at any time during the previous 5 years (the disqualification period for an AVO is currently 10 years),
  - (c) to make a number of other amendments of an administrative, minor or consequential nature.

The Bill also makes minor and miscellaneous amendments to certain other legislation.

### Background

2. According to the agreement in Principle Speech the proposed amendments aim to “streamline and improve the operation of the system for the legal use and registration of firearms for law-abiding citizens within the state”.
3. Firstly, the bill will exempt air rifles from the requirement to be registered, while maintaining the requirement for owners of such firearms to own a category A firearms licence. This is aimed at reducing the workload of the Firearms Registry. The argument is made that maintaining the Register does nothing to enhance public safety.
4. An additional amendment will allow minors under 12 years of age to be able to use air rifles on approved shooting ranges under the supervision of a licensed person.
5. The bill also provides that a large calibre pistol permit can be issued to the holder of a minor’s target pistol permit, provided the applicant has held his or her minor’s permit for at least 12 months and is a member of an approved pistol club. This would not allow a minor to purchase or take home either the pistol ammunition but merely to



- use the firearm under the supervision of a licensed adult at an approved shooting range.
6. The bill also seeks to reduce the disqualification period for the possession of a firearms licence by a person subject to an apprehended violence order from 10 years to five years at the discretion of the Commission of Police. This brings the disqualification period in line with Victoria, the Northern Territory and Western Australia.
  7. Amendments are also proposed to allow a person who holds a licence for primary production to shoot vermin on neighbouring properties or for recreational hunters, vermin or vertebrate control licensees to shoot on local authority land with the consent of the owner/occupier or relevant public authority.
  8. The bill also allows for the 28 day licence application period and the 28 day permit period to run concurrently.
  9. The *Firearms Act 1996* is also amended so that the act of possessing an unregistered firearm in a public place does not apply in the case of a firearm that is not required to be registered such as an antique weapon.
  10. The *National Parks and Wildlife Regulation 2009* is also amended to allow a person to convey an unloaded firearm and ammunition through a national park in a vehicle on a road, so long as the person is authorised to possess that firearm or ammunition.

## The Bill

### Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act 3 months after the date of assent (although a proclamation may provide for a provision of the proposed Act to commence sooner).

### Schedule 1 Amendment of Firearms Act 1996

#### Amendments relating to air rifles

**Schedule 1 [3]** exempts air rifles from the registration requirements under the *Firearms Act*. A permit to acquire will not be required in relation to an air rifle, though the general requirement for a licence or permit to possess or use an air rifle will remain. Special provision is made however to allow minors under the age of 12 years (and who are not therefore eligible for a minor's firearms permit) to use an air rifle at an approved shooting range under the direct supervision of persons who are licensed to use air rifles.

**Schedule 1 [1]** is a consequential amendment that distinguishes air rifles from air pistols for the purposes of the *Firearms Act* (noting that the proposed amendments relating to air rifles do not affect existing licensing and registration requirements in relation to air pistols).

**Schedule 1 [4]** is a consequential amendment that makes it clear that category A licence holders are authorised to possess or use an unregistered air rifle.

#### Amendments relating to firearm licences and permits

**Schedule 1 [5] and [14]** make it clear that the authority conferred by a category C licence extends, in the case where the genuine reason for having such a licence is primary production, to shooting not only on rural land owned or occupied by the licensee but to any other rural land with the permission of the owner or occupier of that land. The genuine reason of primary production involves the use of a firearm solely in connection with farming or grazing activities on rural land (such as the suppression of vertebrate pest animals).

**Schedule 1 [6]** makes it clear that while a category H licence may authorise the use of an antique revolver, a category H licence that is issued for sport/target shooting purposes does not authorise the possession of an antique revolver if it happens to be a prohibited pistol (eg a pistol with a calibre of more than .38 inch). Special permits for large calibre pistols are currently available under the *Firearms Regulation*.

**Schedule 1 [7]** provides that the application fee for a firearms licence for a particular period cannot exceed the equivalent amount for an unrestricted driver licence of the same period.

**Schedule 1 [8]** will enable a serving member of the armed forces of the Commonwealth who is the holder of a firearms licence in his or her off-duty personal capacity to renew the licence even though the member is not living in New South Wales.

**Schedule 1 [9] and [23]** provide that a firearms licence or permit must not be issued, amongst others, to a person who has been subject to an apprehended violence order during the previous 5 years (at present the disqualifying period for an AVO is 10 years).

**Schedule 1 [10], [11], [24] and [25]** separate the existing mandatory and discretionary grounds for refusing the issue of a licence or permit so that from now on the Commissioner of Police will have a discretion (rather than be required) to refuse a licence or permit application on the ground that the applicant has been convicted of a disqualifying offence in the past 10 years or is the subject of a good behaviour bond. **Schedule 1 [18]** is a consequential amendment that makes it clear that the grounds for revoking a licence include any reason for which the licensee may, or must, be refused a licence.

**Schedule 1 [12]** enables a licence applicant, in establishing the genuine reason of recreational hunting/vermin control, to produce proof of permission given by any public or local authority to shoot on that authority's land (whether or not it is rural land). At present, permission to shoot may only be given by landowners and certain public authorities in relation to rural land. **Schedule 1 [13]** is a consequential amendment. **Schedule 1 [15]–[17]** make similar amendments in relation to the genuine reason of vertebrate pest animal control, with the result that the scope of that genuine reason is extended to the control of vertebrate pest animals by professional contract shooters on any land owned, occupied or managed by a public or local authority (and not just rural land). **Schedule 1 [21]** is a consequential amendment.

**Schedule 1 [19] and [26]** provide that the requirement for a person to surrender a firearm when the person's licence or permit is suspended or revoked applies only after the person is directed by the Commissioner in writing to surrender the firearm.

The amendments also extend the requirement to surrender a firearm when the relevant licence or permit otherwise ceases to be in force. **Schedule 1 [20]** is a consequential amendment.

**Schedule 1 [22]** provides for the recognition in New South Wales of interstate firearms licences held by serving members of the armed forces of the Commonwealth in their off-duty personal capacity.

**Schedule 1 [27]** enables a person who has applied for a licence or permit to also apply for a permit to acquire a firearm pending the issuing of the licence or permit authorising the person to possess the firearm. The amendment will enable the 28-day waiting periods for issuing a licence and for issuing a permit to acquire a firearm to occur concurrently.

**Schedule 1 [28]** replaces the requirement for pistol clubs to confirm that a person applying for a permit to acquire a pistol has adequate storage arrangements with a requirement that

the applicant for such a permit certify in the application that he or she is aware of, and can comply with, the safe keeping requirements under the Act in relation to the pistol.

**Schedule 1 [29] and [30]** remove the restrictions on the types of pistols that the holder of a probationary pistol licence is allowed to acquire after the first 6 months of the licence.

**Schedule 1 [31]** extends, from 30 to 90 days, the period for which a permit to acquire is in force and **Schedule 1 [32]** enables that period to be automatically extended for a further 90-day period if the firearm to which the permit to acquire relates has not been acquired during the initial 90-day period.

**Schedule 1 [33]** provides that the 28-day waiting period for the issue of a permit to acquire a firearm of a particular kind does not apply if another firearm of that kind was registered in the applicant's name at any time during the previous 5 years (at present the exemption from the waiting period only applies if the other firearm is registered in the applicant's name at the time the application for the permit is made).

### Miscellaneous amendments

**Schedule 1 [2]** makes it clear that the definition of **ammunition** does not, in the case of cartridges, include a spent cartridge (that is, a cartridge case must be fitted with a live primer and a projectile for it to be ammunition).

**Schedule 1 [34]** provides for the recognition of interstate registered firearms on a transitional basis to assist interstate residents who move to New South Wales with firearms that are not registered under the *Firearms Act*.

**Schedule 1 [35]–[37]** are consequential on the amendments made elsewhere in Schedule 1 to the proposed Act that exempt certain firearms from the requirement to be registered.

**Schedule 1 [35]** also exempts firearms dealers from having to notify the Commissioner of a transaction or dealing that does not involve a change in ownership of a firearm (such as taking possession of a firearm for the purposes of repair).

**Schedule 1 [38]** removes certain firearms (namely, certain longarms with a revolving ammunition cylinder) from the list of prohibited firearms so that they will be treated as ordinary firearms that are required to be registered.

**Schedule 1 [39]** enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

### Schedule 2 Amendment of *Firearms Regulation 2006*

**Schedule 2 [1]** enables firearms licences to be issued for various periods of up to 5 years.

**Schedule 2 [2]** removes the requirement for the holder of an approval for a shooting range to record the name and licence number of each licensed shooter who is practising at the range and who is not otherwise participating in competitions or activities conducted by a shooting club. The current requirement for such persons to be supervised while practising at the range is retained.

**Schedule 2 [3] and [4]** enable a permit for specialised shooting activities involving large calibre pistols to be issued not only to the holder of a category H (sport/target shooting) licence but also to the holder of a minor's target pistol permit who has held such a permit for at least 12 months and who is a member of an approved pistol club. The amendments also expand the range of specialised shooting activities or disciplines in respect of which large calibre pistols can be used under the authority of a permit.

**Schedule 2 [5]** makes it clear that it is not necessary for the approval of a shooting range to specify the name of each particular shooting event or practice activity that may be conducted or carried out at the shooting range.

**Schedule 2 [6]** increases, from 3 to 5 years, the maximum period for which the approval of a shooting range remains in force.

**Schedule 2 [7]** specifies the new application fees for firearms licences for specified periods. The fees are equivalent to the amounts for driver licences for the same respective periods.

**Schedule 2 [8]** exempts pensioners from the requirement to pay an application fee for a category H (ie pistol) licence.

**Schedule 2 [9]** provides for the removal from the Register of Firearms of details relating to firearms that are no longer required to be registered.

**Schedule 2 [11]** removes the requirement for an advertisement for the sale of a firearm to include the name and address of the licensed dealer who is arranging the sale.

### **Schedule 3 Amendment of other legislation**

**Schedule 3.1** amends the *Crimes Act 1900* to make it clear that the offence under that Act of possessing an unregistered firearm in a public place does not apply in the case of a firearm that is not required to be registered under the Firearms Act (eg an antique firearm).

**Schedule 3.2** amends the *National Parks and Wildlife Regulation 2009*:

(a) to provide that it is not an offence for a person to carry or possess a firearm on national park land if the firearm is not loaded and is being conveyed in a vehicle travelling on a road traversing that land and so long as the person is authorised under the *Firearms Act* to possess the firearm, and

(b) to provide for a similar exemption in relation to the possession of ammunition on national park land, and

(c) to remove a superfluous reference to airguns in an offence provision relating to the possession or use of certain weapons on national park estate land (noting that airguns are firearms within the meaning of the Firearms Act and are already covered by the existing prohibition under the National Parks and Wildlife Regulation of carrying, discharging or possessing a firearm on such land).

**Schedule 3.3** amends the *Weapons Prohibition Act 1998*:

(a) to provide that an application for a permit under that Act must be refused if the applicant was subject to an apprehended violence order within the previous 5 years (instead of the previous 10 years as is the case at present), and

(b) to provide that the Commissioner will have a discretion (rather than be required) to refuse to issue a weapons permit to an applicant who has been convicted of an offence or who is subject to a recognisance to keep the peace, and (c) to clarify the grounds on which a weapons permit may be revoked.

**Schedule 3.4** modifies the current exemption under the *Weapons Prohibition Regulation 2009* relating to the possession of laser pointers by firearms licence holders who use them for the purpose of an activity associated with the use of a firearm.

### **Issues Considered by the Committee**

<p>11. The Legislation Review Committee has not identified any issues under s8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p>
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*The Committee makes no further comment on this Bill.*

## 5. HEALTH LEGISLATION AMENDMENT BILL 2010

Date Introduced:	2 June 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carmel Tebbutt
Portfolio:	Health

### Purpose and Description

1. This Bill has numerous objects, including:
  - a) The creation of new offences relating to the obstructing and hindering ambulance officers and obstructing and hindering such officers by acts of violence;
  - b) The amendment of the *Health Administration Act 1982* and the *Private Health Facilities Act 2007* with respect to root cause analysis teams;
  - c) The amendment of the *Assisted Reproductive Technology Act 2007* to require certain information to be provided for the purposes of a central Assisted Reproductive Technologies donor register;
  - d) The amendment of the *Health Services Act 1997* with respect to the delegation of functions by area health services and the joint management of services or facilities by statutory health corporations;
  - e) The amendment of the *Public Health (Tobacco) Act 2008* to increase the period within which tobacco retailers must provide notification of certain matters.

### Background

2. This Bill makes amendments to a suite of legislation under the Health portfolio.
3. Some of the more significant amendments relate to provisions of the *Health Administration Act 1982* and the *Private Health Facilities Act 2007* in respect of the appointment of root cause analysis teams to investigate serious clinical events in public hospitals and private health facilities.
4. Root cause analysis of serious clinical incidents in New South Wales public hospitals was introduced in 2005 in accordance with the recommendations of the Walker inquiry into Camden and Campbelltown hospitals.
5. In 2009, the New South Wales health department conducted a review of the root cause analysis provisions. The review included the release of a public discussion paper, extensive consultation with stakeholder groups and, in September 2009, the tabling of a report before Parliament containing recommended amendments to the

Act. This Bill contains all the amendments proposed by the review with respect to root cause analysis.

6. The Bill also proposes to amend the *Assisted Reproductive Technology Act 2007* to improve the capacity of the donor register system to match up historical donors and offspring who wish to obtain information about each other.
7. In addition, the Bill amends the *Health Services Act 1997* to create two new offences pertaining to the intentional obstruction or hindrance of an Ambulance Service officer who is in the course of providing ambulance services to a person.
8. Lastly, the Bill makes minor amendments to other Acts under the Health portfolio.

## 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 on a day or days to be appointed by proclamation except for certain provisions that are to commence on the date of assent to the proposed Act.

### **Schedule 1 Amendments relating to ambulance officers**

#### **Schedule 1.1 Health Services Act 1997 No 154**

**Schedule 1.1 [1]** creates an offence if a person intentionally obstructs or hinders an ambulance officer when the ambulance officer is providing or attempting to provide ambulance services to another person or persons. The maximum penalty for the offence is imprisonment for 2 years or a fine of \$5,500 or both. However, if the ambulance officer is hindered or obstructed by an act of violence against the ambulance officer the maximum penalty is imprisonment for 5 years. Provision is made for an alternative verdict where a trier of fact finds that the more serious offence is not proven but it is satisfied that the person charged committed the less serious offence. **Schedule 1.1 [2]** makes a consequential amendment that enables the offence of obstructing or hindering an ambulance officer by an act of violence on the ambulance officer to be tried by way of indictment.

#### **Schedule 1.2 Criminal Procedure Act 1986 No 209**

**Schedule 1.2** provides that the offence proposed in Schedule 1.1 [1] of obstructing or hindering an ambulance officer by an act of violence on the ambulance officer is to be tried summarily unless the prosecutor elects otherwise. The proposed amendment also reorganises the order and layout of some existing provisions.

### **Schedule 2 Amendments relating to root cause analysis teams**

#### **Schedule 2.1 Health Administration Act 1982 No 135**

A relevant health services organisation (which includes all area health services and those statutory health corporations and affiliated health organisations that are prescribed) is required to appoint a root cause analysis team if a reportable incident involving the organisation is reported to the chief executive officer of the organisation. **Schedule 2.1 [1]** permits a root cause analysis team to be appointed if the incident reported to the chief executive officer is not a reportable incident but is one that, in

the opinion of the chief executive officer, may be the result of a serious systemic problem that justifies the appointment of such a team. **Schedule 2.1 [2] and [5]** make consequential amendments.

**Schedule 2.1 [3]** requires a member of a root cause analysis team to act in a fair and reasonable manner in the exercise of his or her functions. This replaces an obligation that a root cause analysis team is to have regard to the rules of natural justice. A root cause analysis team is required to notify the relevant health services Organisation if the incident that it is considering raises matters that may involve professional misconduct or unsatisfactory professional conduct by a visiting practitioner or staff member or if such a person may be suffering from an impairment.

A root cause analysis team may also make such a notification if the incident indicates unsatisfactory professional performance. **Schedule 2.1 [4]** specifies that any such notification is to disclose the identity of the person to whom it relates and whether the notification relates to professional misconduct, unsatisfactory professional conduct, unsatisfactory professional performance or impairment.

**Schedule 2.1 [4]** also includes a new ground for making a notification if the root cause analysis team is of the opinion that the incident that it is considering indicates a problem giving rise to a risk of serious and imminent harm to a person. **Schedule 2.1 [9]** provides that a member of a root cause analysis team may disclose information acquired by the person as such a member for the purposes of any such notification. **Schedule 2.1 [8]** includes definitions of the terms **professional misconduct**, **unsatisfactory professional conduct**, **unsatisfactory professional performance** and **impairment**. **Schedule 2.1 [6]** clarifies that a root cause analysis team may, but is not required to, make recommendations in respect of an incident that it has considered. **Schedule 2.1 [7]** provides that the contents of a report of a root cause analysis team may be disclosed to any person and used for any purpose. However, **Schedule 2.1 [12]** provides that evidence as to the contents of a notification or report of a root cause analysis team cannot be adduced or admitted in any proceedings. Currently, any such notification or report is not admissible as evidence in any proceedings that a procedure or practice is or was careless or inadequate.

**Schedule 2.1 [10]** provides that a person (currently this privilege only applies to members of root cause analysis teams and the health services organisations that appoint them) cannot be required to produce any document or disclose any communication to a court, tribunal, board, person or body if the document was prepared, or the communication was made, for the dominant purpose of the conduct of an investigation by a root cause analysis team.

However, this does not apply to a requirement made in proceedings in respect of an act or omission by a root cause analysis team or by a member of such a team. **Schedule 2.1 [11]** provides that this also does not apply to a requirement made by a person or body who has been approved by the Director-General of the Department of Health (the **Director-General**) to carry out a review or audit of an investigation conducted by a root cause analysis team.

**Schedule 2.1 [13]** permits regulations to be made in relation to the conduct of reviews or audits of investigations conducted by root cause analysis teams.

**Schedule 2.1 [14]** omits a spent provision.

#### Explanatory note page 4

#### **Health Legislation Amendment Bill 2010 Explanatory note**

**Schedule 2.1 [15]** enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 2.1 [16]** inserts savings and transitional provisions consequential on the enactment of the proposed Act.

#### **Schedule 2.2 Private Health Facilities Act 2007 No 9**

A licensee of a private health facility is required to appoint a root cause analysis team if a reportable incident involving the facility is reported to the licensee.

**Schedule 2.2 [1]** permits a root cause analysis team to be appointed if the incident reported to the licensee is not a reportable incident but is one that, in the opinion of the licensee, may be the result of a serious systemic problem that justifies the appointment of such a team.

**Schedule 2.2 [2] and [5]** make consequential amendments.

**Schedule 2.2 [3]** requires a member of a root cause analysis team to act in a fair and reasonable manner in the exercise of his or her functions. This replaces an obligation that a root cause analysis team is to have regard to the rules of natural justice. A root cause analysis team is required to notify the licensee and the chair of the medical advisory committee for the relevant facility if the incident that it is considering raises matters that may involve professional misconduct or unsatisfactory professional conduct by a staff member or person who is accredited to provide health services at the facility or if such a person may be suffering from an impairment. A root cause analysis team may also make such a notification if the incident indicates unsatisfactory professional performance. **Schedule 2.2 [4]** specifies that any such notification is to disclose the identity of the person to whom it relates and whether the notification relates to professional misconduct, unsatisfactory professional conduct, unsatisfactory professional performance or impairment. **Schedule 2.2 [4]** also includes a new ground for making a notification if the root cause analysis team is of the opinion that the incident that it is considering indicates a problem giving rise to a risk of serious and imminent harm to a person.

**Schedule 2.2 [9]** provides that a member of a root cause analysis team may disclose information acquired by the person as such a member for the purposes of any such notification. **Schedule 2.2 [8]** includes definitions of the terms *professional misconduct*, *unsatisfactory professional conduct*, *unsatisfactory professional performance* and *impairment*.

**Schedule 2.2 [6]** clarifies that a root cause analysis team may, but is not required to, make recommendations in respect of an incident that it has considered.

**Schedule 2.2 [7]** provides that the contents of a report of a root cause analysis team may be disclosed to any person and used for any purpose. However, **Schedule 2.2 [12]** provides that evidence as to the contents of a notification or report of a root cause analysis team cannot be adduced or admitted in any proceedings. Currently, any such notification or report is not admissible as evidence in any proceedings that a procedure or practice is or was careless or inadequate.

**Schedule 2.2 [10]** provides that a person (currently this privilege only applies to members of root cause analysis teams and the licensee and chair of the medical advisory committee for the facility for which the team was appointed) cannot be required to produce any document or disclose any communication to a court, tribunal, board, person or body if the document was prepared, or the communication was made, for the dominant purpose of the conduct of an investigation by a root cause analysis team. However, this does not apply to a requirement made in proceedings in respect of an act or omission by a root cause analysis team or by a member of such a team. **Schedule 2.2 [11]** provides that this also does not apply to a requirement made by a person or body who has been approved by the Director-General to carry out a review or audit of an investigation conducted by a root cause analysis team.

**Schedule 2.2 [13]** permits regulations to be made in relation to the conduct of reviews or audits of investigations conducted by root cause analysis teams.



**Schedule 2.2 [14]** enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 2.2 [15]** inserts savings and transitional provisions consequential on the enactment of the proposed Act.

### **Schedule 3 Other amendments**

#### **Schedule 3.1 *Assisted Reproductive Technology Act 2007 No 69***

The *Assisted Reproductive Technology Act 2007* establishes a central ART donor register which requires certain information about donors of gametes and adult offspring born as a result of assisted reproductive technology (**ART**) treatment using a donated gamete, to be given to the Director-General. The Director-General is then able to disclose certain information about a donor to any adult offspring of the donor and certain information about any offspring of a donor to the donor. This scheme is limited to information in respect of ART treatment occurring after 1 January 2010. For ART treatment occurring before this date a donor or offspring may apply to the Director-General to have the person's information included in the central ART donor register.

**Schedule 3.1 [1]** provides that when the Director-General receives such an application he or she may direct an ART provider to provide information so as to enable the Director-General to identify, in the case of an application by a donor, any offspring of the donor, and in the case of a person who was born as a result of ART treatment using a donated gamete, the donor of the gamete. An ART provider must comply with any such direction.

**Schedule 3.1 [2]** makes a consequential amendment.

**Schedule 3.1 [3]** provides that the Director-General must not disclose any information provided by an ART provider as a result of a direction unless the person to whom the information relates is an adult and consents to the disclosure.

#### **Schedule 3.2 *Guardianship Act 1987 No 257***

**Schedule 3.2** provides that in the event of an inconsistency between Part 5 (Medical and dental treatment) of the *Guardianship Act 1987* and the *Mental Health (Forensic Provisions) Act 1990*, the *Mental Health (Forensic Provisions) Act 1990* prevails.

#### **Schedule 3.3 *Health Administration Act 1982 No 135***

**Schedule 3.3** provides that the expression "NSW Health" includes bodies and organisations under the control and direction of the Director-General.

#### **Schedule 3.4 *Health Services Act 1997 No 154***

**Schedule 3.4 [1]** permits an area health service to delegate its functions to visiting practitioners, to councils or committees appointed by the area health service, to certain bodies appointed by the Minister for Health or the Director-General or to persons or bodies of a class prescribed by the regulations.

**Schedule 3.4 [2]** permits 2 or more statutory health corporations to agree to jointly manage a public hospital, health institution, health service or health support service or to agree that any such service under the control of one of the statutory health corporations be managed

by another statutory health corporation. Such an agreement cannot be entered without the approval of the Minister for Health.

**Schedule 3.4 [3]** enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 3.5 *Public Health (Tobacco) Act 2008 No 94***

**Schedule 3.5** amends the *Public Health (Tobacco) Act 2008* to increase, from 7 to 28 days, the period within which a person engaged in tobacco retailing must notify the Director-General after becoming aware of certain changes affecting the person's tobacco retailing business.

## Issues Considered by the Committee

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

#### Issue: Privacy

10. The proposed amendment to the *Health Administration Act 1982* at Schedule 2 [4] of the *Health Legislation Amendment Bill 2010* provides that when a root cause analysis team notifies a relevant health service organisation in relation to an incident they are investigating, the team's reporting constitutes a disclosure of the identity of the person to whom the notification relates (regardless of whether the person consents to the disclosure).
11. Ordinarily, the Committee would raise concerns that the disclosure of personal information would compromise the privacy of the individual to which it relates.
12. However, the Committee recognises that there is a strong public interest in reporting the identity of an individual involved in an incident under investigation to a relevant health service organisation as these matters often relate to instances of professional misconduct or personal impairment. The Committee notes that under the Information Protection Principles of the *Privacy and Personal Information Protection Act 1998*, the disclosure of personal information is generally accepted in circumstances where there is a risk of serious or imminent harm to an individual (or class of individuals). As the disclosure provisions of the proposed amendment are broadly in line with the Information Protection Principles, the Committee does not regard the disclosure of personal information to be an undue trespass on the right of individual to privacy.
13. The Committee also considered a proposed amendment of the *Assisted Reproductive Technology Act 2007* at Schedule 3.1[1] of the *Health Legislation Amendment Bill 2010*, which also has the potential to impact on privacy rights.
14. Proposed Schedule 3.1[1] provides that the Director-General of the Department of Health may require an assisted reproductive technology provider to identify the donor of a gamete in which a person was born using assisted reproductive technology or any offspring born as a result of assisted reproductive technology using a donated gamete. The collection of this information is for the purposes of entry into an assisted reproductive technology donor register.
15. The Committee recognises the sensitivity involved in collecting the identities of individuals involved in assisted reproductive technology. In particular, the Committee

- appreciates that the donor of a gamete may wish to remain anonymous and even the transfer of that person's identity from the assisted reproductive technology provider to the Department of Health for the purposes of entry into a register, may be a disclosure that the individual would not want to occur.
16. However, the Director-General is prohibited from disclosing information provided that identifies an individual unless that person has provided written consent to the disclosure. The Committee notes that this is broadly in line with the allowances for the disclosure of personal information under the Information Protection Principles of the *Privacy and Personal Information Protection Act 1998*.
  17. The Committee also notes that the Director-General can disclose information provided that identifies a person if that person has similarly made an application to have their information recorded onto the register. That is, if either the donor of a gamete or the offspring of a donor make an application to have their information recorded in the register, then that application is taken as consent for the purpose of seeking to match up the parties should the other party also voluntarily enter their information onto the register.
  18. The Committee recognises the interest in maintaining a Government-run register should donors and donor-conceived children wish to match up, as well as recognising that the success of the donor and offspring match up program is entirely contingent on identifying information about each party being made available to their other party.
  19. In addition, the Committee appreciates the advantage of the records being maintained by a Government department with regulatory oversight rather than disparate, privately-run facilities and considers that sufficient safeguards have been put in place to maximise the privacy of the respective individuals.
  20. **The Committee notes that the amendments provided for in this Bill have the potential to impact on the privacy rights of individuals. However, the Committee also recognises that the disclosure of information provided for by these amendments are broadly in line with the Information Protection Principles of the *Privacy and Personal Information Protection Act 1998*.**

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

#### Issue: Excessive Punishment

21. The proposed amendment to the *Health Services Act 1997* at Schedule 1.1[1] of the *Health Legislation Amendment Bill 2010* provides that individuals who intentionally obstruct or hinder an ambulance officer providing or attempting to provide ambulance services is guilty of an offence, the maximum penalty for which is 50 penalty units or imprisonment for 2 years or both. In circumstances where an individual acts violently toward an ambulance offer, the maximum penalty is imprisonment for 5 years.
22. The Committee recognises the importance of ambulance service officers to be able to perform their duties without threat or fear of harassment or violence. However, the Committee is concerned that individuals who obstruct ambulance officers from performing their duties have a higher likelihood of suffering from mental health impairments and, as such, this provision may differentially affect individuals in this

group. To this end, the maximum penalty provisions of between 2 to 5 years may appear disproportionate to the offence committed in light of potential mental health concerns of the offender.

**23. The Committee recognises the importance of ambulance service officers to be able to perform their duties without threat or fear of harassment or violence. However, the Committee is concerned that the offence provisions of this amendment may differentially impact on individuals with mental health impairments and, as such, the maximum penalty provisions may appear disproportionate to the offence committed when considering the potential mental health concerns of the offender. The Committee refers this matter to Parliament for its consideration.**

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

##### **Issue: Commencement by Proclamation**

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

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

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

## 6. JURY AMENDMENT BILL 2010

Date Introduced:	3 June 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General

### Purpose and Description

1. This Bill amends the *Jury Act 1977* in relation to the eligibility and selection of jurors; and for other purposes.
2. This Bill provides for changes to the *Jury Act*, with a focus on broadening the pool of eligible jurors to ensure the burden of jury duty is widely distributed and that juries remain representative of society.
3. The approach is to remove a right to be exempt and replace it with a need to show good cause why a person should be exempt.
4. The current *Jury Act* provides that a person is disqualified from serving on a jury if at any time within the last 10 years in New South Wales or elsewhere, they have served any part of a sentence of imprisonment. This 10-year exclusion after any term of imprisonment will now be replaced with a graduated scheme: life exclusion for serious offences, 10 years after terms of imprisonment exceeding three months, and seven years after terms of less than three months.
5. The offences for which a person will be excluded from jury service for life are: any offence for which life imprisonment is the maximum available penalty; any offence constituting a terrorist act within the meaning of the *Terrorism (Police Powers) Act 2002*; any public justice offence under part 7 of the *Crimes Act 1900*, for example, an offence of intimidating victims or witnesses or concealing serious indictable offences; and, a sexual offence as defined in section 7 of the *Criminal Records Act 1991*. This is accordingly consistent with the New South Wales Law Reform Commission's recommendations. A sentence of imprisonment includes being subject to a suspended sentence of imprisonment or being on probation or parole. However, it does not include a sentence of imprisonment that has been quashed or converted to a non-custodial sentence on appeal, a sentence of imprisonment in respect of a conviction that has been quashed or annulled, or for which a pardon has been granted, or a sentence of imprisonment for failure to pay a fine.
6. Juveniles are also currently excluded if at any time within the last three years in New South Wales or elsewhere, they have been found guilty of an offence and detained in a detention centre or other institution for juvenile offenders. This three-year exclusion will be retained, but there will be clarification with regard to certain matters.
7. The *Jury Act* currently provides that a person is ineligible for jury service where they are bound by certain orders pursuant to a criminal charge or conviction. The Bill will now provide a comprehensive list of such orders.

8. The Bill sets other circumstances where a person is excluded from jury service. These include: a person who is awaiting trial or sentencing, a person who is subject to a preventative detention order under the *Terrorism (Police Powers) Act 2002* or a control order or interim control order under division 104 of the *Criminal Code Act 1995* of the Commonwealth, or a person who is a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*.
9. As to other exclusions from jury service, the current legislation provides that in addition to disqualification from jury service, certain categories of people are ineligible. The Bill will consolidate and simplify this class, with those who are disqualified under the heading "Persons excluded from jury duty". The subcategories in this schedule will reflect the range of people who should be excluded from jury duty for legitimate reasons, and include persons holding particular office such as judicial officers, Crown Prosecutors, and the Director of Public Prosecutions. These office holders will be excluded from jury service for a period of three years after ceasing to hold office.
10. People employed in certain occupations in the public sector will similarly be excluded from jury duty for three years after ceasing their employment or period of engagement. For example, employees of the Office of the Director of Public Prosecutions, the New South Wales Police Force, the Police Integrity Commission and the Independent Commission Against Corruption, and people who may have access to information about inmates and other detainees as a result of holding a position with certain Government agencies or related bodies are excluded from jury service during the period of their service. These include employees of the Department of Justice and Attorney General, the Probation and Parole Service and Justice Health.
11. With regard to the eligibility for former police officer, almost all other Australian jurisdictions confine the ineligibility to serving officers. The New South Wales Law Reform Commission recommended this be the case in New South Wales, and this was supported by a number of submissions. In line with the provisions for retired judicial officers, Ministers, and senior public lawyers, under this Bill, a person will be eligible to serve on a jury three years after leaving the Police Force.
12. With regard to good cause, the current *Jury Act* provides that the Sheriff may excuse a person from attendance for jury service for good cause at any time after they have been sent a notice of inclusion but before being summonsed. They may be excused because of any matter of special importance, or any matter of special urgency, such as urgent medical treatment. Applications based upon good cause are assessed on an individual basis. The concept of good cause is not defined in the Act, the Sheriff has developed guidelines to assist staff in applying the relevant provisions of the Act.
13. The New South Wales Law Reform Commission also recommended the preparation of guidelines to assist the Sheriff's exercise of discretion in excusing jurors for good cause. Under the model proposed in the commission's report, all individuals, regardless of their background or profession, would enjoy the same rights and obligations in relation to jury service. The statutory categories for exemption in schedules 2 and 3 of the *Jury Act* would be removed, and individuals would under the Bill, apply for exemption on the basis of criteria set out in the published guidelines.

14. Provisions that allow people falling within certain professional and other employment categories to claim an exemption as of right will be included on the basis of the importance of the services they provide to the community. These groups include medical practitioners, members of the clergy and emergency service providers.
15. Certain other groups of people will be removed from the schedules to the Act and will now have to apply to the Sheriff for an exemption for good cause. For example, two groups currently listed as ineligible will now have to show cause to be excused. They are a person who is unable to read or understand English, and a person who is unable, because of sickness, infirmity or disability, to discharge the duties of a juror. The Disability Council supported removing the ineligibility of those who are disabled, on the basis that it remedies "an unjustified, outdated belief that people with a disability are unable to fulfil juror duties".
16. If anyone is not capable of serving they will be able to apply for an exemption on the basis of good cause, and the criteria will be set out in published guidelines.
17. The Sheriff may exempt a person permanently from jury service when a person has a mental or physical impairment that results in jury service being incompatible with the person's good health or that otherwise renders the person unable to perform jury service. When the Sheriff refuses an application for permanent exemption, the Bill provides for a right of appeal to the Local Court. When a person is otherwise incapacitated due to temporary illness or for other reasons, they will be able to apply for an exemption for good cause under the guidelines.
18. The legislation makes it an offence for an employer to require an employee to use annual or other leave entitlements in order to serve on a jury. The proposed maximum penalty for breach of the provision is 20 penalty units, which is currently \$2,200. In addition to these provisions, the Bill adopts the New South Wales Law Reform Commission's proposals regarding increased penalties for existing offences. Section 69 of the Act provides that an employer shall not dismiss a person in his or her employment, injure the person in his or her employment, or alter his or her position to his or her prejudice by reason of the fact that the person is summoned to serve as a juror. Compared to equivalent offences in other Australian jurisdictions, the Bill now proposes to increase the maximum penalty to 50 penalty units and/or imprisonment for up to 12 months. In addition, an offence by a corporation will now incur a fine of up to 200 penalty units. The proposed increase to 50 penalty units will bring New South Wales into line with the Australian Capital Territory and the Northern Territory, which are at the lower end of the scale of financial penalties in Australia. The addition of a financial penalty for a corporation also brings New South Wales into line with Victoria and Tasmania.

## Background

19. This Bill aims to implement recommendations of the New South Wales Law Reform Commission's 2007 report entitled "Jury Selection". The Law Reform Commission's report arose out of a reference given to the commission in August 2006 by the previous Attorney General to inquire into the operation and effectiveness of the system of selecting jurors under the *Jury Act 1977* and related matters.

20. Legislation has already implemented a number of the recommendations in the Law Reform Commission's report. In 2007, amendments were passed to enable the court to allow up to 15 jurors to be sworn in for trials expected to last for longer than three months. Amendments were passed in 2008 to allow judges to discharge individual jurors for cause, due to a mistake in empanelment or a change in eligibility status after empanelment.
21. Juries in New South Wales are made up of New South Wales citizens who have been chosen randomly from the electoral roll. The Sheriff sends out a notice of inclusion to advise those people whose names have been selected and included on the jury roll. According to the Agreement in Principle speech, approximately 200,000 people are sent a notice of inclusion each year and may subsequently be summoned for jury service. In 2009, of those sent a notice of inclusion, 114,790 people were summoned and required to attend for jury service. Of these 52,766 attended, and 9,039 were selected to serve on juries. Around 50 per cent of people summoned seek and receive approval to be excused from jury duty.
22. Under the existing legislation, three schedules to the Act provide bases for not serving on a jury: some people are disqualified, some ineligible, and some have a right to claim exemption. Disqualification arises from past criminal conduct. Those who are ineligible also cannot serve if they are summoned. This group includes the Governor, the Ombudsman, judicial officers and police officers, and those who cannot read or write English sufficiently, or are too sick, infirm or disabled, to discharge the duties of a juror. In the last group, they have a right to claim exemption. This group includes medical practitioners and emergency service workers, those with full-time carer responsibilities, and vowed clergy.
23. The Bill will also provide that the Sheriff has a statutory right to information regarding a person's criminal record in order to determine whether potential jurors should be excluded from jury service on the basis of their criminal history. The New South Wales Police Force will provide this information based upon the national criminal history record check, undertaken via the National Names Index.
24. The Law Reform Commission recommended shifting to a general exemption model based on good cause. The Agreement in Principle speech informed that the commission's recommendations provide that sickness, infirmity or disability should no longer be a ground of exclusion, but should be considered as a ground of excusal for good cause. Similarly, it recommended that no person should be entitled to be exempted from jury service as of right because of personal characteristics or situation or because of their occupation, profession or calling but should be able to apply to be excused for good cause.
25. The Agreement in Principle speech stated that:

We will consult closely with key stakeholder groups when developing the guidelines to ensure that all those with genuine grounds not to serve are able to be excused...

The adoption of guidelines offers a more flexible approach and provides a more equitable means of dealing with applications for exemption. The Government is concerned to ensure that all relevant circumstances are considered. To this end, the Attorney General has asked the Sheriff to consider the inclusion of a broad concept of "carer" in the guidelines. In developing this, he will consult with key stakeholder groups. The Bill proposes to introduce a definition of "good cause", which will form the basis for the guidelines.



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26. The Sheriff may exempt a person permanently from jury service when a person has a mental or physical impairment that results in jury service being incompatible with the person's good health or that otherwise renders the person unable to perform jury service. When the Sheriff refuses an application for permanent exemption, the Bill provides for a right of appeal to the Local Court. When a person is otherwise incapacitated due to temporary illness or for other reasons, they will be able to apply for an exemption for good cause under the guidelines.
27. The Agreement in Principle speech also explained that:
- the Law Reform Commission's report proposed that, pending the possible introduction of a smart electoral roll, the Sheriff should have the authority and capacity to cross-check data relating to a potential juror's residential address with records held by other government agencies. A system is currently in place whereby the Registry of Births, Deaths and Marriages regularly updates the Sheriff regarding the names of deceased persons. The Bill expands upon this, and provides that the Sheriff may request information from the Roads and Traffic Authority for the purposes of checking the details of a person whom the Sheriff proposes to summons for jury duty. Appropriate privacy protocols will be followed in implementing any such scheme.
28. The national employment standards provide that employees undertaking jury service will be paid their base rate of pay by their employer, or the difference between their base pay and any jury allowances, for the first 10 days of jury service. The scheme provided for in the *Fair Work Act* is reflected in modern awards and has been taken into account in determining the proposed new juror allowance arrangements. Currently, the *Jury Regulation 2004* provides that jurors are to be paid a daily allowance that increases depending on the length of time served on the jury. At present, different daily rates apply for days 2 to 5, days 6 to 10, and from day 11 onwards.
29. Under the proposed amendments, employed and unemployed jurors will generally be eligible for a single daily rate for days 1 to 10. That rate will be set initially at \$100 per day. From day 11 onwards, employed jurors who are no longer entitled to receive their full wage or salary payment by their employers will be paid at a substantially higher rate, which is more than double the rate for the first 10 days of service. Unemployed jurors will continue to be paid at the rate set for the first 10 days of jury service.
30. The Law Reform Commission report proposed that it should be possible to summons jurors to serve at any one of the courts within the permitted radius of their place of residence, subject to appropriate exemptions from service. The current Jury Regulation provides that, in determining the electoral districts that are to comprise the jury districts constituted by the Act, the Sheriff must ensure that the address of each person whose name appears on an electoral roll is included in one, but not more than one, jury district. It is proposed to amend this regulation so that jurors may be included on the jury roll for more than one jury district. This will mean that prospective jurors will be available to be added to jury rolls and to serve at any court convenient to their place of residence.
31. The Agreement in Principle speech informed that:
- Finally, while it is not a component of the bill, I take this opportunity to alert members to the Government's response to the Law Reform Commission's recommendation that
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Parliament give consideration to the question of the extent and preservation of the statutory exclusion and common law immunity of members of Parliament in relation to jury service. Currently in New South Wales a person is statutorily ineligible to serve as a juror if he or she is a member of the Legislative Council or the Legislative Assembly. Members of Parliament also enjoy common law immunity from service, so repealing the statutory exemption without dealing with this issue would be ineffective.

Given recent developments in the United Kingdom, where the exemption from jury service for members of Parliament has been removed, the commission's report suggests that the ineligibility that currently applies to members of Parliament might be repealed. While the Government does not propose that serving Ministers should be required to undertake jury service, it is important that the question of members of parliament general immunity from service be further examined. The Government therefore proposes that the issues raised in the Law Reform Commission's report regarding the eligibility of members of parliament to serve on juries be referred to the Standing Committee on Law and Justice of the Legislative Council of the New South Wales Parliament. This issue, in particular that of common law immunity, is properly a matter for Parliament. Terms of reference for that referral have been developed in consultation with the Law Reform Commission.

32. The new scheme will commence once the necessary administrative procedures are in place. It is anticipated that this will take approximately six months from the time the legislation is passed.

## The Bill

33. The object of this Bill is to amend the *Jury Act 1977* (***the Act***):
- (a) to change the categories of persons disqualified from jury service or ineligible to undertake jury service, and
  - (b) to remove certain exemptions as of right from jury service and enable, instead, a person to apply for an exemption from jury service for "good cause" (a term which is defined), and
  - (c) to improve the administrative provisions governing the way in which the sheriff, courts and coroners determine persons who are excluded from jury service or are exempt from jury service, and
  - (d) to increase the workplace protections for employees who are required to attend for jury service, and
  - (e) to enable the sheriff to request certain information from the Commissioner of Police and the Roads and Traffic Authority in relation to persons being considered for inclusion on a jury roll.

The Bill also amends the *Jury Regulation 2004* (***the Regulation***):

- (a) to enable a person to be included on more than one jury roll, and
- (b) to revise the allowances payable to persons for attendance for jury service.

## 34. 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 *Jury Act 1977* No 18:

**Changes in categories of persons disqualified from or ineligible for jury service or able to claim exemptions from jury service:**

Currently, Schedule 1 to the Act lists categories of persons who are disqualified from jury service and Schedule 2 to the Act lists categories of persons who are ineligible for jury service. The amendments replace the concept of disqualification from jury service and ineligibility for jury service with the concept of exclusion from jury service.

**Schedule 1 [22]** omits Schedules 1 and 2 to the Act and replaces those Schedules with a single Schedule which contains categories of persons who are excluded from jury service. The changes to the categories of persons who will be excluded from jury service include the following:

- (a) persons who have been found guilty of certain serious offences will be excluded from jury service for life,
- (b) persons who have been imprisoned or detained for committing other offences will be excluded from jury service for a specified number of years depending on the length of the period of detention and whether the offences were committed as adults or juveniles,
- (c) persons awaiting trial or sentencing for an offence or the determination of an appeal in relation to an offence, or subject to certain orders, will be excluded from jury service,
- (d) persons will be excluded from jury service during any period of 12 months or more in which they are disqualified from holding a driver licence,
- (e) Australian lawyers will no longer be excluded from jury service,
- (f) the holders of certain specified offices or certain positions will be excluded from jury service but, with certain exceptions, only while holding the office or position and for 3 years afterwards,
- (g) a person who is unable to read or understand English will no longer be excluded from jury service (but will instead be eligible for an exemption for good cause under proposed section 14),
- (h) a person who is unable, because of sickness, infirmity or disability, to discharge the duties of a juror will no longer be excluded from jury service (but will instead be eligible for a permanent exemption or exemption for good cause under proposed section 14 depending on the nature of the sickness, infirmity or disability),
- (i) a person who is an undischarged bankrupt will be excluded from jury service.

**Schedule 1 [23]** omits Schedule 3 to the Act which contains the categories of persons who have a right to claim an exemption from jury service and inserts a new Schedule 2 which contains a revised list of those categories. The following current categories of exemptions have been excluded from the new Schedule, but persons within those categories will be able to apply for an exemption for good cause under proposed section 14:

- (a) mining managers and under-managers of mines,
- (b) persons who are at least 70 years old,
- (c) pregnant women,
- (d) a person who has the care, custody and control of children under the age of 18 years (other than children who have ceased attending school), and who, if exempted, would be the only person exempt under this item in respect of those children,
- (e) a person who resides with, and has full-time care of, a person who is sick, infirm or disabled.

**Schedule 1 [3]** substitutes sections 13–15 of the Act dealing with the procedure for including persons on a supplementary jury roll.

**Proposed section 13** requires the sheriff (as is currently the case) to send a notice to each person that the sheriff intends to include on a supplementary jury roll informing the person of that intention and the various categories of exclusion and exemption from jury service. The notice also includes a questionnaire designed to elicit information as to whether the person is excluded from jury service or has a claim for exemption from jury service.

**Proposed section 14** provides for the manner in which a person may claim to be excluded or exempt from jury service as of right or may apply to the sheriff for some other exemption. The proposed section enables a person to request a permanent exemption from jury service on the grounds that he or she has a permanent mental or physical impairment that results in jury service being incompatible with the person's good health or that otherwise renders the person unable to perform jury service.

The proposed section also enables a person to request an exemption from jury service for the whole or part of the period for which the person is liable to be summoned for jury service by showing good cause. The sheriff may exempt a person from jury service for good cause whether or not a request for exemption has been made. (See proposed section 14A as to what constitutes "good cause".) Any such claim or application may be made in response to a notice under proposed section 13, or in writing in an approved form to the sheriff, at any time before the person is actually in attendance at a trial or coronial inquest pursuant to a summons for jury service.

**Proposed section 14A** sets out what generally constitutes good cause to be exempted or excused from jury service, being grounds involving hardship, serious inconvenience, disability or conflict of interest, or some other reason that would affect the person's ability to perform the functions of a juror.

**Proposed section 14B** enables a person to apply to the sheriff for deferral of jury service.

**Proposed section 14C** enables the sheriff to require verification by statutory declaration or the provision of other evidence of claims, requests or applications in connection with exclusions and exemptions from, and deferrals of, jury service.

**Proposed section 14D** imposes a general duty on the sheriff to update the information on jurors contained in jury rolls and supplementary jury rolls.

**Proposed section 15** re-enacts the current section 15 of the Act dealing with appeals to the Local Court from decisions of the sheriff in connection with exemptions from jury service as a consequence of the removal of the concepts of disqualification from, and ineligibility for, jury service.

**Schedule 1 [1], [2], [4], [5], [6], [9], [10], [11], [12], [18], [19] and [21]** contain consequential amendments.

#### **Employment related amendments:**

**Schedule 1 [13] and [15]** amend section 69 of the Act to increase the penalties for an offence against that section from 20 penalty units to 200 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both (in the case of an

individual). That section contains offences relating to dismissing a person from his or her employment, injuring a person in his or her employment or altering a person's position to his or her prejudice because the person has been summoned for jury service.

**Schedule 1 [14]** amends section 69 of the Act to make it clear that it extends to certain casual employees.

**Schedule 1 [16]** inserts proposed section 69A into the Act to create offences to prevent employers requiring employees to use their leave if they are summoned for jury service or to work extra time to make up for work time lost while attending for jury service.

#### **Powers of sheriff to request certain information:**

**Schedule 1 [20]** amends section 75A of the Act to enable the sheriff to obtain information from the Commissioner of Police relating to the criminal record of a person proposed to be summoned for jury service to determine whether the person is excluded from jury service. The amendment also enables the sheriff to obtain information from the Chief Executive of the Roads and Traffic Authority for the purpose of checking the relevant details of a person proposed to be summoned for jury service.

#### **Miscellaneous:**

**Schedule 1 [7]** amends section 38 of the Act to enable a person making a request for an exemption from jury service to a court at a trial or a coroner at a coronial inquest to make the request in writing if it relates to the person's health or may cause embarrassment or distress if made public.

**Schedule 1 [8]** removes an unnecessary word by way of statute law revision.

**Schedule 1 [11]** substitutes section 62 of the Act to include as an offence the provision of false or misleading information to the sheriff in connection with a claim for jury allowance and to increase the penalty for existing offences of providing false or misleading information to the sheriff from 10 penalty units to 50 penalty units (currently, \$5,500).

**Schedule 1 [17]** amends section 72 as a consequence of the amendments to the Regulation in Schedule 2 relating to allowances to persons attending for jury service.

**Schedule 1 [24] and [25]** amend Schedule 8 to the Act to provide for savings and transitional provisions consequent on the enactment of the proposed Act.

#### **Schedule 2 Amendment of *Jury Regulation 2004*:**

**Schedule 2 [1]** amends clause 3 of the Regulation to enable a person to be included in more than one jury district and, as a result, on more than one jury roll.

**Schedule 2 [2] and [3]** substitute clause 5 and Schedule 1 to the Regulation to revise the allowances payable to persons who are required to attend for jury service. The attendance allowance is the same for all persons for the first 10 days of attendance and then is increased from day 11 onwards for persons who are employed.

## **Issues Considered by the Committee**

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

**Issue: Right To Fair Trial – Clause 5 (1) and (2) – Persons holding particular office; and Clause 6 (1), (2), (3) and (4) – Persons employed or engaged in certain occupations in the public sector - Schedule 1 – Persons excluded from jury service:**

35. Clause 5 (1) of Schedule 1 reads: A person holding any of the following offices is excluded from jury service:

- (a) the Governor,
- (b) a judicial officer (within the meaning of the *Judicial Officers Act 1986*),
- (c) a coroner,
- (d) a member of the Executive Council,
- (e) a member of the Legislative Council or Legislative Assembly,
- (f) the Ombudsman, a Deputy Ombudsman or an Assistant Ombudsman,
- (g) a Crown Prosecutor,
- (h) the Senior Public Defender, a Deputy Senior Public Defender or a Public Defender,
- (i) the Director of Public Prosecutions, a Deputy Director of Public Prosecutions or the Solicitor for Public Prosecutions,
- (j) the Solicitor General,
- (k) the Crown Advocate,
- (l) the Crown Solicitor.

(2) A person who held an office referred to in subclause (1) is also excluded from jury service for the period of 3 years after ceasing to hold that office.

36. Clause 6 of Schedule 1 reads:

(1) A person who is an Australian lawyer or paralegal is excluded from jury service during any period in which he or she is employed or engaged in the public sector in the provision of legal services in criminal cases.

(2) A person is excluded from jury service during any period in which the person is employed or engaged as a member of staff in engaged as clerical, administrative or support staff:

- (a) the Office of the Ombudsman,
- (b) the Office of the Director of Public Prosecutions,
- (c) the Crown Solicitor's Office.

(3) A person is excluded from jury service during any period in which he or she is employed or engaged in law enforcement or criminal investigation in any of the following bodies, except if the person is employed or engaged on a casual or voluntary basis or as clerical, administrative or support staff:

- (a) the NSW Police Force,
- (b) the Australian Federal Police,
- (c) the NSW Crime Commission,
- (d) the Australian Crime Commission,
- (e) the Police Integrity Commission,
- (f) the Independent Commission Against Corruption.

(4) A person who was employed or engaged as referred to in subclause (1), (2) or (3) is also excluded from jury service for the period of 3 years after ceasing to be so employed or engaged.

37. The proposed amendments will allow persons to serve as jurors once the above persons have ceased to be employed or engaged in the above list of offices (clause 5) or list of occupations in the public sector (clause 6) after a period of 3 years from cessation of the occupation or office. The current legislation makes such persons ineligible to serve as jurors in the present Schedule 2, regardless of whether they have ceased their office or occupation after a period of 3 years. An Australian lawyer

(whether or not an Australian legal practitioner and whether or not engaged in public sector), is also currently ineligible under Schedule 2 of the present legislation.

38. The Committee expresses concerns that after the 3 years from the person's cessation to hold the particular office, that a former judicial officer, a former Ombudsman, former Crown Prosecutor, former Director of Public Prosecutions among others in clause 5 (1) could become eligible to serve as a juror. The Committee is similarly concerned that after the 3 years from the person's cessation to be employed in the occupations under clause 6, that the person would be eligible to serve as a juror, such as a former police officer or lawyer formerly engaged in the public sector in the provision of legal services in criminal cases. An Australian lawyer in private practice or in any field of practice or even if the lawyer practised in criminal law but in the private sector, would also become eligible to serve as a juror.

**39. The Committee understands that juries need to be representative of society but the Committee is also aware that the accused person on trial needs to be judged by one's own peers in the form of a jury. According to Lord Devlin, "judgment by peers rather than by professionals is what the jury provides".<sup>1</sup>**

**40. Therefore, the traditional argument against allowing lawyers, police officers and persons from related or similar occupations to serve on juries, seeks to ensure that such persons with specialist knowledge, training and experience in the legal system, law enforcement, criminal investigations, use of evidence, evidentiary rules and procedures, will not disproportionately influence or bias the outcomes of a jury's decision, which may adversely impact on the fair trial of the accused.**

**41. In 2007 the NSW Law Reform Commission recommended that if Australian lawyers should continue to be ineligible, then the class of ineligible lawyers should be confined to those currently practising in NSW. The Commission noted that this was effectively the case in all other Australian jurisdictions, except Victoria.**

**42. The Commission also noted that serving police officers are expressly ineligible in most Australian jurisdictions. Although it did note that the restriction on members of law enforcement or criminal investigation agencies other than police, and on retired police officers, was stricter in NSW than most Australian jurisdictions. Currently, Victoria is the only other State to exclude retired officers permanently. Tasmania excludes former police officers for 10 years, and WA excludes them for five years.**

<sup>1</sup> Lord Devlin, "The Conscience of the Jury", (1991) 107 *Law Quarterly Review*: 402-404.

43. The Committee appreciates the focus and need to broaden the pool of eligible jurors but asks Parliament to consider whether this also needs to be balanced with the wider interest in protecting everyone's right to a fair trial, which includes an impartial jury. Accordingly, the Committee is concerned about removing the current ineligibility of police officers, Australian lawyers (regardless of any practice), judicial officers, a coroner, Crown Prosecutor, Public Defender, Director or Deputy Director of Public Prosecutions, the Ombudsman and Deputy Ombudsman among others, once the 3 year period has passed if such persons no longer hold such an office or are no longer employed or engaged in that occupation. The Committee considers that such persons, although they may no longer be engaged in such occupations or be holding such an office, could still retain their many years of specialist knowledge, training and experience, which may in turn, still influence the decision-making of juries if they served as a juror.
44. Therefore, the Committee asks Parliament to consider whether under Schedule 1, clause 5 (1) and (2) with regard to persons holding particular office; and clause 6 (1), (2), (3) and (4) with regard to persons employed or engaged in certain occupations in the public sector, may undermine the right to fair trial and form an undue trespass on personal rights and liberties.

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

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

45. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee accepts the advice received from the Attorney General's office that: "The reason is as outlined in the Second Reading speech – we need to develop guidelines to support the Sheriff's exercise of his discretion...and to consult with stakeholders. In addition, the changes relating to criminal records checks, cross checking data with the RTA, and changing jury districts all require administrative changes to be made that we cannot be certain as to the timeframe required". The Second Reading speech also explained that: "The new scheme will commence once the necessary administrative procedures are in place. It is anticipated that this will take approximately six months from the time the legislation is passed".

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

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



## 7. MARINE PARKS AMENDMENT (MORATORIUM) BILL 2010\*

Date Introduced:	3 June 2010
House Introduced:	Legislative Council
Minister Responsible:	Hon Robert Brown MLC
Portfolio:	Shooters Party

### Purpose and Description

1. This Bill amends the *Marine Parks Act 1997* to impose a moratorium on the declaration of additional marine parks or the expansion of sanctuary zones within existing marine parks.
2. It provides for a five-year moratorium on the declaration of additional marine parks. It seeks to prevent the making of regulations that would extend the area within a marine park that comprises a sanctuary zone during the five years moratorium from the commencement of the proposed Act.

### Background

3. The Second Reading speech explained that:

The Government released that review, along with a similar review of the Jervis Bay Marine Park, at its first appearance before the Select Committee on Recreational Fishing. The Government's submission also contained the 2009 "Marine Park Science in NSW: An Independent Review".
4. The public exposure period for analysis of the Solitary Islands and Jervis Bay marine parks zoning plan reviews aim to conclude in the month of June.
5. Evidence is currently being taken for the upper House Select Committee on Recreational Fishing, the terms of reference include an examination of the efficacy and efficiency of marine parks.
6. This Bill aims to allow for the completion of the select committee inquiry into recreational fishing and time for the Government to assess any recommendations arising from the inquiry.

### The Bill

7. The object of this Bill is to impose a moratorium on the declaration of additional marine parks or the expansion of sanctuary zones within existing marine parks.

### 8. Outline of provisions

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

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

**Schedule 1 Amendment of *Marine Parks Act 1997***

**Schedule 1 [1]** prevents the Governor from making a proclamation declaring an area to be a marine park during the period of 5 years commencing on the commencement of the proposed Act.

**Schedule 1 [3]** prevents the Governor from making a regulation that would extend the area within a marine park that comprises a sanctuary zone during the period of 5 years commencing on the commencement of the proposed Act. **Schedule 1 [2]** makes a consequential amendment.

**Issues Considered by the Committee**

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

## 8. NATIONAL PARKS AND WILDLIFE AMENDMENT (VISITORS AND TOURISTS) BILL 2010

Date Introduced:	3 June 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Frank Sartor MP
Portfolio:	Environment

### Purpose and Description

1. The object of this Bill is to make amendments to the *National Parks and Wildlife Act 1974* (the NPW Act) for a number of reasons, outlined below.
2. Chiefly, this Bill provides for opportunities for sustainable tourist use and enjoyment of lands reserved under the NPW Act.
3. In addition, the Bill clarifies and rationalises the provisions of the NPW Act dealing with the leasing and licensing of reserved land and provides that reserved land that is within a wilderness area may be licensed for use in certain limited circumstances.
4. The Bill also recategorises certain reserved land from its current reservation to another type of reservation.
5. Lastly, the Bill also amends the *Wilderness Act 1987* to provide that certain commercial activities may be undertaken in wilderness areas, including bush walking, cycling, canyoning, cross country skiing and canoeing.

### Background

6. The Government's 2008 Taskforce on Tourism on National Parks contained 20 recommendations for an enhanced level of sustainable visitation and nature-based tourism in the State's national parks, marine parks and reserves. This Bill contributes towards the implementation of the Taskforce's recommendations.
7. The Taskforce reported that, in its current form, the Act is complex and lacks clarity for operators interested in working with the Government to deliver sustainable opportunities for visitors and tourists.
8. The amendments propose the inclusion of sustainable tourist use within the management principles of relevant reserves and provide for a definition of 'sustainable'.
9. The amendments also streamline the lease or license arrangements and sets out the purposes for which a lease or license may be granted, including obligations incumbent on the Minister before granting a lease or license.

10. Finally, the Bill creates opportunities by facilitating licensed tour operators to undertake nature-based activities on relevant reserves.

## 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 on a day or days to be appointed by proclamation.

### **Schedule 1 Amendment of *National Parks and Wildlife Act 1974 No 80***

#### **Amendments relating to sustainable visitor and tourist use and enjoyment of reserved lands**

The NPW Act currently provides that reserved land is to be managed in accordance with principles set out in Division 2 of Part 4 of that Act. It is generally a management principle for all categories of reserved lands (other than Aboriginal areas and nature reserves) that there be provision for sustainable visitor use and enjoyment that is compatible with the conservation of the land's natural and cultural values. (For example, for the management of national parks, see section 30E (2) (e) of the NPW Act.)

**Schedule 1 [4]** amends various sections of the NPW Act that set out the management principles for the various categories of reserved land (other than Aboriginal areas and nature reserves) to clarify that the management principles for those lands includes the provision for sustainable tourist use and enjoyment of those lands.

**Schedule 1 [1]** amends section 5 (1) of the NPW Act to provide a definition of the term **sustainable**, where used in relation to visitor or tourist use and enjoyment of land, based on the principles of ecologically sustainable development. (Those principles (already defined in section 5 (1) of the Act) are described in section 6 (2) of the *Protection of the Environment Administration Act 1991*.)

**Schedule 1 [5]** inserts proposed section 30K (2) (g) and (h) into the NPW Act to provide for two additional management principles for land reserved under that Act as an Aboriginal area. The first being the provision for sustainable visitor or tourist use and enjoyment that is compatible with the Aboriginal area's natural and cultural values and the cultural values of the Aboriginal people. The second being provision for sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the Aboriginal area's natural and cultural values and the cultural values of the Aboriginal people.

**Schedule 1 [2]** amends various sections of the NPW Act to take account of the expanded management principles.

#### **Amendments relating to leases and licences of reserved land**

**Schedule 1 [17] and [19]** omit sections 151, 151AA and 151B of the NPW Act and insert instead proposed Division 1 (proposed section 150A), Division 2 (proposed sections 151–151E) and Division 3 (proposed sections 151F and 151G) into Part 12 of the NPW Act to clarify and rationalise the provisions of that Act dealing with the leasing and licensing of

reserved land. (The remaining current sections of Part 12 of the NPW Act are renumbered where appropriate and also placed in proposed Division 3.) Proposed section 150A contains definitions for the purposes of Part 12 of the NPW Act.

Proposed section 151 contains the general power of the Minister administering the NPW Act (the **Minister**) to lease or licence any land reserved under the NPW Act. The Minister must not grant a lease or licence of land reserved under Part 4A of the NPW Act (Aboriginal land) contrary to the terms of the lease of the land to the Minister under that Part.

Proposed section 151A sets out the purposes for which reserved land may be leased or licensed. In general, a lease or licence of reserved land (other than a nature reserve) may only be granted for certain specified general purposes, certain purposes related to the sustainable visitor or tourist use and enjoyment of reserved land or for the adaptive reuse of an existing building or structure or the use of a modified natural area. (Currently section 151B of the NPW Act provides for leases of land for such adaptive reuse purposes and licensing the occupation and use of modified natural areas.) The proposed section also provides that a lease or licence of land within a nature reserve may only be granted for a purpose that is consistent with the relevant management principles for nature reserves set out in section 30J of the NPW Act.

Proposed section 151B sets out matters that the Minister must consider before granting a lease or licence of reserved land. The Minister must be satisfied that:

(a) the purpose for which the lease or licence is granted is compatible with the natural and cultural values of:

- (i) the land to be leased or licensed, and
- (ii) reserved land in the vicinity of that land, and

(b) the lease or licence provides for the sustainable and efficient use of natural resources, energy and water, and

(c) in relation to any lease or licence that authorises the erection of a new building or structure on the land or the modification of an existing building or structure on the land—the authorised development or activity is appropriate in relation to the built form and scale of the building or structure, including its bulk, height, footprint, setbacks and density.

The proposed section also provides that in determining whether the Minister is satisfied in relation to any of those matters, the Minister is to have regard to assessment criteria adopted by the Director-General of the Department of Environment, Climate Change and Water (the **Director-General**). Proposed section 151C provides that a lease or licence may be granted subject to conditions. The proposed section also provides that it is a condition of every lease or licence of land granted under proposed section 151 that the lessee or licensee must ensure that the provisions of the NPW Act, the regulations and the plan of management relating to the land are complied with.

Proposed section 151D contains special provisions that apply in relation to leases and licences of land within karst conservation reserves. Proposed section 151E contains special provisions that apply in relation to leases and licences of Aboriginal land reserved under Part 4A of the NPW Act. Such leases or licences may only be granted with the concurrence

of the relevant board of management for the land concerned. Also, such leases or licences must not be granted contrary to the terms of the lease of the land from the relevant Aboriginal Land Council or Councils to the Minister under Part 4A of the NPW Act. Proposed section 151F requires a public consultation process to be undertaken in relation to certain proposals for leases and licences of reserved land. Proposed section 151G requires the Minister to refer certain proposals for leases and licences of reserved land to the National Parks and Wildlife Advisory Council for advice and authorises the Minister to consult with that Council, the Aboriginal Cultural Heritage Advisory Committee and the Karst Management Advisory Committee in other circumstances.

**Schedule 1 [11], [12], [14]–[16], [18], [20], [22], [23] and [28]** make consequential amendments.

**Schedule 1 [6] and [8]** also make consequential amendments by omitting sections 47GC and 47U of the NPW Act (relating to the power of state conservation area trusts and regional park trusts to grant leases and licences of land within state conservation areas and regional parks) as under the proposed provisions the Minister may lease or licence state conservation area land and regional park land.

**Schedule 1 [3]** makes an amendment to enable the Minister to delegate the exercise of any of the Minister's functions under the NPW Act (other than the power of delegation) to a state conservation area trust or regional park trust.

### **Amendments relating to leases and licences of land in wilderness areas**

Section 153A (b) of the NPW Act provides that certain licences or franchises relating to trade and other commercial activities must not be granted under section 152 of that Act in respect of land that is within a wilderness area. **Schedule 1 [24]** omits the paragraph to allow such licences and franchises to be granted.

**Schedule 1 [27]** inserts a proposed clause into Schedule 3 to the NPW Act (Savings, transitional and other provisions) to enable existing plans of management to be appropriately altered after the commencement of **Schedule 1 [24]**. The proposed clause provides that a licence may be granted under section 152 in relation to a wilderness area (and operations under such a licence may be undertaken in the wilderness area) even if an existing plan of management prohibits commercial activities in that area. However, the clause also provides that nothing in the provision affects any other prohibition or restriction in such a plan of management. (So, for example, a prohibition in an existing plan of management against all mountain biking in a specified wilderness area would still have effect to prohibit commercial mountain biking in that wilderness area.)

### **Amendments relating to recategorisation of land reserved under the NPW Act**

**Schedule 1 [25]** inserts proposed Schedule 1 into the NPW Act to recategorise certain reserved land from its current reservation to another type of reservation. Part 1 (General provisions) of the proposed Schedule contains provisions consequent on the recategorisation of land by the Schedule (whether under the proposed provisions or provisions enacted later) and Part 2 contains the provisions that specifically recategorise the land. In summary, the recategorisations by Part 2 of the proposed Schedule are as follows:

- (a) the reservation of part of the Corramy State Conservation Area as a state conservation area is revoked and the land is reserved as a regional park to be known as Corramy Regional Park,
- (b) the reservation of Limeburners Creek Nature Reserve as a nature reserve is revoked and the land is reserved as a national park to be known as Limeburners Creek National Park,
- (c) the reservation of Sea Acres Nature Reserve as a nature reserve is revoked and the land is reserved as a national park to be known as Sea Acres National Park,
- (d) the reservation of part of the Macquarie Nature Reserve as a nature reserve is revoked and the land is reserved as a historic site to be known as Roto House Historic Site.

### **Miscellaneous amendments**

**Schedule 1 [7]** inserts a savings and transitional provision into section 47MA of the NPW Act to provide that when land that is a state conservation area or part of a state conservation area is reserved as a national park or nature reserve or as part of a national park or nature reserve under that section, any plan of management that applied to the land immediately before that reservation continues to apply to the land.

**Schedule 1 [9] and [10]** make law revision amendments to make the language of the NPW Act consistent.

**Schedule 1 [13]** makes an amendment to provide that a proposed amendment or alteration to a plan of management is to be placed on public exhibition for a period of at least 45 days (rather than 90 days as is the case with initial plans of management).

**Schedule 1 [21]** amends section 152 of the NPW Act. That section provides that:

- (a) the Director-General may grant licences to carry on trades, businesses or occupations within national parks and historic sites, and
- (b) the Minister may grant franchises for the sale of goods and services, the provision of public transportation and the supply of other facilities and amenities within national parks and historic sites. The amendment provides that such licences and franchises may be granted in respect of all other categories of reserved land.

**Schedule 1 [26]** allows regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

### **Schedule 2 Amendment of *Wilderness Act 1987* No 196**

Section 9 (c) of the *Wilderness Act 1987* (Management principles for wilderness areas) provides that a wilderness area is to be managed so as to permit opportunities for appropriate self-reliant recreation.

**Schedule 2** amends that provision to make it clear that appropriate self-reliant recreation may be of a commercial nature.

## Issues Considered by the Committee

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

#### Issue: Commencement by Proclamation

12. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all.
13. The Committee notes that administrative arrangements may need to take place before the Bill can commence operation, for example, the Bill requires the Director-General of the Department of Environment and Conservation to adopt assessment criteria that detail how a lease or license to be granted is compatible with natural and cultural values of the land it relates to and its surroundings. In light of this fact, and given the Committee has not identified any other issues with this Bill, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

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| <p>14. <b>The Committee recognises that administrative arrangements need to take place before the Act can commence operation, including the adoption of lease and license assessment criteria, and therefore has not identified any issues under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i>.</b></p> |
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*The Committee makes no further comment on this Bill.*



## 9. RESIDENTIAL TENANCIES BILL 2010

Date Introduced:	2 June 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Virginia Judge MP
Portfolio:	Fair Trading

### Purpose and Description

1. This is a proposed Act with respect to the rights and obligations of landlords and tenants, rents, rental bonds and other matters relating to residential tenancy agreements; and for other purposes.
2. Presently, if the landlord seeks an eviction order from the Tribunal, the circumstances of the case must be considered. The Bill removes the Tribunal's discretion to refuse to make an eviction order, and makes it certain that the Tribunal must grant an eviction order if the lease has expired and proper notice has been given. New grounds on which a landlord may seek immediate termination have been provided.
3. The Bill will limit the capacity of tenants to recover compensation from the landlord following a break-in if they have previously failed to raise concerns about the security of the premises. Specific provision has also been made for landlords to recover costs from tenants such as replacing lost keys and bank fees for bounced cheques.
4. Section 75 provides that tenants will be able to sub-let part of the property, such as a spare room or an unused garage, or change one of the named tenants on the lease. The Bill retains the existing control of landlords over sub-letting the whole property. In terms of partial sub-letting, landlords will still have the right to refuse consent if they have a reasonable objection. In terms of more clarity about what is meant by "reasonable" in those circumstances, section 75(3) has been inserted into the Bill to make it clear that it would be reasonable for a landlord to reject a request if it would exceed the number of occupants permitted by the landlord under the lease, or result in overcrowding, or if the person is listed on a bad tenant database.
5. Division 6 of Part 3 deals with tenants' requests to add a fixture or make a minor alteration to the premises. The tenant will still have to obtain the landlord's consent before making any alterations, as currently required. The types of minor changes intended to be covered by this provision include window safety measures for young children so they do not fall out, extra security features such as a deadlock on the front door, installing a grab rail in the bathroom to assist elderly occupants or tenants with a disability, getting a home phone or internet cable connected, hanging a picture in the living room or planting flowers in the garden.
6. However, the Bill makes it clear that a landlord may refuse any request if it would involve structural changes, if it is inconsistent with the nature of the property, if the change would not be reasonably capable of rectification, repair or removal, or the work is prohibited under any other law. Tenants can be required to make good at the end of the tenancy or compensate the landlord for the costs involved if the work is not

done to a satisfactory standard or is likely to adversely affect the landlord's ability to let the premises to other tenants.

7. The Bill has been refined to make break fees optional. Parties can agree to have a break fee term in their lease if they wish. Landlords who do not see any merit in the break fee proposal can choose not to include a break fee term in the lease, in which case the current law that a tenant who breaks a lease is liable to compensate the landlord for any loss, with the landlord having an obligation to mitigate those losses, will continue to apply.
8. Part 11 aims to tighten the regulation of bad tenant databases. Importantly, Part 11 will, for the first time, give the Tribunal power to determine disputes and make orders in respect to listings. Currently, tenants have nowhere to go if they believe they have been wrongly or unjustly listed on such a database.
9. The Bill will also introduce provisions, for the first time, to deal with disputes between co-tenants. One co-tenant will be able to give notice to the other co-tenant and the landlord to have their name taken off the lease if they decide to move out. Under the current laws, they can remain legally liable. Victims of domestic violence in rental properties will have the right to take action to secure the premises and to seek to take over the tenancy if their name is not already on the lease.
10. The Bill will guarantee the continuation of a tenancy where a tenant, having fallen behind with the rent, catches up or complies with an agreed repayment plan. This is aimed to help tenants who encounter temporary financial difficulties.
11. However, the Bill will also give the Tribunal the power to overrule the continuation guarantee where the tenant shows a habitual disregard for their obligation to pay rent on time. Section 35 will require tenants to be given at least one free and easy option to pay their rent in response to the increasing use of third party rent collection agencies imposing fees on top of the rent.
12. Section 39 will require rented premises to contain water efficiency measures before tenants can be asked to pay for water usage. This has been modelled on the Queensland tenancy laws. There will be a 12-month transitional period for existing landlords to get any necessary work carried out.
13. Division 2, Part 6 aims to ensure that any personal documents that are left behind by a tenant at the end of a tenancy, such as photographs and passports, are to be kept in a safe place until reclaimed for up to 90 days.
14. The Bill reforms the laws surrounding reservation fees, or called the "holding deposits". Proposed section 24 ensures that multiple holding deposits cannot be taken from prospective tenants for the same property. The Bill will end the practice of taking such fees from people who may not have even looked at the property or formally applied. Holding deposits will only be accepted once the premises can be reserved, when the application for tenancy has been approved by the landlord.

## Background

15. The tenancy laws have been under review for some time. The review began in July 2005 when an options paper was released. The rental market is currently regulated

by two pieces of legislation: the *Residential Tenancies Act 1987* and the *Landlord and Tenant (Rental Bonds) Act 1977*.

16. The Bill has been developed following a long period of community consultation. There have been three major rounds of public consultation. This began with the release of an options paper in July 2005. Close to 100 submissions were received in response to the options paper. The next public stage of the review came in September 2007 with the release of the report titled "Residential Tenancy Law Reform—A New Direction". The report outlined more than 100 proposals. There was feedback from more than 1,600 individuals and groups in response to the new directions report. This consultation led to changes and refinements made to a number of the reform proposals.
17. The third stage of the review was the consultation draft bill released in November 2009. According to the Agreement in Principle speech, in addition to the public round of consultation, there have also been at least 20 meetings since 2005, either at a ministerial or departmental level, with key interest groups, including the Tenants Union, the Real Estate Institute and the Property Owners Association, to discuss the reform proposals.
18. From the Agreement in Principle speech:

In submissions to the consultation draft the main area of concern raised by landlords and agents related to cosmetic changes, and in particular painting. It was suggested that tenants, if they do the work themselves, may not paint to an acceptable standard or may use a colour scheme that would not be palatable to future tenants or buyers, forcing landlords to incur considerable cost and effort in rectifying the work. In response to those legitimate concerns, the Government has omitted the word "cosmetic" from the bill and added "internal or external painting" to the list of requests that it would not be unreasonable for a landlord to refuse...After subletting and alterations, the third area of major concern identified by landlords related to the proposed break fee. The break fee is a set penalty payable by a tenant who breaks their lease early. The intention here was to provide a simpler means for resolving the parties' obligations when a lease is broken, thereby providing certainty for both tenants and landlords, and removing these disputes from the tribunal. When added to the high cost of relocation, a break fee would ensure that tenants did not make a decision to walk away from a lease lightly. Some submissions from landlords supported the proposal, correctly observing that in some cases they would benefit from having the outgoing tenant paying a break fee while the new tenant paid rent as well. Under the current legislation, this is not possible as the former tenant can only be charged until the new tenant takes over. Having a break fee would remove restrictions on landlords over the reletting process. It may also reduce the incidence of tenants simply packing up and disappearing or ceasing to pay their rent as a way of getting out of the lease. Other landlords submitted that a break fee would undermine the purpose of having a lease. It was considered that, while the break fee proposal may benefit some landlords, it may hurt landlords with hard-to-rent properties or those at the upper end of the market.
19. With regard to tenant's notice to vacate, the Agreement in Principle speech explained that:

The Government believes that 90 days is a fair and reasonable period of time for tenants who have done nothing wrong in which to try to find suitable and affordable alternative accommodation. It is the same period that they have in South Australia. A number of other jurisdictions have even longer notice requirements.

20. The speech further explained that:

Under the existing laws landlords have to specify a precise day for the tenant to vacate. Many tenants simply wait until after that day comes and goes before they start looking for another place because if they leave any earlier they have to give their notice or pay double rent. The bill will address this issue by giving tenants the flexibility to move out at any time during the notice period. This will encourage tenants to look for a place as soon as possible, meaning that many landlords may get their property back well before the 90 days run out, or even before the existing 60 days, reducing the need for a tribunal hearing.

## The Bill

21. The objects of this Bill are as follows:

- (a) to provide for the rights and obligations of landlords and tenants and for rental bonds and related matters,
- (b) to repeal and re-enact, with modifications, the provisions of the *Residential Tenancies Act 1987* and the *Landlord and Tenant (Rental Bonds) Act 1977*,
- (c) to make consequential amendments to other Acts.

## 22. Outline of provisions

### Part 1 Preliminary:

#### Division 1 General

Division 1 of Part 1 (sections 1–5) of the proposed Act provides for the following matters:

- (a) the name of the proposed Act,
- (b) the commencement of the proposed Act on a day or days to be appointed by proclamation,
- (c) the meaning of words and expressions used in the proposed Act,
- (d) that the proposed Act is to bind the Crown,
- (e) the repeal of the *Residential Tenancies Act 1987* (the **1987 Act**) and the *Landlord and Tenant (Rental Bonds) Act 1977* (the **1977 Act**).

#### Division 2 Application of Act

Division 2 of Part 1 (sections 6–12) of the proposed Act re-enacts sections 5–7 of the 1987 Act with the following additions and modifications:

- (a) the proposed Act will not apply to premises used as a backpackers' hostel or to serviced apartments,
- (b) the exemption from the proposed Act for clubs is limited to parts of clubs used for temporary accommodation,
- (c) the proposed Act will not apply to the following additional kinds of agreements:
  - (i) agreements under which a person resides in refuge or crisis accommodation of a kind prescribed by the regulations,
  - (ii) leases and licences under the *Crown Lands Act 1989*, the *Western Lands Act 1901* and the *Crown Lands (Continued Tenures) Act 1989*,
  - (iii) an agreement having a term (including any option to extend) of 99 years or more,
- (d) the existing exemption from the proposed Act for holiday accommodation will now apply to leases for periods of up to 3 months rather than 2 months,
- (e) the proposed Act will apply to agreements or arrangements under which persons occupy premises as a residence in return for, or as part of

remuneration for, carrying out work in connection with the premises or for employment,

(f) it is made clear that a person in a shared household who is not named as a tenant in a residential tenancy agreement will not be considered to be a tenant unless the tenant transfers a tenancy to the person or the person is a sub-tenant under a written residential tenancy agreement with the tenant,

(g) the Director-General of the Department of Services, Technology and Administration (the **Director-General**) or any other person may apply to the Consumer, Trader and Tenancy Tribunal (the **Tribunal**) for an order declaring that a specified agreement or premises is or are, or is or are not, a residential tenancy agreement or premises to which the proposed Act applies.

## **Part 2 Residential tenancy agreements**

Part 2 (sections 13–22) of the proposed Act re-enacts Part 2 of the 1987 Act with additions and modifications.

## **Part 3 Rights and obligations of landlords and tenants:**

### **Division 1 Pre-agreement matters**

Division 1 of Part 3 (sections 23–31) of the proposed Act contains the additional provisions relating to matters occurring before or at the time a residential tenancy agreement is entered into.

### **Division 2 Rent and other payments**

Division 2 of Part 3 (sections 32–48) of the proposed Act re-enacts section 19 and Part 4 of the 1987 Act with additions and modifications.

### **Division 3 Occupation and use of residential premises**

Division 3 of Part 3 (sections 49–54) of the proposed Act re-enacts sections 20–23, 25, 26 and 30 of the 1987 Act with additions and modifications.

### **Division 4 Landlord's rights to enter residential premises**

Division 4 of Part 3 (sections 55–61) of the proposed Act re-enacts section 24 of the 1987 Act with additions and modifications.

### **Division 5 Repairs to premises**

Division 5 of Part 3 (sections 62–65) of the proposed Act re-enacts sections 25 (1) (b) and 28 of the 1987 Act with additions and modifications.

### **Division 6 Alterations and additions to residential premises**

Division 6 of Part 3 (sections 66–69) of the proposed Act re-enacts section 27 of the 1987 Act with additions and modifications.

### **Division 7 Security and safety of residential premises**

Division 7 of Part 3 (sections 70–73) of the proposed Act re-enacts section 29 of the 1987 Act with the additions and modifications.

## **Part 4 Changes of tenant and landlord**

Part 4 (sections 74–79) of the proposed Act re-enacts Division 2 of Part 3 of the 1987 Act with additions and modifications.

## **Part 5 Termination of residential tenancy agreements:**

### **Division 1 Termination of residential tenancy agreements generally**

Division 1 of Part 5 (sections 80–83) of the proposed Act re-enacts sections 53 and 63 of the 1987 Act with additions and modifications.

### **Division 2 Termination by landlord**

Division 2 of Part 5 (sections 84–95) of the proposed Act re-enacts sections 56, 57, 58, 64, 68 and 69 of the 1987 Act with additions and modifications.

### **Division 3 Termination by tenant**

Division 3 of Part 5 (sections 96–105) of the proposed Act re-enacts sections 57, 59, 60, 64, 69A and 70 of the 1987 Act with additions and modifications.

### **Division 4 Abandonment of residential premises**

Division 4 of Part 5 (sections 106 and 107) re-enact sections 77 and 78 of the 1987 Act, with additions and modifications.

### **Division 5 Termination by events**

Division 5 of Part 5 (sections 108 and 109) of the proposed Act re-enacts section 61 of the 1987 Act. It also contains an additional provision that enables the legal personal representative of a deceased sole tenant under a residential tenancy agreement to give a termination notice. The estate of the deceased tenant is not liable to pay rent for any period after which vacant possession of the residential premises is given and the termination notice may be given before the end of a fixed term agreement.

### **Division 6 Miscellaneous**

Division 6 of Part 5 (sections 110–118) of the proposed Act re-enacts sections 54, 55 and 65 of the 1987 Act with additions and modifications.

## **Part 6 Recovery of possession of premises:**

### **Division 1 Recovery of possession**

Division 1 of Part 6 (sections 119–125) of the proposed Act re-enacts Division 4 of Part 5 of the 1987 Act. The provision relating to the minimum period within which a tenant may be required to vacate residential premises subject to a mortgagee repossession has been omitted, as that requirement will now be contained in the *Sheriff Act 2005* (see **Schedule 3.16**). The requirement for a tenant who remains in occupation after failing to comply with an order of the Tribunal to pay compensation has been removed.

### **Division 2 Goods left on residential premises**

Division 2 of Part 6 (sections 126–135) of the proposed Act contains a new scheme for dealing with goods left by a tenant or an occupant after giving vacant possession of the residential premises or abandoning the premises.

## **Part 7 Social housing tenancy agreements:**

### **Division 1 Preliminary**

Division 1 of Part 7 (sections 136 and 137) of the proposed Act re-enacts definitions of terms relating to social housing tenancies contained in the 1987 Act and provides that the Part prevails to the extent of any inconsistency with the other provisions of the proposed Act and any regulations made under the proposed Act.

### **Division 2 Acceptable behaviour agreements**

Division 2 of Part 7 (section 138) of the proposed Act re-enacts section 35A of the 1987 Act.

### **Division 3 Water usage charges, rent and other payments**

Division 3 of Part 7 (sections 139–141) of the proposed Act re-enacts sections 19A, 19B and 47A of the 1987 Act. The provisions relating to water usage charges will not apply to social housing tenancy agreements if the agreements specify that section 39 of the proposed Act is to apply.

### **Division 4 Fixed term agreements**

Division 4 of Part 7 (section 142) of the proposed Act re-enacts section 14A of the 1987 Act. It also provides that a further fixed term agreement created by the provision may be terminated by the tenant as if it were a periodic agreement.

### **Division 5 Termination of social housing tenancy agreements—additional grounds**

Division 5 of Part 7 (sections 143–155) of the proposed Act re-enacts Division 2A of Part 5 of the 1987 Act.

### **Division 6 Exemption**

Division 6 of Part 7 (section 156) of the proposed Act re-enacts, with minor changes, an exemption currently contained in regulations under the 1987 Act.

## **Part 8 Rental bonds:**

### **Division 1 Preliminary**

Division 1 of Part 8 (sections 157 and 158) of the proposed Act re-enacts relevant definitions of terms relating to rental bonds contained in the 1977 Act. Included in the provisions is an extension of the definitions of *landlord*, *residential tenancy agreement* and *tenant* so as to apply the Part to premises and agreements covered by entitled to possession may exercise the functions of a landlord under the proposed Part in respect of the release of a rental bond.

### **Division 2 Payment and deposit of rental bonds**

Division 2 of Part 8 (sections 159–162) of the proposed Act re-enacts sections 8 and 9 of the 1977 Act with additions and modifications.

### **Division 3 Release of rental bonds**

Division 3 of Part 8 (sections 163–176) of the proposed Act re-enacts sections 11 and 11A of the 1977 Act with additions and modifications.

### **Division 4 Rental Bond Board**

Division 4 of Part 8 (sections 177–179) of the proposed Act re-enacts Part 2 of the 1977 Act, constituting the Board.

### **Division 5 Functions of Board relating to residential accommodation**

Division 5 of Part 8 (sections 180–184) of the proposed Act re-enacts Part 2A of the 1977 Act, conferring functions relating to residential accommodation on the Board.

### **Division 6 Financial matters**

Division 6 of Part 8 (sections 185 and 186) of the proposed Act re-enacts sections 18–21 of the 1977 Act, establishing the Rental Bond Account and the Rental Bond Interest Account.

## **Part 9 Powers of Tribunal:**

### **Division 1 General powers of Tribunal**

Division 1 of Part 9 (sections 187–189) of the proposed Act re-enacts sections 16 (2) and (3), 78 (3) and 85 of the 1987 Act. The Tribunal's power to order compensation is also extended to compensation for the listing of inaccurate, ambiguous or out of date information on a residential tenancy database. The Division also makes it clear that a former landlord or former tenant may apply for orders under the proposed Act.

### **Division 2 Powers of Tribunal relating to breaches of residential tenancy agreements**

Division 2 of Part 9 (sections 190 and 191) of the proposed Act re-enacts section 16 (1) and (4) of the 1987 Act. It also contains matters to be considered by the Tribunal when considering applications relating to breaches of security conditions.

### **Division 3 Powers of Director-General in proceedings**

Division 3 of Part 9 (sections 192–195) of the proposed Act re-enacts sections 95–98 of the 1987 Act, but confers the functions under those provisions on the Director-General.

## **Part 10 Enforcement:**

### **Division 1 Powers of investigators**

Division 1 of Part 10 (sections 196–201) contains provisions conferring powers on investigators for the purpose of ascertaining whether the proposed Act and any regulations are being complied with or obtaining evidence, documents or information in relation to contraventions of the Act or regulations.

### **Division 2 Offences**

Division 2 of Part 10 (sections 202–205) of the proposed Act re-enacts and updates sections 124, 127 and 128 of the 1987 Act. Section 125 of the 1987 Act has not been re-enacted as offences are now contained in individual provisions of the proposed Act. The Division also enables penalty notices to be issued for offences specified by the regulations under the proposed Act.

### **Division 3 Mandatory appointment of agents for landlords**

Division 3 of Part 10 (sections 206 and 207) of the proposed Act contains a scheme under which the Director-General may issue a mandatory direction to a landlord requiring the landlord to appoint an agent. Such a direction may prohibit a specified person from being appointed and cannot be given to a landlord who already has an agent. A direction can only be given if a landlord has engaged in serious or persistent breaches of the proposed Act, the regulations or residential tenancy agreements. The landlord may seek a review of a direction from the Administrative Decisions Tribunal.

### **Division 4 Costs in certain court proceedings**



Division 4 of Part 10 (section 208) of the proposed Act re-enacts section 120A of the 1987 Act.

## **Part 11 Residential tenancy databases:**

### **Division 1 Preliminary**

Division 1 of Part 11 (sections 209 and 210) of the proposed Act defines words and expressions used in the Part and provides that the Part will not apply to entities that keep databases for their own purposes.

### **Division 2 Tenancy database information**

Division 2 of Part 11 (sections 211–218) sets out a scheme for the use of tenancy Databases.

### **Part 12 Miscellaneous:**

Part 12 (proposed sections 219–227) of the proposed Act re-enacts and updates sections 120, 126, 130 and 133 of the 1987 Act. The Part also contains other provisions.

### **Schedule 1 Membership and procedure of Rental Bond Board**

**Schedule 1** contains provisions relating to the constitution and procedure of the Board.

### **Schedule 2 Savings, transitional and other provisions**

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

### **Schedule 3 Amendment of Acts**

**Schedule 3** amends the Acts specified in the Schedule as a consequence of the enactment of the proposed Act.

## **Issues Considered by the Committee**

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

**Issue: Procedural Fairness – Part 5, Division 2 (Termination By Landlord) - Clauses 91 (2), 92 (3), 93 (4), 94 (2), And Part 5, Division 3 (Termination By Tenant) – Clauses 103 (4) and 104 (4):**

23. Division 2 of Part 5 provides for termination by a landlord. Proposed section 91 deals with the use of premises for illegal purposes. Proposed subsection (1) reads:

The Tribunal may, on application by a landlord, make a termination order if it is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the residential premises, has intentionally or recklessly caused or permitted:

- (a) the use of the residential premises or any property adjoining or adjacent to the premises (including any property that is available for use by the tenant in common with others) for the purposes of the manufacture, sale, cultivation or supply of any prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, or
- (b) the use of the residential premises for any other unlawful purpose and that the use is sufficient to justify the termination.

24. Proposed subsection (3) reads: The termination order may specify that the order for possession takes effect immediately.
25. The Committee notes the proposed section 91 (4) reads: A landlord may make an application under this section without giving the tenant a termination notice.
26. Proposed section 92 also provides that the Tribunal may terminate residential tenancy agreement for threat, abuse, intimidation or harassment on an application by a landlord if the Tribunal is satisfied.
27. The termination order may specify that the order for possession takes effect immediately. Similarly, proposed section 92 (3) reads that: A landlord may make an application under this section without giving the tenant a termination notice.
28. Proposed section 93 deals with hardship to landlord. Proposed subsection (2) reads that: The Tribunal may, on application by a landlord, make a termination order if it is satisfied that the landlord would, in the special circumstances of the case, suffer undue hardship if the residential tenancy agreement were not terminated. Proposed subsection (4) provides that a landlord may make an application under this section without giving the tenant's a termination notice.
29. Proposed section 94 deals with termination of long term tenancies. Proposed subsection (1) provides that: The Tribunal may, on application by a landlord, make a termination order for a residential tenancy agreement:
  - (a) if the tenant has been in continual possession of the same residential premises for a period of 20 years or more, and
  - (b) if the tenant occupied the premises under a fixed term agreement, the fixed term of the original agreement has expired, and
  - (c) if the Tribunal is satisfied that it is appropriate to do so in the circumstances of the case.
30. In a similar way, proposed section 94 (2) provides that: a landlord may make an application under this section without giving the tenant a termination notice.
31. Division 3 of Part 5 provides for termination by a tenant. With regard to a landlord's breach of agreement, proposed section 103 (1) reads that: The Tribunal may, on application by a tenant, make a termination order if it is satisfied that:
  - (a) the landlord has breached the residential tenancy agreement, and
  - (b) the breach is, in the circumstances of the case, sufficient to justify termination of the agreement.
32. Proposed section 103 (4) reads that: a tenant may make an application under this section without giving the landlord a termination notice.
33. Proposed section 104 also covers hardship to tenant in fixed term agreements. Proposed subsection (1) provides that: the Tribunal may, on application by a tenant, make a termination order for a fixed term agreement if it is satisfied that the tenant would, in the special circumstances of the case, suffer undue hardship if the residential tenancy agreement were not terminated.
34. Similarly, proposed section 104 (4) provides that: a tenant may make an application under this section without giving the landlord a termination notice.

35. **The Committee will be concerned about legislation that authorises decision-making and termination orders without the requirement of giving a termination notice beforehand (even if at short notice) to the affected person (whether the person is a tenant or a landlord).**
36. **The Committee appreciates that there may be special circumstances involving potential illegal purposes, or alleged threat, abuse, intimidation or harassment, hardship to the landlord, or breach of agreement by the landlord, or hardship to the tenant in a fixed term agreement. However, the Committee considers the right to procedural fairness may be undermined if there is no requirement to give a termination notice (even if it is short notice). This is particularly significant for the affected tenant under proposed section 91 (3) and proposed section 92 (2) as the termination order may specify that the order for possession takes effect immediately. This may potentially have the unintended effect of making a person homeless and undermines the right of a person to adequate housing<sup>2</sup> especially if the person may not have received any termination notice beforehand.**
37. **Therefore, the Committee asks Parliament to consider whether clauses 91 (2), 92 (3), 93 (4), 94 (2) of Division 2 (Termination By Landlord) of Part 5 and clauses 103 (4) and 104 (4) of Division 3 (Termination By Tenant) of Part 5, may trespass unduly on personal rights and liberties including procedural fairness and right to notice.**

**Issue: Retrospectivity – Clause 6 – Part 1, Division 2 – Application of Act:**

38. Proposed section 6 provides that: This Act applies to residential tenancy agreements in respect of residential premises whether made before or after the commencement of this section.
39. The Committee will always be concerned with any retrospective effect of legislation which impacts on personal rights. However, the Committee also notes Schedule 2 with regard to the savings, transitional and other provisions, especially, the protections afforded under clause 4 of Part 2 of Schedule 2, to ensure that previous actions are not affected, including the validity of any action done or payment made before the proposed Act, or any right or remedy under an existing residential tenancy agreement before the proposed Act. Clauses 5, 6 and 7 of Part 2 of Schedule 2 also ensure that the former legislation will continue to apply in relation to any application made to the Tribunal under the former Act; that the former legislation will continue to apply in relation to any termination notice given before the repeal of the former Act, as well as in relation to the enforcement of a termination of a residential tenancy agreement that occurred before the repeal of the former Act.
40. Furthermore, the Committee notes that clause 14 of Part 2 of Schedule 2 ensures that Part 11 of the proposed Act does not apply to existing entries in a residential tenancy database maintained and used immediately before the commencement of this clause until 3 months after the commencement. Clause 15 of Part 2 of Schedule 2 also ensures that proposed section 39(1)(b) does not apply in respect of an existing

<sup>2</sup> Article 25 (1) of the *Universal Declaration of Human Rights* adopted by the General Assembly of the United Nations in 1948, provides that everyone has a right to a standard of living adequate for health and well being, including housing.

residential tenancy agreement until 12 months after the commencement of that provision.

**41. Therefore, the Committee does not consider the retrospective effect may trespass unduly on personal rights and liberties given the safeguards included in the savings, transitional and other provisions provided in Schedule 2.**

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

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

42. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all.

**43. The Committee also notes from the Agreement in Principle speech that this Bill involves some main changes in a significant reform package, and that it is the first comprehensive revamp of the laws in more than 20 years. This will likely involve appropriate administrative, community awareness and transitional arrangements to be made. The Committee considers that, in these circumstances, clause 2 may not give rise to an inappropriate delegation of legislative power.**

**Issue: Henry VIII Clauses And Matters Which Should Be Regarded by Parliament - Clause 12 (1) of Part 1, Division 2 – Exemptions from operation of Act:**

44. Clause 12 (1) of Division 2, Part 1 reads: The regulations may exempt from the operation of this Act or the regulations or any specified provision of this Act or the regulations any specified person, agreement or premises or any specified class of persons, agreements or premises.

**45. The Committee notes that allowing for regulations to effectively determine whether the operation of the Act or regulations could be exempt with regard to matters or definitions, which should also be regarded by Parliament, such as specified persons, agreement or premises, may delegate the power to make a fundamental component of the legislative scheme. Therefore, the Committee refers this to Parliament and asks Parliament to consider whether clause 12 (1) of Division 2 of Part 1, may constitute an inappropriate delegation of legislative power.**

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

## Part Two – Regulations

### SECTION A: MINISTERIAL CORRESPONDENCE – REGULATIONS PREVIOUSLY CONSIDERED

## RETIREMENT VILLAGES REGULATION 2009

### Ministerial Correspondence

Date of Gazette:	18 December 2009
Commencement:	1 March 2010
Minister Responsible:	Hon Virginia Judge MP
Portfolio:	Fair Trading

### Background

1. The Committee reported on this Regulation in its *Legislation Review Digest 1 of 2010*.
2. At its meeting of 22 February 2010, the Committee resolved to write to the Minister and seek advice with regard to the concerns raised in submissions to the Regulatory Impact Statement (RIS) with respect to clause 8 (definition of 'resident') and also to seek clarification regarding the concerns of costs and benefits of the regulatory changes.

### Minister's Reply

3. The Minister wrote her reply in a letter received on 28 May 2010:

In relation to clause 8 of the Regulation, I should point out that the clause was first introduced in the Retirement Villages Regulation 2000. In ten years of operation, NSW Fair Trading is not aware of it causing problems in practice. The submissions that raised concerns about retaining this clause in the new Regulation did not provide case studies or evidence to suggest the clause has caused or could cause problems.

Clause 8 contains important protections for a spouse or de facto of a resident in addition to those contained in section 4 of the *Retirement Villages Act 1999*. Section 4(1) of the Act gives a residence right to a spouse or de facto partner occupying retirement village premises with a resident. Relying upon this definition alone would mean a spouse or de facto who is not a party to the village contract would automatically lose their residence right if the resident died or permanently vacated the premises.

Under clause 8(1) of the Regulation, the spouse or de facto retains their residence right after the other resident dies or vacates while they continue to occupy the premises. This gives the spouse or de facto additional rights to those set out in the Act, it does not infringe upon existing rights or bring additional liabilities to persons who are not party to the village contract. The spouse or de facto is not obligated to continue living in the premises and they have no liability for ongoing recurrent charges after vacating.

However, clause 8(1) appropriately does not apply where the terms of the deceased resident's will make it necessary for the spouse or de facto partner to vacate the

premises. For example, this could occur if the terms of the will require vacant possession so the premises can be sold and money paid to a beneficiary. In the event the spouse or de facto partner wished to challenge the terms of the will, they would do so under the relevant laws of wills and succession. It is not appropriate that such matters be determined by retirement villages legislation.

4. With regard to concerns raised in relation to the costs and benefits of the RIS and regulatory changes, the Minister advised in the letter that:

It was not possible to provide a quantified assessment of the impact on different ownership structures, given the myriad of different contractual arrangements in place in different villages and within villages from one resident to another.

### Committee's Response

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



PARLIAMENT OF NEW SOUTH WALES  
LEGISLATION REVIEW COMMITTEE

22 February 2010

Our Ref: LRC 3490  
Your Ref: IDFT: M09/6474

The Hon Virginia Judge MP,  
Minister for Fair Trading  
Level 36, Governor Macquarie Tower,  
1 Farrer Place, Sydney NSW 2000

Dear Minister

#### **Retirement Villages Regulation 2009**

Thank you for your letter received on 6 January 2010, advising of the making of the above Regulation and including a copy of the regulatory impact statement.

Pursuant to its obligations under s 9 (1A) of the *Legislation Review Act 1987*, the Committee has resolved to report to Parliament on the above Regulation in its *Legislation Review Digest No 1 of 22 February 2010*. The Committee has also resolved to write to you for your advice on clarifying the following questions of concern.

The Committee seeks your advice with regard to the concerns raised in many of the submissions from key stakeholder groups in relation to clause 8 (definition of 'resident') especially if the clause may potentially form an undue trespass on personal rights and liberties and right to housing by the removal of 'occupants' without the requirement of the relevant termination provisions usually applicable for 'residents' if beneficiaries seek to claim a return of an ingoing contribution after the death of the other resident. The Committee is also concerned that the clause 8 definition may have an adverse potential to bring liabilities to persons who are not parties to the residency contract.

The Committee would also like to seek clarification regarding the concerns raised in some of the submissions that the Regulatory Impact Statement did not adequately address the costs and benefits of the regulatory changes such as: variations in impact according to different ownership structures (strata title, leasehold etc); the impact on existing contracts; or the likely industry wide consequences such as reduced competitiveness, which may lead to a broad impact on business.

Thank you for your attention to this matter. The Committee looks forward to receiving your advice. In order for the timely preparation of the draft report for the Committee, I would be grateful if your advice could be provided preferably before 1 April 2010. If you should have any further queries, please contact Catherine Watson, Committee Manager, on 9230 2036 or email: [Catherine.Watson@parliament.nsw.gov.au](mailto:Catherine.Watson@parliament.nsw.gov.au)

Yours sincerely

Allan Shearan MP  
Chair





MINISTER FOR FAIR TRADING  
MINISTER FOR THE ARTS

RML: M10/1708  
Min No EA1549045

Mr A F Shearan MP  
Chair  
Legislative Review Committee  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

26 MAY 2010



Dear Mr Shearan

I refer to your letter (your ref: LRC 3490) regarding the Retirement Villages Regulation 2009 and your request for advice on certain issues of concern raised in key stakeholder submissions.

In relation to clause 8 of the Regulation, I should point out that the clause was first introduced in the Retirement Villages Regulation 2000. In ten years of operation, NSW Fair Trading is not aware of it causing problems in practice. The submissions that raised concerns about retaining this clause in the new Regulation did not provide case studies or evidence to suggest the clause has caused or could cause problems.

Clause 8 contains important protections for a spouse or de facto of a resident in addition to those contained in section 4 of the *Retirement Villages Act 1999*. Section 4(1) of the Act gives a residence right to a spouse or de facto partner occupying retirement village premises with a resident. Relying upon this definition alone would mean a spouse or de facto who is not a party to the village contract would automatically lose their residence right if the resident died or permanently vacated the premises.

Under clause 8(1) of the Regulation, the spouse or de facto retains their residence right after the other resident dies or vacates while they continue to occupy the premises. This gives the spouse or de facto additional rights to those set out in the Act, it does not infringe upon existing rights or bring additional liabilities to persons who are not party to the village contract. The spouse or de facto is not obligated to continue living in the premises and they have no liability for ongoing recurrent charges after vacating.

However, clause 8(1) appropriately does not apply where the terms of the deceased resident's will make it necessary for the spouse or de facto partner to vacate the premises. For example, this could occur if the terms of the will require vacant possession so the premises can be sold and money paid to a beneficiary. In the event the spouse or de facto partner wished to challenge the terms of the will, they would do so under the relevant laws of wills and succession. It is not appropriate that such matters be determined by retirement villages legislation.

Level 36, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000  
Ph: (02) 9228 5900 Fax: (02) 9228 5899

The regulatory impact statement released with the draft Retirement Villages Regulation 2009 was developed in accordance with the requirements of the *Subordinate Legislation Act 1989*. It assessed the impact of the proposed Regulation, in its draft form at that time, by weighing up the costs and benefits of the draft provisions and the alternative options (including doing nothing). This included assessing the impact on industry, residents, government and the general community, based on information available to NSW Fair Trading at the time, including examples of village contracts provided by residents.

It was not possible to provide a quantified assessment of the impact on different ownership structures, given the myriad of different contractual arrangements in place in different villages and within villages from one resident to another.

A number of modifications were made to the draft Regulation in response to comments made in submissions and in subsequent meetings with key stakeholders.

I trust that this information assists in clarifying the Committee's concerns.

Yours sincerely



Virginia Judge MP  
**Minister**

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

	Digest Number
Banana Industry Repeal Bill 2010	8
Building and Construction Industry Long Service Payments Amendment Bill 2009	1
Carers Recognition Bill 2010*	3
Carers Recognition Bill 2010*	5
Carers (Recognition) Bill 2010	5
Casino Control Amendment Bill 2010	2
Charter of Budget Honesty Amendment (Independent Election Costings) Bill 2010*	5
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	4
Coal Mine Health and Safety Amendment Bill 2010	4
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
Court Information Bill 2010	4
Credit (Commonwealth Powers) Bill 2010	2
Crimes (Administration of Sentences) Amendment Bill 2010	2
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	3
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Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010	8
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Health Legislation Amendment Bill 2010	8
Housing Amendment (Community Housing Providers) Bill 2009	1
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Jury Amendment Bill 2010	8
Marine Parks Amendment (Moratorium) Bill 2010*	8
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National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010	2

	Digest Number
National Park Estate (Riverina Red Gum Reservations) Bill 2010	5
National Parks and Wildlife Amendment Bill 2010	2
National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010	8
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	5
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Relationships Register Bill 2010	5
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State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010	5
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Trees (Dispute Between Neighbours) Amendment Bill 2010	5
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## Appendix 2: Index of Ministerial Correspondence on Bills

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

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1			
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2	

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

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Building and Construction Long Service Payments Amendment Bill 2009				N	
Casino Control Amendment Bill 2010	N, R, C		N, R		
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	N				
Coal Mine Health and Safety Amendment Bill 2010	N, R			N, R	
Court Information Bill 2010	N, R			N	
Credit (Commonwealth Powers) Bill 2010	N, R, C			N, R, C	
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	N			N	
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	N, R				
Crimes Amendment (Police Pursuits) Bill 2010	N, R				
Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010				N	
Environment Planning and Assessment Amendment (Development Consents) Bill 2010			N, R		
Gas Supply Amendment Bill 2009				N	
Health Legislation Amendment Bill 2010	N, R			N, R	
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	
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	
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	
Sydney Olympic Park Authority Amendment Bill 2009	N, R			N	
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	N			N	
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)				N	
Weapons and Firearms Legislation Amendment Bill 2010	N, R			N	

Key

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



## Appendix 4: Index of correspondence on regulations

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008	Digest 2009	Digest 2010
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12		
Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010	Attorney General	23/02/10	28/04/10			1, 5
Fisheries Management Legislation Amendment (Fishing Closures) Regulation 2009	Minister for Primary Industries	23/11/09	11/01/10		16	1
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08	5/01/09	10	2	
Retirement Villages Regulation 2009	Minister for Fair Trading	22/02/10				1, 8
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10		