

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 13 of 2009

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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 3).

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 3).

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 2009

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

Appendix 2: Index of Ministerial Correspondence on Bills for 2009

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 2009

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

Appendix 4: Index of correspondence on Regulations reported on in 2009

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

1. Child Protection (Nicole's Law) Bill 2009*

Issue: Privacy – Clause 5 (1) and (2) – publication of certain information

18. The Committee is concerned that the above proposed section 5 may undermine the right to privacy especially if the publication and availability of information may potentially generate 'vigilante' actions from other individuals and subject the person to arbitrary or unlawful interference with that person's privacy, family, home or unlawful attacks on their reputation.
19. The Committee is of the view that intrusion into a person's privacy is not justified unless it can be shown the benefits to be gained outweigh the personal rights. The Committee notes that legislation and regulations are already in place to address registrable persons under the *Child Protection (Offenders Registration) Act 2000*, including the existence of the Child Protection Register.
20. Therefore, the Committee holds concerns that this Bill aims to introduce the publication of certain information, including the residential addresses or suburbs and postcodes, details of registrable offences, under the proposed section 5, for all registrable persons, without requiring the considerations of whether the person would pose a substantial or demonstrable safety risk to that person or to another person, and whether there is a reasonable cause to believe that the person may commit an offence against another person.
21. The Committee refers to Parliament the question as to whether the proposed section 5 is justified with regard to unduly trespassing on a person's right to privacy, when considering and weighing the existing legislative protections already in place for the community in relation to registrable persons under the *Child Protection (Offenders Registration) Act 2000*.

2. Crimes Legislation Amendment (Possession of Knives in Public) Bill 2009*

Issue: Excessive Punishment; Rights of children – Schedule 1 [1] – Proposed section 11C *Summary Offences Act 1988*

16. The Committee understands that the intention of the proposed legislation is to act as a deterrent against the possession of knives in public spaces and schools. However, the Committee is concerned that the change in the penalty structure and significant increase in the penalties will disproportionately impact on children and young people and may constitute excessive punishment. Accordingly, the Committee refers proposed section 11C *Summary Offences Act 1988* to Parliament for its consideration.

Issue: Excessive Punishment; Rights of children – Schedule 2 – proposed section 27 Law Enforcement (Powers and Responsibilities) Act 2002

21. The Committee understands the intention of the proposed legislation is act as a deterrent against the possession of knives in public spaces and schools. However, the Committee is concerned that the increase in the penalty will disproportionately impact on children and young people and may constitute excessive punishment. Accordingly, the Committee refers proposed section 27 *Law Enforcement (Powers and Responsibilities) Act 2002* to Parliament for its consideration.

3. Crown Lands Amendment (Special Purpose Leases) Bill 2009**Issue: Ill-Defined and Wide Powers – Clause 3 – Amendment of *Crown Lands Act 1989* – clause 3 (1) - amendment of Part 4, Division 3A heading; and clause 3 (2) – amendment of section 44B(1) Development districts**

15. The Committee notes that the *Legislation Review Digest Report* number 8 of 16 June 2008 has commented on the *Western and Crown Lands Amendment (Special Purpose Leases) Bill 2008* when it was introduced to Parliament.
18. At the time, in the *Legislation Review Digest Report* number 8 of 16 June 2008, the Committee had referred to Parliament regarding the then proposed section 44B, as the Committee considered the amendment may make individual rights unduly dependent on an insufficiently defined and wide administrative power. The Committee, again, makes similar observations with regard to clause 3 of this Bill.
19. The Committee notes that the scope for the Minister's declaration that *any* land within the Eastern and Central Division along with the current Western Division, to be a development district for the purposes of Division 3A of Part 4, appears to be wide. The Committee also notes that the Minister may make further notifications to alter the district's boundaries, abolish the district or vary its designated purposes subject to sections 44B (3) and (4), which could appear to be broad in scope.
20. Therefore, the Committee considers clause 3 (which amends section 44B of the *Crown Lands Act 1989*), may make individual rights unduly dependent on an insufficiently defined and wide administrative power, and refers this to Parliament.

4. Education Amendment (School Attendance) Bill 2009**Issue: Schedule 1 [5] – Proposed section 22D(9) – Excessive Punishment**

20. The Committee notes that proposed section 22D(9) intends to act as a deterrent against non-attendance of children at school. However, the Committee has serious concerns regarding the impact of the penalties on parents and young people, in particular those from disadvantaged backgrounds, including Aboriginal young people and parents. Accordingly, the Committee refers proposed sections 22D(9) to Parliament for its consideration.

Issue: Schedule 1 [6] – Proposed section 23 – Excessive Punishment; Children’s Rights

25. The Committee notes that prosecution of parents and children in the Local Court for non-attendance at school is intended as a last resort. However, the Committee has serious concerns regarding the impact of the increased penalties in proposed section 23(1) on young people and their parents, in particular those from disadvantaged backgrounds, including Aboriginal young people and parents. Accordingly, the Committee refers section 23 to Parliament for its consideration.

Issue: Schedule 1 [5] – Proposed section 22A – Obtaining information about children of compulsory school age; Proposed section 22C(6) & (7) – Privacy

31. The Committee notes that the intention of the Bill is to ensure that children and young people attend school, which may be facilitated in certain situations through the provision of certain information about a child or young person. However, the Committee has concerns about the impact of proposed section 22A (and section 22C(6) & (7)) on the personal rights and liberties of children and young people, in particular their right to privacy. The Committee is also concerned that proposed section 22A(5) (and section 22C(7)) provides that the authority or duty of an institution or person to provide information applies despite obligations in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

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

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

5. Housing Amendment (Registrable Persons) Bill 2009**Issue: Retrospectivity - proposed section 58B (5) of Part 7A - Schedule 1 [1] – Termination of lease of registrable person in certain circumstances:**

11. The Committee notes that the proposed section 58B (5) of new Part 7A extends to a lease entered into before the commencement of this new Part. The Committee will always be concerned where the law is changed retrospectively in a manner that may adversely affect any person.
12. The Committee notes that legislatively terminating a lease that had been duly made under the law at the time before the commencement of the new section, may trespass on a person’s right to order his or her affairs in accordance with the current law. Accordingly, the Committee considers this proposed section 58B (5) of Part 7A may trespass unduly on personal rights and refers this to Parliament.

Issue: Denial of Compensation – proposed section 58D of Part 7A - Schedule 1 [1] – No compensation payable:

14. The Committee will always be concerned where legislation proposes that no compensation is payable for acts or omissions of a person in good faith in the purported administration or execution of a part of a legislation.

15. However, the Committee notes the proposed subsection (2) of 58D provides that the Director-General must ensure the tenant is repaid any rent, fee or charges for occupying the public housing referable to a period after termination of the lease under the proposed new Part. The Committee considers that by reading the proposed subsection (2) together with the proposed subsection (1) of the new section 58D of Part 7A, there does not appear to be an undue trespass on individual rights in this instance.

Issue: Procedural Fairness – proposed section 58E of Part 7A – Schedule 1 [1] – Certain termination provisions do not apply to termination under this Part:

18. The Committee holds concerns with regard to the proposed section 58E of Part 7A, and asks Parliament to consider whether that it may be an undue trespass on the right to procedural fairness by legislating away the need to give relevant notices of termination (and required time periods) and the right of review concerning the making of such terminations of tenancy agreements as ordinarily provided for under Part 5 of the *Residential Tenancies Act 1987*.

Issue: Excludes review – proposed section 58F of Part 7A - Schedule 1 [1] – Protection of exercise of functions of Director-General and Commissioner of Police under this Part:

20. The Committee will always be concerned if a Bill purports to oust the jurisdiction of the courts. The Committee notes the importance of judicial review for protecting individual rights against potentially oppressive administrative action and the importance of upholding the rule of law.
21. The Committee is also concerned that the proposed section has the potential to deny a person natural justice by removing the opportunity for review of the exercise of functions (including the non-exercise or improper exercise of functions and the proposed or threatened exercise of functions), by the Director-General or the Commissioner of Police (including that of their delegates).
22. The Committee is of the view that the proposed section 58F of Part 7A could make individual rights and liberties appear unduly dependent on non-reviewable decisions and refers this to Parliament.

6. Industrial Relations Further Amendment (Jurisdiction Of Industrial Relations Commission) Bill 2009

Issue: Clause 2 (1) - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

12. 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. Liquor And Registered Clubs Legislation Amendment Bill 2009

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

8. Prevention of Cruelty to Animals Amendment Bill 2009

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

9. Road Transport (Driver Licensing) Amendment (Demerit Points) Bill 2009*

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

10. Rural Fires Amendment Bill 2009

Issue: Proposed section 22A - Power to remove persons or obstacles

14. The Committee is of the view that proposed section 22A may abrogate certain common law rights relating to trespass and personal property. However, the Committee understands that the grant of power in proposed section 22A may be in the public interest and required in certain circumstances to protect members of the public.

Issue: Part 2, Division 3A - Proposed 33B - Power to enter land up to 24 hours after fire

22. The Committee is of the view that proposed section 33B may abrogate certain common law rights relating to trespass and personal property. However, the Committee understands that the grant of power in proposed section 33B is intended to allow the NSW Rural Fire Service to investigate the cause or origin of a fire. The Committee also notes that the power to entry is not a "timeless power" but rather is only provided for a period of up to 24 hours after the fire has been put out to provide for an investigation of the cause and origin of a fire.

Issue: Proposed section 33C – Search Warrants

28. The Committee understands that the intention of proposed section 33C is to provide the NSW Rural Fire Service with powers to investigate a fire in its aftermath. However, the Committee notes that the proposed powers in section 33C may unduly trespass on personal rights and liberties and refers the matter to Parliament.

Issue: Proposed section 33D – Functions of the Commissioner that may be exercised by others – Insufficient criteria regarding the scope of persons to whom a power may be delegated

31. Proposed section 33D provides that any function conferred or imposed on the Commissioner by these sections may be delegated to a fire fighting authority or a member of staff of a fire fighting authority. The Committee believes that the powers in the proposed Bill could be more clearly defined to specific which officers may be appropriately delegated certain powers by the NSW Rural Fire Service Commissioner.

Issue: Proposed Schedule 2.2 [8] and [9] - Children's Rights; Excessive Punishment

35. The Committee has concerns that the increased maximum penalties in proposed Schedule 2.2 [8] and [9] may have a disproportionate impact on children and young people. However, the Committee notes that child arsonists are usually dealt with differently from adults, for example specific provisions are made for children in the sentencing process through Youth Justice Conferencing.

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

37. 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.

11. Transport Administration Amendment (Rail Trails) Bill 2009

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

Part One – Bills

SECTION A: Comment on Bills

1. CHILD PROTECTION (NICOLE'S LAW) BILL 2009*

Date Introduced:	24 September 2009
House Introduced:	Legislative Council
Minister Responsible:	Reverend the Hon Fred Nile MLC
Portfolio:	Christian Democratic Party (Fred Nile Group)

Purpose and Description

1. This Bill requires the public to be notified of the identity and residential address of convicted child sex offenders; and for other purposes.
2. Clause 5 defines "publishable information" as any information required to be made available by the Commissioner of Police. Clause 5 (1) states: The Commissioner of Police must publish the following information contained in the Register in respect of each registrable person—such as names of convicted sex offenders are placed on that register.
3. This Bill requires that the registrable persons list all the names by which they are or have been known. Clause 5 (1) states that:
 - (a) the person's name, together with any other name by which the person is or has previously been known,
 - (b) in respect of each name other than the person's current name, the period during which the person was known by that other name,
 - (c) the person's date of birth,
 - (d) a physical description of the person including their gender and race,
 - (e) the person's most recent photograph,
 - (f) the suburb and postcode of the residential address of the person.
4. Clause 5 of Bill states further:
 - (g) for a registrable person found guilty of a Class 1 offence, the person's full residential address,
 - (h) details of each Class 1 or Class 2 offence of which the person has been found guilty or with which the person has been charged,
 - (i) details of each offence of which the person has been found guilty that resulted in the making of a child protection registration order,

- (j) the date on which the person was sentenced for any registrable offence,
 - (k) the date on which the person ceased to be in government custody in respect of a registrable offence, or entered or ceased to be in government custody in respect of any offence during the person's reporting period.
- (2) The Commissioner of Police must ensure that publishable information:
- (a) is made available on the website of the NSW Police Force, and
 - (b) can be viewed at each police station, free of charge, during ordinary office hours.
5. Clause 6 provides protection for a person who has become a protected witness. Clause 6 is titled "Restriction on publishable information", which states:
- (1) The Commissioner of Police must ensure that any publishable information about a protected witness (that is, a person to whom Division 5 of Part 3 of the *Child Protection (Offenders Registration) Act 2000* applies) whose identity is apparent or can reasonably be ascertained from that public information is not made available to the public under section 5.
6. The Bill provides that the Commissioner of Police must ensure that publishable information does not contain information from which the identity of a victim of a registrable offence can reasonably be ascertained.
7. Clause 7 provides for the withdrawal of publishable information so that the Commissioner of Police must withdraw from publication any information that relates to a registrable person when that person ceases to be subject to reporting obligations under Part 3 of the *Child Protection (Offenders Registration) Act 2000*.

Background

8. The name of this Bill comes from the case of Nicole that involved an offender on parole in 1974, who stabbed and killed the five-year-old Nicole Hanns, after breaking into the family home to sexually assault her nine-year-old brother.
9. Nicole's law is based on a similar law passed in the United States called Megan's law, the initial legislation in New Jersey. Megan's law created a registration and notification procedure to alert law enforcement, schools, community organisations and neighbours to the presence of a sex offender who the authorities believe may pose a risk to the community.
10. The laws have operated in the United States in different ways such as: requiring broad community notification; requiring notification to individuals and organisations at risk; and those allowing access to registration information through the county sheriff. This Bill is based on the third approach.
11. The Bill also aims to prevent similar situations such as the recent matter involving Dennis Ferguson and Housing NSW. Under the Bill, the person will be required to register the suburb and postcode of his or her residential address.

12. The Bill seeks to provide the opportunity for parents to be alerted to, and to avail themselves of the freely available information. The Commissioner of Police will ensure that the public are not prevented from accessing the information.

The Bill

13. The objects of this Bill are:

- (a) to require the Commissioner of Police to publish certain information contained in the Child Protection Register established under section 19 of the *Child Protection (Offenders Registration) Act 2000*, and
- (b) to ensure that the publishing of information does not enable the identity of victims of registrable offences to be ascertained.

14. Outline of provisions

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

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

Clause 3 provides that the proposed Act is to be read as if it formed part of the *Child Protection (Offenders Registration) Act 2000*.

Clause 4 defines the term **publishable information** used in the proposed Act.

Clause 5 provides that the Commissioner of Police must publish certain information in respect of known sex offenders and details the information that must be published and the manner in which it must be published.

Clause 6 restricts the information that may be published by the Commissioner of Police so as to ensure that the identity of protected witnesses and victims of registrable offences is not made public.

Clause 7 provides that when a registrable person ceases to be subject to reporting obligations under the *Child Protection (Offenders Registration) Act 2000*, the Commissioner of Police must withdraw from publication any information relating to that person.

Schedule 1 Consequential amendments to *Child Protection (Offenders Registration) Act 2000 No 42*

Schedule 1 [1] amends the *Child Protection (Offenders Registration) Act 2000* so as to include details of a registrable person's physical appearance including race, gender and a photograph to that which must be provided as relevant personal information.

Schedule 1 [2] and [3] make minor consequential amendments to the *Child Protection (Offenders Registration) Act 2000*.

Issues Considered by the Committee

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

Issue: Privacy – Clause 5 (1) and (2) – publication of certain information

15. The proposed section 5 reads:

- (1) The Commissioner of Police must publish the following information contained in the Register in respect to each registrable person:
 - (a) the person's name, together with any other name by which the person is or has previously been known,
 - (b) in respect of each name other than the person's current name, the period during which the person was known by that other name,
 - (c) the person's date of birth,

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- (d) a physical description of the person including their gender and race,
- (e) the person's most recent photograph,
- (f) the suburb and postcode of the residential address of the person,
- (g) for a registrable person found guilty of a Class 1 offence, the person's full residential address,
- (h) details of each Class 1 or Class 2 offence of which the person has been found guilty or with which the person has been charged,
- (i) details of each offence of which the person has been found guilty that resulted in the making of a child protection registration order,
- (j) the date on which the person was sentenced for any registrable offence,
- (k) the date on which the person ceased to be in government custody in respect of a registrable offence, or entered or ceased to be in government custody in respect of any offence during the person's reporting period.

(2) The Commissioner of Police must ensure that publishable information:

- (a) is made available on the website of the NSW Police Force, and
- (b) can be viewed at each police station, free of charge, during ordinary office hours.

16. The Committee notes that the right to privacy is well-recognised. Article 17 of the *International Covenant on Civil and Political Rights* provides that:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

17. The Committee also notes the presumption of innocence, a fundamental right established by Article 14(2) of the *International Covenant on Civil and Political Rights*. The Committee considers that the proposed section 5 may have the potential to overturn the presumption of innocence including the right to be treated as though innocent after a person has already served their sentence.

18. The Committee is concerned that the above proposed section 5 may undermine the right to privacy especially if the publication and availability of information may potentially generate 'vigilante' actions from other individuals and subject the person to arbitrary or unlawful interference with that person's privacy, family, home or unlawful attacks on their reputation.

19. The Committee is of the view that intrusion into a person's privacy is not justified unless it can be shown the benefits to be gained outweigh the personal rights. The Committee notes that legislation and regulations are already in place to address registrable persons under the *Child Protection (Offenders Registration) Act 2000*, including the existence of the Child Protection Register.

- 20. Therefore, the Committee holds concerns that this Bill aims to introduce the publication of certain information, including the residential addresses or suburbs and postcodes, details of registrable offences, under the proposed section 5, for all registrable persons, without requiring the considerations of whether the person would pose a substantial or demonstrable safety risk to that person or to another person, and whether there is a reasonable cause to believe that the person may commit an offence against another person.**
- 21. The Committee refers to Parliament the question as to whether the proposed section 5 is justified with regard to unduly trespassing on a person's right to privacy, when considering and weighing the existing legislative protections already in place for the community in relation to registrable persons under the *Child Protection (Offenders Registration) Act 2000*.**

The Committee makes no further comment on this Bill.

2. CRIMES LEGISLATION AMENDMENT (POSSESSION OF KNIVES IN PUBLIC) BILL 2009*

Date Introduced:	24 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Fred Nile MLC
Portfolio:	Non Government – Christian Democrat Party

Purpose and Description

1. This Bill proposes to increase the maximum penalty for certain offences under the *Summary Offences Act 1988* and the *Law Enforcement (Powers and Responsibilities) Act 2002* relating to the possession of knives and other dangerous implements in public places and schools.
2. Section 11C *Summary Offences Act 1988* currently makes it an offence to carry a knife in a public place or school without reasonable excuse. Schedule 1[1] of the Bill proposes to increase the penalties under the *Summary Offences Act 1988*.
3. The current penalty structure under section 11C *Summary Offences Act 1988* is 5 penalty units; 10 penalty units or imprisonment for 12 months, or both, for a person dealt with once previously for a knife-related offence; and 20 penalty units or two years imprisonment, or both, for a third or subsequent knife related offence. A previous knife related offence is currently defined in sections 11C (4) and 11C (5), which is proposed to be omitted and included in section 29A(7) and (8).
4. Under the current legislation only second-time or subsequent offender of a knife-related offence may be imprisoned. However, the Bill proposes to alter the penalty structure for possession of a knife in a public place or school to create a single maximum penalty, with the maximum penalty of 20 penalty units, two years imprisonment, or both regardless of whether a person has previously been dealt with in relation to a knife-related offence.
5. Further, under section 26 *Law Enforcement (Powers and Responsibilities) Act 2002*, police are able to request a person in a public place or school to submit to a frisk search if the officer suspects on reasonable grounds that the person has a dangerous implement (such as a knife) in their custody.
6. Section 27 *Law Enforcement (Powers and Responsibilities) Act 2002* currently makes it an offence with a maximum penalty of 5 penalty units for failing or refusing to comply with a request for a frisk search in this situation, or for failing or refusing to produce the dangerous implement. The Bill proposes to increase the maximum penalty to 50 penalty points.

Background

7. As stated in the Second Reading Speech, the Bill increases the penalties for knife possession laws in NSW. The prohibition on carrying knives in public and related police powers to search people suspected to be carrying knives was initially introduced on 1 July 1998 under the *Crimes Legislation Amendment (Police and Public Safety) Act 1998*.
8. The *Crimes Legislation Amendment (Police and Public Safety) Act 1998* commenced in July 1998 and made amendments to the *Summary Offences Act 1988*. The Act made custody of a knife in a public place an offence, permitted police to conduct searches for knives and other dangerous implements, and enabled police to give reasonable directions in public places to deal with persons whose behaviour or presence constituted an obstruction, harassment, intimidation or caused fear.
9. The *Crimes Legislation Amendment (Police and Public Safety) Act 1998* was monitored by the NSW Ombudsman over the first 12 months of its operation. The NSW Ombudsman in the "Policing Public Safety Report" (1999) found that people from 15 to 19 years of age were much more likely to be stopped and searched for knives than any other age group.
10. The NSW Ombudsman's Report also found that 42% of knife searches were carried out on people aged under the age of 18 and most common age group to carry knives were 17 year olds. The Report found that there was a high number of knife searches of young people where no knife was found. Further, according to the Report, 6.6% of people searched were Aboriginal or Torres Strait Islanders.
11. The NSW Law Reform Commission Report, *Young Offenders*, (2005) also discussed the above findings and commented in the disproportionate impact of public space laws, including legislation relating to knife laws on young people, particularly as young people tend to congregate in public spaces such as shopping malls.
12. Subsequent to the introduction of the *Crimes Legislation Amendment (Police and Public Safety) Act 1998*, the *Law Enforcement (Powers and Responsibilities) Act 2002* commenced in December 2005. Part 4, Division 3 of this Act consolidates search and seizure powers for police in public spaces and schools. In 2007, the NSW Ombudsman commenced a review of certain functions conferred on police under the *Law Enforcement (Powers and Responsibilities) Act 2002*, which was tabled in Parliament earlier this year.

The Bill

13. 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 Summary Offences Act 1988 No 25

Section 11C of the *Summary Offences Act 1988* makes it an offence for a person to have custody of a knife in a public place or a school without reasonable excuse. The maximum

penalty for this offence currently depends on whether the person in question has been dealt with previously for a knife-related offence and the number of any such dealings. In the case of a person who has had no such previous dealings, a maximum penalty of 5 penalty units is applicable. A maximum penalty of 10 penalty units or imprisonment for 12 months, or both, applies in the case of a person who has been dealt with once previously for a knife-related offence. A maximum penalty of 20 penalty units or imprisonment for 2 years, or both, applies in the case of a person who has been dealt with more than once previously for a knife-related offence.

Schedule 1 [1] amends section 11C so that a maximum penalty of 20 penalty units or imprisonment for 2 years, or both, is applicable in relation to any offence against that section (regardless of whether a person has previously been dealt with in relation to a knife-related offence).

Schedule 1 [2]–[4] make consequential amendments as a result of the amendment of section 11C to relocate section 11C (4) and (5) to section 29A (7) and (8). This will preserve the existing provision that allows a penalty notice for a knife-related offence under section 11C to be issued to a person on only one occasion. Subsequent knife related offences under section 11C will be dealt with by a court.

Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Section 26 of the *Law Enforcement (Powers and Responsibilities) Act 2002* gives police officers the power to request a person to submit to a frisk search if the person is in a public place or a school and the police officer suspects the person has a dangerous implement (such as a knife) in his or her custody. Section 27 of the *Law Enforcement (Powers and Responsibilities) Act 2002* makes it an offence for a person to refuse to comply with a request made by a police officer in accordance with section 26 or to refuse to produce anything detected or seen on or with the person in such a search.

Schedule 2 amends section 27 to increase the maximum penalty for an offence against that section from 5 penalty units to 50 penalty units.

Issues Considered by the Committee

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

Issue: Excessive Punishment; Rights of children – Schedule 1 [1] – Proposed section 11C Summary Offences Act 1988

14. Currently section 11C *Summary Offences Act 1988* provides that a person must not, without reasonable excuse have in their custody a knife in a public place or a school. The current maximum penalty is 5 penalty units; or in the case of a person dealt with once previously for a knife-related offence 10 penalty units or imprisonment for 12 months, or both; or in the case of a person dealt with more than once previously for a knife-related offence 20 penalty units or imprisonment for 2 years, or both.
15. Proposed section 11C(1) increases the maximum penalty to 20 penalty units or imprisonment for 2 years, or both. The following comments were made in the Second Reading Speech with respect to the amendments to the penalty structure through proposed section 11C(1):

Crimes Legislation Amendment (Possession of Knives in Public) Bill 2009*

This could see even first-time offenders facing serious penalties, including possible time in prison, sending a clear deterrent message that knife possession will not be tolerated. Obviously, this gives the court the option to apply that maximum penalty, but we will provide the court with the powers it needs.

16. The Committee understands that the intention of the proposed legislation is to act as a deterrent against the possession of knives in public spaces and schools. However, the Committee is concerned that the change in the penalty structure and significant increase in the penalties will disproportionately impact on children and young people and may constitute excessive punishment.¹ Accordingly, the Committee refers proposed section 11C *Summary Offences Act 1988* to Parliament for its consideration.

Issue: Excessive Punishment; Rights of children – Schedule 2 – proposed section 27 *Law Enforcement (Powers and Responsibilities) Act 2002*

17. Section 26(1) *Law Enforcement (Powers and Responsibilities) Act 2002* provides that a police officer may request a person who is in a public place or a school to submit to a frisk search if the police officer suspects on reasonable grounds that the person has a dangerous implement in his or her custody.
18. Section 26(2) *Law Enforcement (Powers and Responsibilities) Act 2002* provides that if the person is in a school and is a student at the school, the police officer may also request the person to submit to a search of any bag or other personal effect that is on or with the person or submit to a search of the person's locker at the school and an examination of any bag or other personal effect that is inside the locker.
19. Section 27 *Law Enforcement (Powers and Responsibilities) Act 2002* currently provides that a person must not, without reasonable excuse fail or refuse to produce anything detected or seen on or with the person in such a search when requested to do so by a police officer (in accordance with sections 26 and 201), or fail or refuse to comply with a request made by a police officer (in accordance with sections 26 and 201) for the person to submit to a search.
20. Various safeguards are provided in sections 26 and 201 *Law Enforcement (Powers and Responsibilities) Act 2002*, for example when police search a person, they must provide evidence that they are a police officer (unless the police officer is in uniform), their name and place of duty, the reason for the search and must warn that failure to submit to the search may be an offence. Currently, the maximum penalty under section 27 *Law Enforcement (Powers and Responsibilities) Act 2002* for failure to comply the request of the police officer is 5 penalty units. Proposed section 27 increases the maximum penalty to 50 penalty units.

21. The Committee understands the intention of the proposed legislation is act as a deterrent against the possession of knives in public spaces and schools. However, the Committee is concerned that the increase in the penalty will disproportionately impact on children and young people and may constitute excessive punishment. Accordingly, the Committee refers proposed section 27 *Law Enforcement (Powers and Responsibilities) Act 2002* to Parliament for its consideration.

¹ See also the *United Nations Convention on the Rights of the Child* (CROC), which provides that detention of children must be a measure of last resort for the shortest possible period (article 37(b), CROC).

The Committee makes no further comment on this Bill.

3. CROWN LANDS AMENDMENT (SPECIAL PURPOSE LEASES) BILL 2009

Date Introduced:	24 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Tony Kelly MLC
Portfolio:	Lands

Purpose and Description

1. This Bill amends the *Crown Lands Act 1989* in relation to the establishment of development districts and the granting of special purpose leases in the Eastern and Central Division.
2. It proposes an amendment to section 44B (1) of the *Crown Lands Act 1989*, which will permit the Minister, after complying with section 44B, to grant special purpose leases for the purpose of energy production or other approved purpose in the Eastern and Central Division.
3. The Bill will enable renewable energy generation projects to be developed on Crown land throughout the State without the need to acquire the existing leasehold interest. The proposed special purpose leases will exist in parallel with existing leases under the *Crown Lands Act* and be for a maximum term of up to 100 years.

Background

4. In 2008, there were amendments to the *Western Lands Act* and *Crown Lands Act* to allow for two leases to run in parallel with respect to the same Crown land in the Western Division.
5. The construction and operation of facilities for the harnessing of energy from any source, including the sun or wind, and its conversion into electrical energy has already been declared by section 44B (4) of the *Crown Lands Act* to be an approved purpose.
6. According to the Agreement in Principle speech, “a special purpose lease, which provides for joint use of the land, is particularly applicable to wind power generation where, following the construction of the wind turbines, the power station is likely to have little impact on continuing farming activity such as grazing”.
7. The Agreement in Principle speech also explained that:

A special purpose lease is granted only with the consent of the general purpose lessee and a development proponent may negotiate directly with a general purpose lessee on matters such as operating conditions and shared use of infrastructure. The Department of Planning will continue to have an ongoing role in the approval of new developments on leasehold land within renewable energy precincts. Additionally, a special purpose lease allows for an appropriate return to the State for the use of Crown land for energy production.

8. The Agreement in Principle speech further continued that:

The special purpose lease provision enacted in 2008 enabled the Minister for Lands to sign an agreement to lease for a future wind farm project over 32,000 hectares of Western Division Crown land at Silverton, west of Broken Hill. Whilst there is no specific project in the Eastern and Central Division of the State currently requiring these provisions, it is expected that this amendment will produce similar benefits to those achieved in the Western Division, although the projects are likely to be on a smaller scale.

The Bill

9. The object of this Bill is to amend the *Crown Lands Act 1989* (the principal Act) to extend the provisions relating to the granting of special purpose leases to land within the Eastern and Central Division of New South Wales. The *Western and Crown Lands Amendment (Special Purpose Leases) Act 2008* inserted provisions into the principal Act to facilitate the granting of special purpose leases in relation to land within the Western Division of New South Wales.
10. Special purpose leases are able to co-exist with certain other tenures and allow for the establishment of renewable energy generators (such as wind farms) over land that is leased for other purposes (such as grazing purposes). While most of the land may remain available for such other purposes, any particular part of it (other than the site of a dwelling-house or other significant improvement) could become the site of a renewable energy generator. However, in the case of land that is already the subject of some other tenure, it is only possible to grant a special purpose lease with the consent of the holder of that tenure.

11. Outline of provisions

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

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

Clause 3 amends the principal Act to enable the Minister to declare any land within the Western Division or the Eastern and Central Division to be a development district for the purposes of the provisions relating to special purpose leases. The Act currently allows such a declaration only in respect of land within the Western Division. Such a declaration must designate an approved purpose for which a special purpose lease may be granted over land in a development district. Approved purposes include the construction and operation of facilities to harness energy and convert it into electricity and such other purposes as are approved by proclamation. Clause 3 also makes a consequential amendment.

Issues Considered by the Committee

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

Issue: Ill-Defined and Wide Powers – Clause 3 – Amendment of *Crown Lands Act 1989* – clause 3 (1) - amendment of Part 4, Division 3A heading; and clause 3 (2) – amendment of section 44B(1) Development districts

12. The *Western and Crown Lands Amendment (Special Purpose Leases) Act 2008* has already inserted provisions into the principal Act to facilitate the granting of special purpose leases in relation to land within the Western Division of NSW.
13. The *Crown Lands Act 1989* currently allows the Minister to declare any land within the Western Division to be a development district for the purposes of the provisions relating to special purpose leases. Such a declaration must designate an approved purpose for which a special purpose lease may be granted over land in a development district. Approved purposes include the construction and operation of facilities to harness energy and convert it into electricity and such other purposes as are approved by proclamation.
14. Clause 3 will amend the principal Act, section 44B (1), to enable the Minister to declare **any** land within the Western Division or the Eastern and Central Division to be a development district for the purposes of the provisions relating to special purpose leases.

15. The Committee notes that the *Legislation Review Digest Report* number 8 of 16 June 2008 has commented on the *Western and Crown Lands Amendment (Special Purpose Leases) Bill 2008* when it was introduced to Parliament.

16. The Committee, in *Digest Report* number 8 of 16 June 2008, noted the scope for the Minister's declaration that *any* land within the then Western Division to be a development district for the purposes of the proposed Division, appeared to be very wide. The Committee also noted that the Minister may make further declarations to alter the district's boundaries, abolish the district or vary its designated purposes, which appeared to be broad in scope.
17. In addition to the current Western Division, the proposed amendment will also enable the Minister, by notification in the Gazette, to declare **any** land within the Eastern and Central Division in section 44B (1) to be a development district for the purposes of the Division. The declaration will designate the purposes for which a special purpose lease may be granted over land in the development district established by the declaration. Approved purposes include (section 44B (4)(a)), the construction and operation of facilities for the harnessing of energy from any source (including the sun or wind) and its conversion into electrical energy, or subsection (4)(b), such other purposes as may be approved by proclamation on the recommendation of the Minister. Further changes by the Minister by notification in the Gazette, may alter the boundaries of, or abolish, any development district, or subject to subsections (3) and (4), vary the designated purposes for the district.

18. At the time, in the *Legislation Review Digest Report* number 8 of 16 June 2008, the Committee had referred to Parliament regarding the then proposed section 44B, as the Committee considered the amendment may make individual rights unduly dependent on an insufficiently defined and wide administrative power. The Committee, again, makes similar observations with regard to clause 3 of this Bill.

- 19. The Committee notes that the scope for the Minister's declaration that *any* land within the Eastern and Central Division along with the current Western Division, to be a development district for the purposes of Division 3A of Part 4, appears to be wide. The Committee also notes that the Minister may make further notifications to alter the district's boundaries, abolish the district or vary its designated purposes subject to sections 44B (3) and (4), which could appear to be broad in scope.**
- 20. Therefore, the Committee considers clause 3 (which amends section 44B of the *Crown Lands Act 1989*), may make individual rights unduly dependent on an insufficiently defined and wide administrative power, and refers this to Parliament.**

The Committee makes no further comment on this Bill.

4. EDUCATION AMENDMENT (SCHOOL ATTENDANCE) BILL 2009

Date Introduced:	23 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Verity Firth MP
Portfolio:	Training and Education

Purpose and Description

1. The object of this Bill is to amend the *Education Act 1990* (the Act) to ensure that children of compulsory school-age attend school, and for that purpose:
 - (a) to facilitate the provision of information to the Director-General of the Department of Education and Training about children who are not attending school, and
 - (b) to provide for confidential conferences with parents and other relevant parties to assist in ensuring a child attends school, and
 - (c) to provide for the making of compulsory schooling orders by the Children's Court directed at parents whose children do not attend school and, in certain cases, directed at children who do not attend school, and
 - (d) to increase the monetary penalties for parents who do not ensure that their children attend school, in particular, where parents fail to comply with compulsory schooling orders.
2. The Bill also makes other amendments to the Act, including:
 - (a) to require opportunities to be provided for Aboriginal families and communities to participate in decision-making about the education of Aboriginal children, and
 - (b) to confer specific power on the Director-General to determine the eligibility criteria for different kinds of government schools.

Background

3. As stated in the Agreement in Principle Speech, when attempting to deal with school non-attendance, it is important to have a system that is flexible enough to address the real underlying causes of the problem. The failure of a family to educate a child can be caused by a wide range of factors, such as mental illness, drug and alcohol addiction, social isolation, parental disabilities, an absence of parenting skills or family disruption.
4. Currently in NSW, parents have a legal duty under the Act to enrol their child in school or enlist them for home schooling and ensure that they attend regularly. Section 23 of the Act currently provides for the prosecution of a child's parents if their child fails to attend school, with a monetary penalty of up to 10 penalty units. However, as highlighted in the Agreement in Principle Speech, the imposition of a fine may in some cases add additional stress to a family that is already struggling.

5. The Bill makes a number of amendments to the Act, for example it allows the Minister for Education and Training (the Department) to approve an alternative education program for children who are unable for social, cultural or other reasons to participate effectively in formal school education. The Bill would enable a child to participate in a program run by the Salvation Army, such as Oasis as an alternative way of meeting the compulsory education requirements of the Act.

Conference to deal with unsatisfactory school attendance

6. Section 22C of the Bill also provides the Department with the power to convene a conference with persons and agencies to improve a child's attendance. The conference could include the child's parents or caregivers, the school executive, other government agencies such as NSW Health or the Department of Community Services and individual members of the community, who may be able to assist in improving attendance.
7. According to the Agreement in Principle Speech, the purpose of the conference would be to discuss the reasons why the child is not at school and to develop strategies to improve attendance. It may identify services that are required, for example parenting or adult literacy classes, drug or alcohol counselling, health care services, housing, financial support, welfare services, and cultural support services. As also stated in the Agreement in Principle Speech, the intention of the Bill is that the majority of non-attendance matters would be resolved through the conference process.
8. As also stated in the Agreement in Principle Speech, if a student is of Aboriginal background the Department may seek out a member of the local Aboriginal community to play a role in assisting with the child's attendance. The Bill also amends the Act to require the Education Department to provide opportunities for Aboriginal families, kinship groups, representative organisations and communities to participate in significant decisions relating to the education of Aboriginal children.

Compulsory Schooling Order

9. If the above measures are not successful, proposed section 22D allows the Department of Education and Training to apply to the Children's Court for a compulsory schooling order. As highlighted in the Agreement in Principle Speech, the application for a compulsory schooling order is not a criminal procedure, however if the order is not followed prosecution may be considered as the next step. A compulsory schooling order may contain a requirement to follow through on the actions voluntarily agreed to in a conference or it may contain new actions deemed by the Court to be able to assist in the goal of the child attending school.
10. Proposed section 22D provides that a compulsory schooling order may require a parent to cause a child to receive schooling in accordance with the order; or where a child is over 12 years and the Children's Court is satisfied that the child is either living independently or the parents are not able to control the child, the Children's Court may direct a compulsory schooling order at the child in place of his or her parents.
11. For children aged between 15 and 17 years, a fine of up to one penalty unit, (\$110), will be available for failing to comply with a compulsory schooling order. Section 22D provides for a maximum penalty of 100 (\$11,000) penalty units for a parent of a child who does not attend school (see also section 23(1)(c)).

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12. As stated in the Agreement in Principle Speech, a “compulsory schooling order adds the weight of the justice system to the requirement to follow through on these actions”. The intention of the Bill, in particular the conference process and the compulsory schooling order is to resolve a case of persistent non-attendance without having to proceed to prosecution. However, where a compulsory schooling order is not successful and a child is over the age of 15 years, the Bill still retains the option of prosecution.

Prosecution in the Local Court

13. Under proposed section 23(1), where parents continue to fail to ensure that their children are enrolled and attending school, prosecution may be brought in the Local Court. The Bill retains the option of a monetary penalty, however it significantly increases the amount of the penalties available to Magistrates, with a maximum of 100 penalty units in the case of a parent subject to a compulsory schooling order. Proposed section 23 provides a number of defences to the offence provision in proposed section 23(1).
14. The Bill also provides Magistrates with alternative penalty options instead of a fine in certain circumstances. Proposed section 23(5) provides that instead of imposing a fine on a person the court may make a community service order upon the parent. It will also be possible for the court to take a range of alternative sentencing options, such as imposing a good behaviour bond or deferring sentencing pending the completion of a rehabilitation program. As stated in the Agreement in Principle Speech, it is anticipated that in many cases the above options will be more suitable to the ultimate goal of the child returning to regular attendance than a fine
15. Finally, proposed section 135 includes a requirement that the Minister review the Act to determine whether the policy objectives remain valid and whether the terms of Part 5 remain appropriate for securing those objectives. The review is to be undertaken as soon as possible after two years from the commencement of the Bill and is to be tabled in Parliament.

The Bill

16. 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 proclaimed (on or after 1 January 2010, the date on which recent changes to the compulsory school-age for children commence).

Schedule 1 Amendment of Education Act 1990 No 8

Schedule 1 [1] defines relevant terms for the purposes of the amended provisions of the *Education Act 1990* (the Act).

Section 6 of the Act requires every person involved in the administration of the Act or in the education of school-age children to have regard to certain objects.

Schedule 1 [2] inserts a new object that provides for Aboriginal families, kinship groups, representative organisations and communities to be given opportunities to participate in significant decisions made under the Act relating to the education of their children.

Schedule 1 [3] replaces the term “correspondence schools” with the term “distance education” to reflect changes in schooling methods, such as the use of the internet.

Schedule 1 [4] restates, without significant change, the duty of parents of children of compulsory school - age to cause their children to receive compulsory schooling.

Schedule 1 [5] (proposed section 22A) authorises relevant institutions and other people to provide information to the Director-General about a child who is not attending school as required by the Act. The proposed section also imposes a duty on relevant institutions to provide such information if requested by the Director-General.

A **relevant institution** means a government department or other public authority and also includes a government school, a registered non-government school, a registered vocational training organisation and a non-government organisation that receives government funding.

The provision of information under the proposed section does not give rise to any liability to civil, criminal or disciplinary action and is not a breach of professional ethics or standards. The identity of a person who provides information under the proposed section is not to be disclosed.

Schedule 1 [5] (proposed section 22B) enables the Director-General to make schooling arrangements with the parents of a child, including written undertakings by the parents with respect to compulsory schooling for the child. These undertakings may be used in evidence in proceedings under Part 5 of the Act (such as proceedings against parents for compulsory schooling orders or for an offence).

Schedule 1 [5] (proposed section 22C) deals with conferences of relevant parties to deal with unsatisfactory school attendance. If a child is not receiving compulsory schooling, the Children’s Court or the Director-General may direct the relevant parties to participate in a conference that is conducted by an authorised person appointed by the Children’s Court or the Director-General. During a conference, parties may seek to identify and resolve issues in dispute, to identify services that would assist a child to attend school and to formulate undertakings and orders for consideration by the Children’s Court to ensure the child is provided with compulsory schooling. Participants in a conference may disclose information about a child to assist in achieving the purposes of the conference, despite anything in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*. A conference is confidential and evidence of anything said during a conference cannot be used in court proceedings.

Schedule 1 [5] (proposed section 22D) enables the Children’s Court, on the application of the Director-General, to make a compulsory schooling order in relation to a child who is not receiving compulsory schooling. An order may require a parent to cause the child to receive compulsory schooling in accordance with the order. An order may also be directed at a child, but only if the child is 12 years of age or older and lives independently of his or her parents or will not obey his or her parents. The Children’s Court may also determine the participation requirements under section 21B (inserted by the *Education Amendment Act 2009*) for education or training or paid work if the child has completed Year 10. When making an order, the Children’s Court may recommend that a relevant institution provide

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services to the child and his or her family to assist the child in receiving schooling. If a parent fails to comply with a compulsory schooling order, the maximum penalty for the offence under section 23 is increased to 100 penalty units (currently, \$11,000). If a child who is 15 years of age or older fails to comply with an order, the child is guilty of an offence and liable to a maximum penalty of 1 penalty unit (currently, \$110). If the order is not complied with, the Director-General may enrol the child in a government school if authorised to do so by the order. A decision by the Children's Court to impose an order may be appealed to the District Court.

Schedule 1 [6] substitutes section 23 to update (and increase the maximum penalty for) the offence of failing to send a child to school. A parent of a child of compulsory school-age is guilty of the offence if the parent fails to cause the child to be enrolled at school or registered for home schooling. The maximum penalty is 25 penalty units for a first offence, 50 penalty units for a second offence or 100 penalty units for a parent subject to a compulsory schooling order (currently the maximum penalty for the offence is 10 penalty units). There are various defences to the offence, including if a child is participating in distance education or approved alternative education, if the child is subject to a certificate of exemption under section 25 of the principal Act, or if the child cannot attend school because of a medical condition or because the child has been suspended or expelled from school. In proceedings for the offence, the court may make a community service order instead of imposing a fine. The revised section also makes provision for the medical examination of children whose non-attendance at school is alleged to have been caused by a medical condition (including provision under which a school principal may require a parent to provide medical certificates for non-attendance by the child because of the past record of absences due to medical conditions).

Schedule 1 [14] makes a consequential amendment.

Schedule 1 [7] and [9] require school principals to keep in the register of enrolments and attendances particulars about absences of children from school for medical or other reasons, and particulars about any unsatisfactory school attendance by children of compulsory school-age.

Schedule 1 [11] amends the definition of authorised person.

Schedule 1 [8], [12] and [13] make consequential amendments.

Schedule 1 [10] enables the Director-General to determine eligibility criteria for different kinds of government schools.

Schedule 1 [15] requires the provisions inserted by the proposed Act to be reviewed after 2 years.

Schedule 1 [16] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Issues Considered by the Committee

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

Issue: Schedule 1 [5] – Proposed section 22D(9) – Excessive Punishment

17. Proposed section 22D(9) provides that if a parent or child (between the age of 15 and 17 years) fails to comply with an obligation under a compulsory schooling order:
- (a) in the case of a parent, the maximum penalty for a relevant offence under section 23 is increased to 100 penalty units;
 - (b) in the case of a child of or above the age of 15 years, the child is guilty of an offence and liable to a penalty not exceeding 1 penalty unit (but without the court proceeding to a conviction), unless the child had a reasonable excuse for not complying with the order.
18. The Committee notes the comments in the Agreement in Principle Speech that a “compulsory schooling order adds the weight of the justice system to the requirement to follow through on these actions”. The Committee also notes that the intention of compulsory schooling order is to resolve case of persistent non-attendance without having to proceed to prosecution and that the penalty has been included to act as a deterrent against non compliance with a compulsory schooling order.
19. The Committee also notes that there is provision in section 23(5) for the making of a community service order under section 8(1) of the *Crimes (Sentencing Procedure) Act 1999* rather than a fine. However, the Committee still has concerns regarding the option of imposing a penalty of 100 (\$11,000) penalty units on parents, particularly those from disadvantaged backgrounds. The Committee is also particularly concerned that the maximum penalty of 100 (\$11,000) penalty units in proposed section 22D(9)(a) is significantly higher than the penalties imposed in other States.
- 20. The Committee notes that proposed section 22D(9) intends to act as a deterrent against non-attendance of children at school. However, the Committee has serious concerns regarding the impact of the penalties on parents and young people, in particular those from disadvantaged backgrounds, including Aboriginal young people and parents. Accordingly, the Committee refers proposed sections 22D(9) to Parliament for its consideration.**

Issue: Schedule 1 [6] – Proposed section 23 – Excessive Punishment; Children’s Rights

21. Proposed section 23 reads that a parent of a child of compulsory school-age is guilty of an offence if the parent fails to cause the child to be enrolled at, and to attend, a government school or a registered non-government school, or to be registered for home schooling under Part 7. The maximum penalties provided in proposed section 23 are:
- (a) 25 penalty units in the case of a first offence;
 - (b) 50 penalty units in the case of a second or subsequent offence; or
 - (c) 100 penalty units in the case of a parent subject to a compulsory schooling order.
22. The Committee notes that there are a number of defences provided in proposed sections 23(2) and 23(3), for example:
- (a) if the child was participating in an alternative education program approved by the Minister for children unable, for social, cultural or other reasons, to participate effectively in formal school education;

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- (b) if the child was prevented from attending school due to an illness or unforeseen accident;
 - (c) the child's absence from school was because of the child's disobedience, or a consequence of the failure of a person other than a parent of the child to honour an undertaking under the Act (and this was not the parent's fault); or
 - (d) the child was living independently of his or her parents.
23. Section 23 of the Act currently provides a maximum penalty of 10 penalty units if a parent fails to enrol their child at a government school or home schooling or fails to ensure that their child attends school. Accordingly, the Committee has concerns that the penalties have been significantly increased through the proposed amendments and are significantly higher than those provided in similar legislation in other States. However, the Committee notes that under proposed section 23(5), the Court may make a community service order under section 8(1) of the *Crimes (Sentencing Procedure) Act 1999* instead of a fine.
24. The Committee also notes the comments in the Agreement in Principle Speech that there are a number of factors that may cause a child to not attend school, for example mental illness, drug and alcohol addiction, social isolation, parental disabilities, an absence of parenting skills or from other causes of family disruption. Accordingly, although the Committee understands that the inclusion of higher penalties in proposed section 23 may act as a deterrent, it has serious concerns that the imposition of a heavy fine may, as stated in the Agreement in Principle Speech: "add additional stress to a family that is already struggling".
- 25. The Committee notes that prosecution of parents and children in the Local Court for non-attendance at school is intended as a last resort. However, the Committee has serious concerns regarding the impact of the increased penalties in proposed section 23(1) on young people and their parents, in particular those from disadvantaged backgrounds, including Aboriginal young people and parents. Accordingly, the Committee refers section 23 to Parliament for its consideration.**

Issue: Schedule 1 [5] – Proposed section 22A – Obtaining information about children of compulsory school age; Proposed section 22C(6) & (7) – Privacy

26. Proposed section 22A reads that any relevant institution or other person may provide information to the Department of Education and Training solely for the purpose of assisting the Director-General to ascertain:
- (a) the age, identity or whereabouts of a child who is not receiving compulsory schooling or who is not participating in education, training or paid work as an alternative to receiving compulsory schooling, and
 - (b) the reasons why the child is not receiving that schooling or not so participating.
27. Proposed section 22A(7) provides that the identity of the person who discloses the above information is not to be disclosed. Further, proposed section 22A(5) provides that the above authority or duty to provide information under this section applies despite the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*, but is subject to any other Act or law and to client legal privilege.

28. Proposed section 22A(6) provides that the provision of information under the section in good faith does not give rise to any liability to civil, criminal or disciplinary action, and is not a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.
29. The Committee understands that the intention of the Bill is to address the problem of non-attendance in school, which is considered to be in the best interests of a child. The Committee also notes the comments in the Agreement in Principle Speech that proposed section 22A is intended to assist the Department in identifying and locating a child who is not attending school and proving that they are of compulsory school age.
30. The Committee also notes that similar provisions appear in proposed section 22C(6) and (7) in the context of a conference with the relevant parties, as provided by proposed section 22C. For example, section 22C(6) reads that participants in a conference may disclose to each other such information concerning the child and his or her family that may reasonably assist in achieving the purpose of the conference. Section 22C(7) also states that the authority to disclose information under the above section applies despite obligations in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*, but is subject to any other Act or law and to client legal privilege.

31. The Committee notes that the intention of the Bill is to ensure that children and young people attend school, which may be facilitated in certain situations through the provision of certain information about a child or young person. However, the Committee has concerns about the impact of proposed section 22A (and section 22C(6) & (7)) on the personal rights and liberties of children and young people, in particular their right to privacy. The Committee is also concerned that proposed section 22A(5) (and section 22C(7)) provides that the authority or duty of an institution or person to provide information applies despite obligations in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

Parliamentary scrutiny of legislative power [s 8A(1)(b)(iv) LRA]

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

32. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation (being not earlier than 1 January 2010). This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee also notes the reasons provided in the explanatory note, namely that the Bill provides for commencement on or after 1 January 2010, which is the date on which recent changes to the compulsory school-age for children commences. Accordingly, the Committee understands that Clause 2 may be required to allow for time for these changes to be implemented.

33. The Committee accepts the above reasons 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.

5. HOUSING AMENDMENT (REGISTRABLE PERSONS) BILL 2009

Date Introduced:	23 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Borger MP
Portfolio:	Housing

The Bill passed both Houses on 23 September 2009. The preparation of this report was done in accordance with the *Legislation Review Act 1987* with respect to commenting on Bills as originally presented to Parliament.

Purpose and Description

1. This Bill amends the *Housing Act 2001* with respect to the housing of registrable persons under the *Child Protection (Offenders Registration) Act 2000*.
2. It amends the *Housing Act 2001* to enable the Director General of the Department of Human Services or their delegate, based on the recommendation of the NSW Commissioner of Police, to relocate registrable persons to alternative residential premises.
3. The *Housing Act 2001* will be amended to enable the lease of the registrable person to be terminated by the Director General of the Department of Human Services or their delegate, and to require Housing NSW to make available alternative accommodation for the relocated registrable person. It gives the Director General of the Department of Human Services or their delegate the power to terminate the lease of a registrable person who is living in public housing based on the recommendation of the Commissioner of Police.
4. The Commissioner of Police will be able to make such a recommendation in situations where he considers the presence of the person is creating a risk to their own safety or the safety of others in the community. When a lease is terminated, the registrable person must vacate the property. They can be removed by police if they refuse to vacate the property.
5. If an offender is on the Child Protection Register, the Bill will allow the power to move that tenant to alternative accommodation, whether in the private rental market or within the social housing system, when there is a threat of physical harm or injury to that person or neighbours in the locality.

Background

6. According to the Agreement in Principle speech:

In the case of Dennis Ferguson, who has been housed in a location that is, as I am advised, 500 metres from one school and 700 metres from another, no suitable provisions are applicable in the *Residential Tenancies Act 1987* to enable Housing New South Wales to seek an immediate eviction order to move him against his will to alternative accommodation...The current situation at this present dwelling is

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untenable for local residents who may rally and threaten his safety and, indeed, the safety of other people within a housing complex or the rest of the local community. This has been evident over the past difficult week. With the heightened attention this case has brought to the community over the past week also comes safety considerations for the individual concerned, as well as the other tenants in the complex and the community at large...The New South Wales Government wants to ensure that everyone has a right to the quiet enjoyment of their home. It is intended that the operation of these provisions applies irrespective of the nature of the tenancy term—whether it is an existing fixed-term tenancy or a weekly or periodic tenancy.

7. The Agreement in Principle speech further indicated that the new powers of the Director General are intended to be delegated to the Chief Executive of Housing NSW, and that the accommodation of registered or serious sex offenders in private housing or community housing is not intended to be affected by the amendments.

The Bill

8. The object of this Bill is to amend the *Housing Act 2001* to enable the Director-General of the Department of Human Services, on the recommendation of the Commissioner of Police, to terminate the lease of a tenant who is renting public housing within the meaning of that Act and who is a registrable person under the *Child Protection (Offenders Registration) Act 2000*. The Commissioner of Police may make such a recommendation only if the Commissioner considers that the presence of the tenant at the public housing places any neighbours in the locality or the tenant at risk of being physically harmed or injured. The Director-General will be required to make alternative housing available to the tenant.

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 the date of assent to the Act.

Schedule 1 Amendment of *Housing Act 2001* No 52

Schedule 1 [1] inserts proposed Part 7A into the *Housing Act 2001* to achieve the object described in the Overview.

Schedule 1 [2] amends Schedule 3 to the *Housing Act 2001* to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

Issues Considered by the Committee

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

Issue: Retrospectivity - proposed section 58B (5) of Part 7A - Schedule 1 [1] – Termination of lease of registrable person in certain circumstances:

10. Proposed section 58B provides that:

- (1) The Director-General may, on the recommendation of the Commissioner of Police, by written order terminate the lease of a tenant who is renting public housing and who is a registrable person.

- (2) The Commissioner of Police may make a recommendation under this section only if the Commissioner considers that the presence of the tenant at the public

housing places any neighbours in the locality or the tenant at risk of being physically harmed or injured.

(3) On termination of the lease, the tenant must vacate the public housing the subject of the lease.

(4) An order of the Director-General under this section terminating a lease operates:

(a) to give the New South Wales Land and Housing Corporation an immediate right to exclusive possession of the premises concerned, and

(b) to authorise any police officer, using such force as is reasonably necessary, to enter the premises concerned and take such steps as are reasonably necessary in order to give the Corporation possession of the premises.

(5) This section extends to a lease entered into before the commencement of this Part.

11. The Committee notes that the proposed section 58B (5) of new Part 7A extends to a lease entered into before the commencement of this new Part. The Committee will always be concerned where the law is changed retrospectively in a manner that may adversely affect any person.

12. The Committee notes that legislatively terminating a lease that had been duly made under the law at the time before the commencement of the new section, may trespass on a person's right to order his or her affairs in accordance with the current law. Accordingly, the Committee considers this proposed section 58B (5) of Part 7A may trespass unduly on personal rights and refers this to Parliament.

Issue: Denial of Compensation – proposed section 58D of Part 7A - Schedule 1 [1] – No compensation payable:

13. Proposed section 58D provides that:

(1) No act or omission of a person in good faith in purported administration or execution of this Part gives rise to any civil liability against:

(a) the person, or

(b) the State or an authority of the State.

(2) However, the Director-General must ensure that the tenant is repaid any rent, fee or charges for occupying the public housing referable to a period after termination of the lease under this Part.

14. The Committee will always be concerned where legislation proposes that no compensation is payable for acts or omissions of a person in good faith in the purported administration or execution of a part of a legislation.

15. However, the Committee notes the proposed subsection (2) of 58D provides that the Director-General must ensure the tenant is repaid any rent, fee or charges for occupying the public housing referable to a period after termination of the lease under the proposed new Part. The Committee considers that by reading the proposed subsection (2) together with the proposed subsection (1) of the new section 58D of Part 7A, there does not appear to be an undue trespass on individual rights in this instance.

Issue: Procedural Fairness – proposed section 58E of Part 7A – Schedule 1 [1] – Certain termination provisions do not apply to termination under this Part:

16. Proposed section 58E reads:

Part 5 of the *Residential Tenancies Act 1987* does not apply to or in respect of the termination of a lease under this Part.

17. Part 5 of the *Residential Tenancies Act 1987* in respect of the termination of a lease provides for some of the following:

- Notice of termination and relevant time periods
- Notice to be given before giving notice of termination of a social housing tenancy agreement to a tenant
- Right of review
- Time periods to be observed in giving notice of termination on the ground that the tenant is not eligible for social housing
- Review of decision to give notice on the ground that the tenant is offered alternative social housing premises
- Time periods to be observed in giving notice of termination on the ground that tenant is offered alternative social housing premises.

18. The Committee holds concerns with regard to the proposed section 58E of Part 7A, and asks Parliament to consider whether that it may be an undue trespass on the right to procedural fairness by legislating away the need to give relevant notices of termination (and required time periods) and the right of review concerning the making of such terminations of tenancy agreements as ordinarily provided for under Part 5 of the *Residential Tenancies Act 1987*.

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

Issue: Excludes review – proposed section 58F of Part 7A - Schedule 1 [1] – Protection of exercise of functions of Director-General and Commissioner of Police under this Part:

19. The Committee notes that proposed section 58F of Part 7A will exclude reviews and appeals. The proposed section states that:

(1) This section applies to a function (a ***protected function***) conferred or imposed on the Director-General or the Commissioner of Police, including a delegate of the Director-General or Commissioner of Police, (a ***protected person***) by or under this Part.

(2) The exercise by any protected person of any protected function may not be:
(a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or

(b) restrained, removed or otherwise affected by any proceedings.

(3) Without limiting subsection (2), that subsection applies whether or not the proceedings relate to any question involving compliance or non-compliance, by a protected person, with the provisions of this Act or the rules of natural justice (procedural fairness).

(4) Accordingly, no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by the protected person, with those provisions or with those rules so far as they apply to the exercise of any protected function.

(5) This section has effect despite any provision of this Act or other legislation or any other law (whether written or unwritten).

(6) In this section:

exercise of functions includes:

- (a) the purported exercise of functions, and
- (b) the non-exercise or improper exercise of functions, and
- (c) the proposed, apprehended or threatened exercise of functions.

proceedings includes:

- (a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
- (b) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the *Supreme Court Act 1970*, but does not include any investigation or proceedings under the *Independent Commission Against Corruption Act 1988*.

20. **The Committee will always be concerned if a Bill purports to oust the jurisdiction of the courts. The Committee notes the importance of judicial review for protecting individual rights against potentially oppressive administrative action and the importance of upholding the rule of law.**
21. **The Committee is also concerned that the proposed section has the potential to deny a person natural justice by removing the opportunity for review of the exercise of functions (including the non-exercise or improper exercise of functions and the proposed or threatened exercise of functions), by the Director-General or the Commissioner of Police (including that of their delegates).**
22. **The Committee is of the view that the proposed section 58F of Part 7A could make individual rights and liberties appear unduly dependent on non-reviewable decisions and refers this to Parliament.**

The Committee makes no further comment on this Bill.

6. INDUSTRIAL RELATIONS FURTHER AMENDMENT (JURISDICTION OF INDUSTRIAL RELATIONS COMMISSION) BILL 2009

Date Introduced:	25 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General, Industrial Relations

Purpose and Description

1. This Bill amends the *Industrial Relations Act 1996* to make further provision with respect to the jurisdiction of the Industrial Relations Commission when constituted by Commissioners; and to amend other related legislation by way of statute law revision.
2. The purpose of this Bill is to enable commissioners of the Industrial Relations Commission who are Australian lawyers to handle small claims for the recovery of moneys owed under an industrial instrument.
3. It also makes minor amendments to the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009* that relate to the commencement of the *Local Court Act 2007*.
4. When the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009* commences, that Act will abolish the Industrial Magistrate's Court. The jurisdiction of the Industrial Magistrate's Court will then transfer to the Industrial Court, although the Local Court sitting in designated rural and regional places will be able to exercise the jurisdiction of the former Industrial Magistrate's Court. Procedures for small claims matters in the industrial relations jurisdiction will be similar, regardless of whether the matter is being heard by the Industrial Court or a Local Court sitting in a designated place.

Background

5. This Bill aims to ensure that the Industrial Court will provide a simple, low-cost regime for small claims matters. It aims to ensure that the quick and cheap regime of the Local Court is reflected in the Industrial Court.
6. It follows the recommendations made by the President of the Industrial Relations Commission. The President recommended that commissioners who are Australian lawyers be able to exercise jurisdiction over small claims matters within the Industrial Court.
7. The Industrial Court is the part of the Industrial Relations Commission that exercises judicial power. The recommendation of the President was subject to consultations aimed at preparing the Industrial Court for the commencement of the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009*.

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8. According to the Agreement in Principle speech, the Bill will seek to improve the efficiency and operation of the Industrial Court upon the commencement of the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009*. The Industrial Magistrate's Court currently handles a significant number of claims for unpaid entitlements, many of which are small claims. As part of the Local Court, the Industrial Magistrate's Court may use assessors of the Local Court to determine small claims. Assessors in the Local Court must be Australian lawyers, but they are not judicial officers.

The Bill

9. The object of this Bill is to allow Commissioners of the Industrial Relations Commission who are Australian lawyers to hear and determine small claims applications for orders for the recovery of remuneration and other amounts payable by employers. The Bill also amends other related legislation by way of statute law revision.

10. Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation. However, an amendment made by Schedule 2 to the proposed Act will commence immediately before the amending provision that it amends.

Schedule 1 Amendment of *Industrial Relations Act 1996 No 17*

The *Industrial Relations Act 1996 (the principal Act)* confers jurisdiction on the Industrial Relations Commission in Court Session and the Local Court constituted by an Industrial Magistrate to hear and determine small claims applications for orders for the recovery of remuneration and other amounts payable by employers. (Uncommenced amendments made by another Act to the principal Act abolish the office of Industrial Magistrate and confer this jurisdiction of an Industrial Magistrate instead on the Local Court sitting at a designated place.) The maximum amount that an employer may be ordered to pay on a small claims application is currently \$20,000. The Industrial Relations Commission (if it is not constituted as the Commission in Court Session) may deal with a small claims matter only if the matter arises in the course of other proceedings before the Commission.

In amending the definition of *industrial court* in section 364 of the principal Act, **Schedule 1 [2]** will enable a Commissioner of the Industrial Relations Commission who is an Australian lawyer to hear and determine "stand alone" small claims applications (that is, without the matter having to arise in the course of other proceedings). **Schedule 1 [1]** makes a consequential amendment.

Schedule 2 Amendment of *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 No 32*

Schedule 2 makes various amendments to the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009* by way of statute law revision (mostly to enable certain amendments made by that Act to be incorporable as intended by that Act).

Issues Considered by the Committee

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

Issue: Clause 2 (1) - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

11. The Committee notes that the proposed Act is to commence on a day to be appointed by proclamation (except as provided by clause 2 (2) an amendment made by Schedule 2 to a provision of the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commissions) Act 2009*). 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 Act will commence on proclamation to allow procedures to be put in place so that the transfer of jurisdiction occurs with as little disruption as possible".

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| <p>12. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

7. LIQUOR AND REGISTERED CLUBS LEGISLATION AMENDMENT BILL 2009

Date Introduced:	24 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Kevin Greene MP
Portfolio:	Gaming and Racing

Purpose and Description

1. This Bill amends the Liquor Act 2007 to make further provision with respect to trading on restricted trading days, the sale of liquor under certain producer/wholesaler licences, dealing with disturbance complaints, and other miscellaneous matters; to amend the Registered Clubs Act 1976 to make further provision with respect to the membership of clubs; and for other purposes.
2. The right for hotels and on-premises licences to use existing extended trading hours on Good Friday and Christmas Day morning was restored in December last year under the Liquor Amendment (Restricted Trading Days) Regulation 2008. This will be amended in the Liquor Act to avoid confusion and to ensure certainty.
3. The Bill includes amendments to ensure that trading that was permitted under the former Liquor Act for restaurants on Good Friday and Christmas Day will continue. However, restrictions on Good Friday and Christmas Day trading for hotels and bottle shops that applied under the former Liquor Act will still remain under the new Act.
4. The previous Liquor Act allowed all wine producers to sell their own cider, perry and mead at their cellar door. This Bill amends the Liquor Act to restore this right for metropolitan wine producers.
5. Cider, perry and mead producers will also be permitted to make cellar door sales as well as sales at wine shows and producers' markets. The Liquor Act now allows non-metropolitan brewers and distillers to sell their own product directly to the public at their licensed premises. This Bill will extend this for metropolitan brewers and distillers, and also to clarify that sales are not restricted to products in bottles.
6. Some shopping centre operators have bars or restaurants within their centres that may wish to hold the liquor licence for those premises while leasing or subleasing to a separate business operator. The current law prohibits against this. The Bill will amend the Liquor Act to allow for the approval of leasing or subleasing of premises in a shopping centre where liquor is sold for on-premises consumption. The authority will impose controls through their licence conditions.
7. Amendments will make it clear that the Director General is not limited to the complaint process set out in Division 3 of Part 5 of the Liquor Act in dealing with complaints. It also clarifies that the Director General can deal with a complaint quickly by allowing consideration of written submissions made by complainants and responses provided by licensees without having to hold a conference. It will ensure

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that the Director General is able to make the changes to liquor licence conditions when determining a complaint. Parties will be given the opportunity to make submissions to the Director General before a complaint is determined.

8. The previous Liquor Act contained a provision requiring persons to answer any question asked by a special inspector or a police officer in relation to records, documents and other things that could be seized under that Act. The Casino, Liquor and Gaming Control Authority Act contains a similar requirement. However, the requirement applies only to licensing inspectors, not to police. The Bill amends the Act to ensure that police have the same powers as licensing inspectors.
9. The Casino, Liquor and Gaming Control Authority Act provides that an inspector may require a person to furnish information or records in connection with any matter relating to the responsibilities or functions of the authority under the gaming and liquor legislation. However, the requirement does not extend to information or records in connection with the responsibilities or functions of an inspector, the Director General or the Commissioner of Police. The Bill clarifies that a person may be required by an inspector or the Commissioner of Police to furnish information and/or records in connection with any matter relating to the responsibilities or functions of an inspector, the Director General and the Commissioner of Police.
10. These powers may only be exercised in relation to the administration of the liquor and gaming laws and the promotion of the objects of those laws.
11. The amendments provide that business owners can apply to transfer a liquor licence in appropriate circumstances, such as when the licensee is dismissed from or leaves the business. It makes it clear that where a Local Court imposes conditions on a liquor licence as a result of a prosecution for a breach, those conditions can subsequently be varied or revoked upon application.
12. Key official provisions in the Casino, Liquor and Gaming Control Authority Act will be amended to make it clear that a key official must not be a close associate of an applicant for, or the holder of, a gaming or liquor licence. Various information provision requirements in the Liquor Act relating to persons interested in a liquor licence will be aligned to ensure consistency.
13. The operation of club manager requirements in the Liquor Act will be clarified so it is clear that all clubs must have a manager who is responsible under the liquor laws for the operation of the club's licence.
14. The Bill provides additional savings and transitional provisions associated with the abolition of the former Liquor Administration Board so that it is clear functions exercised by the former board can be exercised by the Casino, Liquor and Gaming Control Authority.

Background

15. The new Liquor Act commenced on 1 July 2008. A new administrative licensing system replaced the former court-based regime, and liquor licence categories were changed to reduce red tape and costs. Some implementation issues have arisen with the new laws. They require amendments to the *Liquor Act 2007*, the *Casino, Liquor and Gaming Control Authority Act 2007* and the *Registered Clubs Act 1976*.

16. The proposed amendments also arose from a review by the Independent Pricing and Regulatory Tribunal [IPART], which examined the economic contribution clubs make to the community in New South Wales; the commercial, social and regulatory pressures on clubs; and other emerging industry trends. The IPART review looked at club governance issues, reducing red tape, improving financial management, and training and development needs.
17. IPART's report contained 69 recommendations to support the future viability of clubs. Many of the recommendations relate to financial reporting and benchmarking, education and training to improve club management, diversification of club operations, and measures to ensure industry viability. The current focus is on recommendations relating to corporate governance, constitutional reform, an industry management plan and a club viability panel.
18. This Bill implements recommendations to remove unnecessary regulatory restrictions on clubs. Clubs are diversifying their activities in order to generate revenue from other income-producing streams. Currently, the Registered Clubs Act prohibits clubs from providing off-site catering at functions sponsored by, and paid by, persons who are not members of the club. This Bill will amend the Act so that clubs can cater off-site to non-club members. This aims to enable clubs to expand their business and be competitive in the market.
19. Some clubs cater for holidaymakers and business travellers who frequent the club during their stay. These people usually enter clubs as temporary members. However, the Registered Clubs Act currently requires these temporary members to sign a register each time they enter a club's premises. Amendments will enable clubs to adopt more flexible sign-in procedures for temporary members. Clubs will be allowed to issue temporary memberships for a consecutive period not exceeding seven days, with the Casino, Liquor, Gaming and Control Authority able to approve longer periods of up to 30 consecutive days.
20. The Registered Clubs Act also restricts membership numbers, and requires that clubs seek regulatory approval if they want to increase membership numbers. This restriction was introduced many years ago to address issues relating to overcrowding in club venues. The enactment of planning and fire safety laws over time has made this provision redundant. The Bill will delete this provision from the Registered Clubs Act.

The Bill

21. The object of this Bill is to amend the *Liquor Act 2007* as follows:
 - (a) to clarify the trading hours that apply to hotels and certain licensed premises (such as restaurants) on Good Friday and Christmas Day,
 - (b) to restrict the granting of extended trading authorisations for hotels and licensed public entertainment venues in relation to Good Friday and Christmas Day,
 - (c) to enable cider, perry and mead producers, and beer and spirits producers, to sell their own products on their licensed premises directly to the public (ie cellar door sales),
 - (d) to modify the way in which the Director-General of Communities NSW may deal with complaints about the disturbance caused by or in relation to licensed premises,
 - (e) to make other amendments of a minor, administrative or consequential nature.

The Bill also amends the *Registered Clubs Act 1976* and the *Casino, Liquor and Gaming Control Authority Act 2007*:

- (a) to provide for persons to be admitted as temporary club members for a period of up to 7 consecutive days (or for a period of up to 30 consecutive days with the approval of the Casino, Liquor and Gaming Control Authority (***the Authority***)), and
- (b) to remove provisions restricting membership numbers for clubs, and
- (c) to make other minor amendments of an administrative or consequential nature.

22. 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 *Liquor Act 2007* No 90

Restricted trading days:

Schedule 1 [5] makes it clear that a hotel may continue to trade in the early hours of a restricted trading day (ie from midnight to 5 am on that day) if that period of trading is authorised by an extended trading authorisation under the Act. At present, the Act provides that a hotel can only trade from noon to 10 pm on a restricted trading day, which would have the unintended consequence of preventing the hotel from using its late trading authorisation (if any) in continuation of the previous night. The existing requirement for hotels to provide meals with the service of liquor from noon to 10 pm on Christmas Day is not affected.

Schedule 1 [4] also makes it clear that the restrictions on trading on Good Friday and Christmas Day do not apply in relation to the sale or supply of liquor to persons who are staying in accommodation at a hotel or to their guests.

Schedule 1 [6] makes similar provision in relation to on-premises licences (such as restaurants and public entertainment venues). Some of these licensed premises may have an authorisation for late trading at the start of a restricted trading day and the amendment makes it clear that any such late trading is not affected during the early hours of the restricted trading day. The amendment also makes it clear that a meal must be served at a table on the licensed premises at all other times while liquor is authorised to be sold on the premises on a restricted trading day. **Schedule 1 [7]** provides that the restrictions on the sale or supply of liquor on a restricted trading day do not apply in relation to persons who are staying in licensed accommodation premises.

Schedule 1 [19] provides that an extended trading authorisation may be granted in relation to an on-premises licence at certain times on a restricted trading day (subject to the requirement under section 25 (3) of the Act that a meal is also served).

Schedule 1 [21] provides that an extended trading authorisation cannot be granted in relation to a hotel or a licensed public entertainment venue (other than a cinema or theatre) during certain times on or in relation to a restricted trading day (ie between 5 am and noon, between 10 pm and midnight and from midnight to 5 am on the day following a restricted trading day).

Producer/wholesaler licences:

Schedule 1 [9]–[12] and [17] provide that licensees who carry on business as cider, perry or mead producers may, in a similar fashion to licensed wine producers, sell their own product directly to the public (ie cellar door sales) or at wine shows or producers' markets or fairs. **Schedule 1 [23]** makes it clear that drink on-premises authorisations under section 50 of the Act will be available for cider, perry or mead producers. **Schedule 1 [13]–[16]** will enable brewers and distillers, regardless of where they are located, to sell their own product directly to the public and in any type of sealed container.

Disturbance complaints:

Schedule 1 [29] provides that the Director-General of Communities NSW may deal with a complaint under section 79 of the Act (which relates to disturbances in or about licensed premises) by convening a conference or by inviting written submissions and deciding the matter without a conference. It is also made clear that the Director-General is not required to take any action in relation to a complaint or can take other action in relation to a complaint (an example of which might be to attempt to settle the matter otherwise than under the provisions of the Act). If a conference is convened, the parties are not entitled to be legally represented.

Schedule 1 [30] provides that the decisions that may be taken by the Director-General after dealing with a complaint about licensed premises include varying or revoking the conditions to which the licence is subject. **Schedule 1 [31]** provides that certain matters that the Director-General is required to take into consideration before making a decision (such as the order of occupancy between the licensed premises and the complainant) are relevant to any decision by the Director-General and not just the decision to impose conditions.

Miscellaneous:

Schedule 1 [1] and [2] are consequential on a recent administrative changes order that provides for references to the Director of Liquor and Gaming to be construed as references to the Director-General of Communities NSW.

Schedule 1 [3] makes it clear that the secretary of a registered club is, in the case of a club that has only 2 sets of premises that are not remote from each other or have a small number of staff, taken to be the manager of the premises for the purposes of the Act.

Schedule 1 [20] enables a hotel to be granted an extended trading authorization from midnight to 5 am on a Monday in connection with a special occasion.

Schedule 1 [18] and [22] are consequential amendments.

Schedule 1 [24] enables the regulations to specifically provide exceptions to the requirement under section 55 of the Act to provide information in relation to persons who are interested in the business conducted under a liquor licence.

Schedule 1 [25] provides that, in the case of a limited licence, incidents that occur between midnight and 3 am in or in relation to the licensed premises are required to be recorded in the incident register under section 56 of the Act.

Schedule 1 [26]–[28] provide for the owner of the business carried on under a liquor licence to apply to the Authority to take over as licensee if the licensee is no longer employed by the business owner.

Schedule 1 [32] will enable a licensee who is the owner of premises situated in a shopping centre, and who also owns all the other premises in the shopping centre, to lease the licensed premises to another person.

Schedule 1 [33] makes it clear that the requirement to notify the Authority if licensed premises cease to trade during a continuous period of more than 6 weeks does not apply in the case of a limited licence.

Schedule 1 [34] and [35] provide that a court may, on application, vary or revoke the conditions that it has imposed on a licence.

Schedule 1 [36] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [37] preserves any extended trading hours that applied on a restricted trading day in relation to an existing on-premises licence under the former Liquor Act.

Schedule 1 [38] enables the Authority to determine social impact assessments that were pending under the former Liquor Act before its repeal and to deal with other transitional matters.

Schedule 1 [39] provides that the amendments made by the proposed Act in relation to disturbance complaints extend to existing complaints.

Schedule 2 Amendment of *Registered Clubs Act 1976 No 31*

Schedule 2 [1] and [4] remove provisions that place a limit on the number of members that a club must have. **Schedule 2 [2]** removes the prohibition on a club providing catering services away from the club premises.

Schedule 2 [8] provides for persons to be admitted as temporary members of a club for a period of up to 7 consecutive days (or for a longer period of up to 30 consecutive days with the approval of the Authority). **Schedule 2 [7] and [9]** provide that a register must be kept of temporary members who are admitted for such an extended period (such a member is only required to sign in on the first occasion the person enters the club and not on each day of the temporary membership).

Schedule 2 [13] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 3 Amendment of *Casino, Liquor and Gaming Control Authority Act 2007 No 91*

Schedule 3 [1]–[3] replace references in the Act to the Director of Liquor and Gaming with references to the Director-General of Communities NSW.

Schedule 3 [4] updates a reference to those police officers who, along with the Commissioner of Police, are subject to certain restrictions as “key officials” under the gaming and liquor legislation.

Schedule 3 [5] provides that key officials within the meaning of the Act cannot be a close associate of a person who is an applicant for, or the holder of, a gaming or liquor licence. An example of a close associate is someone who has a financial interest in the business of a licensee.

Schedule 3 [6] and [7] confer on police officers certain powers that may currently be exercised by the Authority or an inspector, such as the power to require the production of information or records, or to answer questions, in relation to matters arising under or in connection with the gaming and liquor legislation.

Schedule 3 [8] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Issues Considered by the Committee

<p>23. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p>

The Committee makes no further comment on this Bill.

8. PREVENTION OF CRUELTY TO ANIMALS AMENDMENT BILL 2009

Date Introduced:	25 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Ian MacDonald MP
Portfolio:	Primary Industries

Purpose and Description

1. The object of this Bill is to amend the *Prevention of Cruelty to Animals Act 1979*: (the Act)
 - (a) to increase the maximum penalties that may be imposed for offences under the regulations relating to animal trades and the confinement or use of laying fowl for commercial egg production, and
 - (b) to make it an offence to fail to comply with a notice issued by an inspector in relation to an animal.

Background

2. The intention of the Bill is to improve the welfare of caged layer hens by increasing the maximum penalty for breaches of the *Prevention of Cruelty to Animals (General) Regulation 2006* (the Regulation). In January 2008, the *Prevention of Cruelty to Animals (General) Amendment (Laying Fowl) Regulation 2007* amended the Regulation to improve the welfare of caged hens.
3. The Regulation specifies cage sizes, including the minimum floor area for hens, cage height and door size. In addition to the standards for caged layers, the Regulation also specifies minimum standards for laying hens kept in sheds, in particular in relation to provision of food and water, the size of nests and nest boxes, the height of sheds and the number of hens that can be kept in a particular area.
4. As stated in the Agreement in Principle Speech, there was extensive consultation with industry in the development and implementation of the Regulation and the majority of egg producers invested heavily in new cage systems. However, as also stated in the Agreement in Principle Speech “some egg producers are still failing to comply with the new requirements and the penalty level is an insufficient deterrent”.
5. Accordingly, the intention of the Bill is to create a deterrent by the increasing penalties to assist enforcement agencies such as the RSPCA to ensure compliance with the Regulation. Currently, the maximum penalty that can be imposed for a breach of the regulations for caged layer hens is 25 penalty units (\$2,750).
6. Proposed section 35 will provide that the maximum penalty for breaches of the Regulation with respect to animal trades or the confinement or use of laying fowl for commercial egg production to be increased from 25 penalty units (\$2,750) to 50 penalty units (\$5,500) for individuals, and 200 penalty units (\$22,000) for

Prevention of Cruelty to Animals Amendment Bill 2009

corporations. As stated in the Agreement in Principle Speech, the Bill will make the penalties in NSW consistent with those in Queensland and Western Australia.

7. The Bill also makes amendments regarding to failure to comply with an inspector's notice under the Act. Under the Act, if an RSPCA inspector is satisfied that a person is in breach of the Act or the Regulation relating to the care of an animal, the inspector can issue a notice. The notice provides the actions that a person must take for the care of the animal to avoid further contravention of the Act.
8. Accordingly, the Bill amends section 24N of the Act broaden the scope of inspector's notices. Currently, notices must relate to the "care of an animal", however, there are a number of provisions in the Act and the Regulation that relate to behaviour towards an animal that may fall outside the meaning of "care of an animal". The proposed amendment will allow inspector's notices to apply to any contravention of the Act or Regulation ("in relation to an animal") not just those that are considered to fall within the meaning of "care of an animal".
9. Finally, the Bill introduces a provision that will make failing to comply with an inspector's notice an offence that is subject to a maximum penalty of 25 penalty units (\$2,750). As stated in the Agreement in Principle Speech, this provision is part of the commitment made by the Primary Industries Ministerial Council to standardise animal welfare legislation in all jurisdictions.

The Bill

10. Outline of provisions

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

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

Schedule 1 Amendment of Prevention of Cruelty to Animals Act 1979 No 200

Schedule 1 [1] revises the current provision of the *Prevention of Cruelty to Animals Act 1979* that enables an inspector to issue a notice to a person if the inspector is satisfied on reasonable grounds that the person is contravening a provision of the Act or the regulations. The current provision allows the inspector to specify in the notice the action that the inspector considers must be taken to avoid a further contravention. The notice can be used as evidence in proceedings against a person for a contravention of the Act or the regulations.

Under the new provisions, a person will be required to take the action specified in the notice and it will be an offence for a person to fail, without reasonable excuse, to comply with such a notice. The maximum penalty will be 25 penalty units (currently, \$2,750). A person will not be able to be convicted for both the new offence and another offence against the Act or the regulations in respect of the same act or omission. The amendment removes the provision relating to the use of a notice as evidence in proceedings, as it is no longer required as a consequence of the creation of the new offence. The amendment also broadens the power of an inspector to issue a notice so that a notice may be issued in respect of any contravention of the Act or the regulations in relation to an animal and not only in relation to the care of an animal as is currently the case.

Schedule 1 [2] increases the maximum penalty that may be imposed for offences under the regulations in relation to animal trades and the confinement or use of laying fowl for commercial egg production from 25 penalty units to 200 penalty units for a corporation and 50 penalty units for an individual.

Schedule 1 [3] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Issues Considered by the Committee

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| <p>11. 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.

9. ROAD TRANSPORT (DRIVER LICENSING) AMENDMENT (DEMERIT POINTS) BILL 2009*

Date Introduced:	25 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Mr Andrew Stoner MP
Portfolio:	The Nationals

Purpose and Description

1. This Bill amends the *Road Transport (Driver Licensing) Act 1998* to ensure that demerit points are not incurred by a person who is found guilty of, but not convicted in relation to, certain speeding and traffic light offences.
2. This Bill is introduced by the Liberal-Nationals Coalition to resolve an anomaly, where the courts in NSW can overturn an infringement notice under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, but the Roads and Traffic Authority still imposes the demerit points.
3. It amends the existing anomaly where the Roads and Traffic Authority can still impose demerit points even if the magistrate has dismissed the case. The Bill only applies to low-level speeding offences and traffic light offences.

Background

4. Currently, the magistrate might uphold the charge, the driver might be found guilty, and he or she may have to pay the designated fine and have the number of demerit points imposed. However, if the court waives the fine, the Roads and Traffic Authority should also waive the demerit points. Under the Bill, if the charge is dismissed under section 10 by the magistrate, the driver does not have to pay the fine nor has demerit points imposed for the offence.
5. Recently, the Government reverted to one demerit point for the lowest level speeding offences, which had attracted three demerit points.
6. Demerit points are incurred automatically once a driver pays the fine on the infringement notice. If drivers challenge it in court and the charge is dismissed under section 10 of the *Crimes (Sentencing Provisions) Act 1999*, the fine is quashed but the Roads and Traffic Authority still imposes the demerit points. When a driver incurs 12 demerit points, his or her licence is lost or suspended.
7. Section 10 offences relate to those when a person is found guilty but the court records no conviction. Currently, demerit points can be avoided if a driver defends himself or herself against the charge and is found not guilty. According to the Agreement in Principle speech:

However, a driver might have a legitimate reason for speeding. For example, a driver's wife might be pregnant and he might have been rushing her to hospital; there might be some other emergency situation; or the road signs might be found to be misleading or

Road Transport (Driver Licensing) Amendment (Demerit Points) Bill 2009*

confusing. The judge might understand those reasons but the Roads and Traffic Authority might not. Drivers might walk out of court without a fine but still with demerit points and possibly end up having their licences suspended if they have other demerit points against their record.

The Bill

8. The object of this Bill is to amend the *Road Transport (Driver Licensing) Act 1998* so that demerit points are not incurred by a person in relation to low-level speeding offences and traffic light offences if the person is found guilty of the offence but an order is made directing that the relevant charge be dismissed under section 10 (1) (a) of the *Crimes (Sentencing Procedure) Act 1999*.

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 the date of assent to the proposed Act.

Clause 3 inserts proposed section 15A into the *Road Transport (Driver Licensing) Act 1998* which gives effect to the changes described above in the Overview.

Issues Considered by the Committee

<p>10. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p>

The Committee makes no further comment on this Bill.

10. RURAL FIRES AMENDMENT BILL 2009

Date Introduced:	24 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Steven Whan MP
Portfolio:	Minister for Rural Affairs

Purpose and Description

1. The Bill amends the Rural Fires Act 1997 to make further provision in relation to the management of bush fire hazard reduction work, the investigation of rural fires and the functions of the NSW Rural Fire Service. The Bill also increases the penalty notice amounts for certain fire-related offences.
2. The object of this Bill is to amend the Rural Fires Act 1997:
 - (a) to provide that certain bush fire hazard management functions of local authorities (e.g. councils) are to be exercised instead by hazard management officers of the NSW Rural Fire Service;
 - (b) to enable the Commissioner of the NSW Rural Fire Service (the Commissioner) to enter and inspect land, with or without the consent of the owner or occupier, to investigate the cause or origin of a fire for up to 24 hours after the fire has been put out;
 - (c) to enable the Commissioner to apply for a search warrant to enter and inspect land to investigate the cause or origin of a fire;
 - (d) to enable an officer of a rural fire brigade to remove persons or things who or that are an interference from a fire or other emergency,
 - (e) to increase the penalty notice amounts for certain fire-related offences under the principal Act.

Background

3. The Bill has been introduced in response to the loss of life and destruction of property in Victoria on 7 February as well as the recommendations made in the Legislation, Criminal and Policy Review Division, NSW Attorney General's Department's Review of Bushfire Arson Laws and Penalties Report (April 2009) (the Report). The recommendations in the Report focused on increasing the penalties for minor but specific offences relating to bushfire arson; and providing new investigative powers to assist the Rural Fire Service in identifying fires that have been the result of arson.²
4. The Bill also transfers the responsibility for bushfire hazard reduction on private lands from local authorities such as local councils to the Commissioner of the NSW Rural Fire Service. As stated in the Agreement in Principle Speech:

² See also the Victorian Bushfires Royal Commission, Interim Report, August 2009; Damon A Muller, Using Crime Prevention to Reduce Deliberate Bushfires in Australia, The Australian Institute of Criminology, Research and Public Policy Series, No 98, 2009; and Mathew Willis, Bushfire Arson: a review of the literature, The Australian Institute of Criminology, Research and Public Policy Series, No 61, January 2004.

The New South Wales Rural Fire Service has, since 2002, taken on the vast majority of responsibility for private land hazard management on behalf of local councils under a conference arrangement...However, conferring the responsibility for hazard management is not without its difficulties. It has the potential to cause considerable confusion to members of the public regarding the bodies that are responsible for private land hazard management in New South Wales.

5. The Bill implements a number of the recommendations of the Report. For example, the Report recommended that appropriate officers of the Rural Fire Service be granted the same powers as those granted to officers of NSW Fire Brigades under section 19 of the *Fire Brigades Act 1989*.³ Accordingly, proposed section 22A gives power to an officer of a rural fire brigade to remove any person, vehicle, vessel or thing, which may interfere with the work of any rural fire brigade or the exercise of any of the officer's functions.
6. The Rural Fire Service investigates the cause and origin of a bushfire and if the cause of a fire appears suspicious the Rural Fire Service Commissioner refers the investigation to the NSW Police Force. As stated in the Agreement in Principle Speech, information about the cause and origin of fires is also provided to agencies such as the New South Wales Fire Brigades, the New South Wales Police Force, the National Parks and Wildlife Service, Forests New South Wales, insurance companies, and the Office of Fair Trading for various means such as the creation of a profile of a community's fire problems and the development of prevention programs.
7. The Bill also provides the Rural Fire Service Commissioner with the power to enter land, other than that used only for residential purposes to investigate the cause or origin of a fire on that land or any adjacent land up to 24 hours after the fire has been put out. For part of land used only for residential purposes, or if more than 24 hours have elapsed since the fire was extinguished, a search warrant will be required under proposed section 33C.
8. Under proposed section 33C, the Commissioner can apply to an authorised officer for a search warrant if the Commissioner reasonably believes entry onto the land is necessary in order to investigate the cause or origin of a fire. The *Law Enforcement (Powers and Responsibilities) Act 2002* will apply to search warrants issued under this proposed section.
9. Finally, the Bill increases the penalty for certain penalty notice offences under the Act to \$1,100, as recommended in the Report. The Bill doubles the penalties for failing to comply with hazard reduction notices (s 66(8)), lighting a fire during a total fire ban (s 99(6)), and leaving fires unattended (s 100(2)). As stated in the Agreement in Principle Speech: "These offences can have especially significant and adverse effects on lives and property, and a significant penalty is important to punish and deter such behaviour".

The Bill

10. Outline of provisions

³ Section 19 of the *Fire Brigades Act 1989* provides that: "The officer in charge at a fire or hazardous material incident may cause to be removed any person, vehicle, vessel or thing the presence of whom or which at or near a fire or hazardous material incident might, in the officer's opinion, interfere with the work of any fire brigade or the exercise of any of the officer's functions".

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.

Bush fire hazard reduction

Schedule 1 [9] replaces existing provisions that enable a local authority (ie a local council, the Western Lands Commissioner or the Lord Howe Island Board) to issue a notice to the owner or occupier of land to carry out bush fire hazard reduction work with provisions that enable such a notice instead to be issued by a hazard management officer of the NSW Rural Fire Service. The new provisions will operate as follows:

Proposed section 65A provides that the Commissioner may nominate a member of the NSW Rural Fire Service as a hazard management officer.

Schedule 1 [26] inserts a definition of *hazard management officer* for the purposes of the principal Act. Proposed section 65 enables authorised persons (who will now include hazard management officers) to carry out bush fire hazard reduction work on certain land with the permission of the appropriate persons or bodies.

Proposed section 66 enables a hazard management officer to require the owner or occupier of any land to carry out bush fire hazard reduction work on the land by a notice. An owner or occupier who fails to comply with such a notice is guilty of an offence. Proposed section 67 enables an owner or occupier of land on whom a notice requiring bush fire hazard reduction work has been served to lodge an objection with the hazard management officer.

Proposed section 68 provides for an appeal to be lodged with the Commissioner by a person who has lodged an objection.

Proposed section 69 enables a hazard management officer to enter land to determine whether a notice should be issued, or has been complied with, and requires the officer to notify certain authorities if notice is given and to keep records in respect of notices.

Schedule 2.2 [5] makes a consequential amendment. Proposed section 70 enables the Commissioner to carry out bush fire hazard reduction work required to be done by a notice if the owner or occupier of the land concerned fails to carry out the work. The cost of the work carried out by the Commissioner is recoverable from the owner or occupier.

Schedule 1 [1] provides that the Commissioner may delegate his or her functions under proposed section 70 to the Commissioner of NSW Fire Brigades.

Schedule 1 [10] and Schedule 2.2 [6] make consequential amendments.

Schedule 1 [12] substitutes an existing provision that requires local authorities and public authorities to make annual reports to the Commissioner in respect of bush fire hazards so that local authorities will no longer be required to report on bush fire hazard reduction notices.

Schedule 1 [14]–[16] provide that the Commissioner is to have the sole responsibility for investigating and taking action in respect of bush fire hazard complaints (currently a local authority also has that responsibility). This includes carrying out bush fire hazard reduction

work if an owner or occupier of land or public authority fails to do so after being notified that work should be done.

Schedule 1 [13] provides that a local authority is to refer a bush fire hazard complaint made to it to the Commissioner.

Schedule 1 [11] makes a consequential amendment.

Schedule 1 [17] provides that the Commissioner, in addition to a local authority, may issue a bush fire hazard reduction certificate relating to work carried out by persons (other than the Commissioner or a local authority) on private land.

Schedule 1 [18] makes a consequential amendment.

Power to remove persons or obstacles

Schedule 1 [2] authorises an officer of a rural fire brigade or group of rural fire brigades to remove any person, vehicle, vessel or thing interfering at a fire, incident or other emergency.

Power to enter land to investigate fires

Schedule 1 [3] inserts proposed Division 3A of Part 2 (proposed sections 33A–33D) into the principal Act to provide the Commissioner with the express power to enter land in order to investigate the cause or origin of a fire on that land or on any adjacent land. This power of entry would be exercisable in situations where the owner or occupier of the land does not consent to the entry by, for example, an officer of a rural fire brigade who is seeking to investigate the cause or origin of a fire.

Proposed section 33A provides that the object of the proposed Division is to assist in the prevention of fires by expressly authorising entry onto land to investigate the cause or origin of a fire.

Proposed section 33B authorises the Commissioner to enter and inspect land (other than residential premises), with or without the consent of the owner or occupier of that land, to investigate the cause or origin of a fire that has occurred on that land or any adjacent land, but only up to 24 hours after the fire has been put out.

Proposed section 33C enables the Commissioner to apply for a search warrant for any land if the Commissioner reasonably believes that entry onto the land is necessary for the purposes of the investigation of the cause or origin of any fire that has occurred on that land or any adjacent land.

Proposed section 33D provides that the powers of entry in proposed section 33B or 33C may be exercised by the Commissioner of NSW Fire Brigades and provides that the Commissioner of the NSW Rural Fire Service may delegate the powers of entry to a fire fighting authority.

Schedule 2.1 makes a consequential amendment to enable the Commissioner of NSW Fire Brigades to delegate his or her functions under any Act (in addition to the *Fire Brigades Act 1989*).

Penalty notices for certain fire-related offences

Schedule 2.2 [8] and [9] increase the amount (to \$1,100 in each case) of a penalty notice that may be issued for the following fire-related offences under the principal Act:

- (a) failing to comply with a bush fire hazard reduction notice (section 66 (8)),
- (b) lighting a fire in contravention of a direction from the Minister (section 99 (6)),
- (c) leaving a fire in the open air before the fire is thoroughly extinguished (section 100 (2)).

Other amendments

Schedule 1 [4]–[8], [19]–[22] and [25] and **Schedule 2.2 [1]–[4]** update various references to Ministers, Departments, bodies and officers.

Schedule 1 [23] inserts a savings and transitional regulation-making power.

Schedule 1 [24] inserts savings and transitional provisions as a consequence of the enactment of the proposed Act.

Schedule 2.2 [7] provides that a notice of intention to burn off or burn a firebreak is to now include the name of the person proposing to light the relevant fire.

Issues Considered by the Committee

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

Issue: Proposed section 22A - Power to remove persons or obstacles

11. Proposed section 22A reads that an “officer of a rural fire brigade or group of rural fire brigades may cause to be removed any person, vehicle, vessel or thing the presence of whom or which at or near a fire, incident or other emergency might, in the officer’s opinion, interfere with the work of any rural fire brigade or the exercise of any of the officer’s functions”.
12. As stated in the Agreement in Principle Speech, although a person is entitled to defend his or her property against fire or other emergency, by clearing persons and obstacles from the site of a fire or other emergency, officers of rural fire brigades are able to focus on defending threatened property and suppressing the hazard, without the additional concern of ensuring the safety of untrained members of the public who choose to stay on the site.
13. Proposed s 22A was introduced in response to a recommendation that appropriate officers of the Rural Fire Service be granted the same powers as granted to officers of NSW Fire Brigades under section 19 of the *Fire Brigades Act 1989*. However, as highlighted in the Report, proposed section 22A: “contemplates specific action taken against individuals, in some cases against their common law rights”.

14. The Committee is of the view that proposed section 22A may abrogate certain common law rights relating to trespass and personal property. However, the Committee understands that the grant of power in proposed section 22A may be in the public interest and required in certain circumstances to protect members of the public.

Issue: Part 2, Division 3A - Proposed 33B - Power to enter land up to 24 hours after fire

15. As stated in the Report, the investigation of bushfires to ascertain their cause often involves entry onto private property. There are currently a number of ways that investigators are empowered to enter and investigate on such property, including:
 - with the consent of the owner or occupier of the land;
 - establishing a crime scene pursuant to part 7 of the *Law Enforcement (Powers and Responsibilities) Act 2002*; or
 - with a search warrant under part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.
16. As stated in the Attorney General's Department's Report, in many cases the investigation is conducted with the consent of the owner or occupier of the land. In situations where consent from the owner or occupier is not forthcoming, where there are reasonable grounds to believe that an offence has been committed and the fire requires criminal investigation immediately, relevant police powers can be used by the police with the assistance of the Rural Fire Service.
17. According to the Report, where a fire is not obviously suspicious and consent cannot be obtained from the owner or occupier, the Rural Fires Service has previously relied on section 23 of the Act for the power of entry. Section 23 of the Act provides that an officer of a rural fire brigade or group of rural fire brigades may enter any premises for the purpose of exercising any function conferred or imposed on the officer by or under this Act. In its submission to the Attorney General's Department, the Rural Fire Service asked that consideration be given to specific legislative powers of entry for the NSW Rural Fire Service.
18. The Report recommended that the Act be amended to provide to designated Fire Investigation Officers of the Rural Fire Service, the power to enter any land upon which a bushfire has occurred for the purposes of investigation for a period of up to 24 hours after a fire has been declared out. As stated in the Report:

In a bushfire situation, it might be necessary for the Rural Fire Service to enter property in the immediate aftermath of a fire, to consider evidence which might quickly be destroyed. In that situation, designated Fire Investigation Officers of the Rural Fire Service should have a standing power to enter any land upon which a bushfire has occurred for the purposes of investigation for a period of up to 24 hours after the has been formally declared out by the Rural Fire Service.
19. Proposed Part 2, Division 3A provides the above powers to the Commissioner of the NSW Rural Fire Service, which may be delegated to officers of NSW Rural Fire Service. Section 33B reads that that "Commissioner may enter and inspect any land for the purposes of investigating the cause or origin of any fire that has occurred on that land or any adjacent land, but only for a period of up to 24 hours after the fire has been put out".
20. Under proposed section 33B, this power may be exercised with or without the consent of the owner or occupier of the land. However, proposed section 33B (3) reads that section 33B "does not authorize the Commissioner to enter any part of land used only for residential purposes without the authority of a search warrant under section 33C or the consent of the owner or occupier of the land concerned".

21. As stated in the Report, the proposed powers in section 33B relating to powers of entry contemplate specific action taken against individuals, in some cases against their common law rights. The Report recommended that it would not be appropriate to grant a timeless power to trespass upon a person's property. Accordingly, in proposed section 33B, the power to enter land to investigate the cause or origin of a fire is provided for a period of up to 24 hours after the fire has been put out.

22. The Committee is of the view that proposed section 33B may abrogate certain common law rights relating to trespass and personal property. However, the Committee understands that the grant of power in proposed section 33B is intended to allow the NSW Rural Fire Service to investigate the cause or origin of a fire. The Committee also notes that the power to entry is not a "timeless power" but rather is only provided for a period of up to 24 hours after the fire has been put out to provide for an investigation of the cause and origin of a fire.

Issue: Proposed section 33C – Search Warrants

23. The Report also recommended that in order to allow for situations where it is not possible to investigate in the immediate aftermath of the fire, or where investigation at a later time is required after the period of 24 hours has elapsed, consideration should be given to providing Fire Investigation Officers of the Rural Fire Service the option of applying to an authorised officer for a warrant to investigate the cause of the fire further.

24. The Report also recommended that the "warrants would only be available for the purposes of investigating the cause of the fire when the cause is not known. That is, they will be available only when a fire is *not* reasonably suspected to have been caused by criminal action as in that event, the powers available to police would suffice".

25. Further, it recommended that "warrants should also be limited to privately owned bushland as they are concerned ascertaining the cause of bushfires. They would not extend to allow investigators to enter homes or other built up premises". Further the Report recommended that, given the "extra-ordinary nature of these warrants, they should be limited in further ways and therefore further detailed consideration of this proposal and necessary safeguards is necessary".

26. Proposed section 33C(1) reads the "Commissioner may apply to an authorised officer for a search warrant for any land if the Commissioner reasonably believes that entry onto the land is necessary for the purposes of the investigation of the cause or origin of any fire that has occurred on that land or any adjacent land".

27. Proposed section 33C (2) reads that "An authorised officer to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Commissioner or any other person named in the warrant to enter land for the purposes of the investigation of the cause or origin of any fire that has occurred on that land or any adjacent land".

28. The Committee understands that the intention of proposed section 33C is to provide the NSW Rural Fire Service with powers to investigate a fire in its aftermath. However, the Committee notes that the proposed powers in section 33C may unduly trespass on personal rights and liberties and refers the matter to Parliament.

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

Issue: Proposed section 33D – Functions of the Commissioner that may be exercised by others – Insufficient criteria regarding the scope of persons to whom a power may be delegated

29. Proposed section 33D reads that any “function conferred or imposed on the Commissioner under section 33B or 33C may be exercised by the Commissioner of NSW Fire Brigades, but only to the extent that the function is exercisable in respect of land within a fire district”.
30. The Committee has concerns that insufficient criteria is provided regarding scope of persons to whom the Commissioner may delegate certain functions. The Committee is concerned that the powers proposed in sections 33B and 33C may be exercised as by officers of the NSW Rural Fire Service that are not appropriately qualified and trained to carry out the functions in these proposed sections.

31. Proposed section 33D provides that any function conferred or imposed on the Commissioner by these sections may be delegated to a fire fighting authority or a member of staff of a fire fighting authority. The Committee believes that the powers in the proposed Bill could be more clearly defined to specific which officers may be appropriately delegated certain powers by the NSW Rural Fire Service Commissioner.

Issue: Proposed Schedule 2.2 [8] and [9] - Children’s Rights; Excessive Punishment

32. Schedule 2.2 [8] and [9] would increase the maximum penalty for the commission of certain fire-related offences to \$1,100. This means that the proposed amendments will double the penalties for failing to comply with hazard reduction notices (s 66(8)), lighting a fire during a total fire ban (s 99(6)), and leaving fires unattended (s 100(2)).
33. The Committee understands that the intention of the proposed amendments is to act as a deterrent. As stated in the Agreement in Principle Speech: “These offences can have especially significant and adverse effects on lives and property, and a significant penalty is important to punish and deter such behaviour”.
34. However the Committee is aware that arson often involves children and young people, with 20% of fires in Australia though to be started by juveniles.⁴ The Committee also notes the NSW Police Force’s submission to the Attorney General’s Department noted the relatively high numbers of juveniles who commit bushfire related offences.

⁴ See also the Australian Institute of Criminology, Australian Juvenile Arson Intervention Programs, Bushfire Arson Bulletin, No 38, 21 November 2006; Damon A Muller and Ashley Stebbins, Juvenile Arson Intervention Programs in Australia, The Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice, No 335, May 2007

35. The Committee has concerns that the increased maximum penalties in proposed Schedule 2.2 [8] and [9] may have a disproportionate impact on children and young people. However, the Committee notes that child arsonists are usually dealt with differently from adults, for example specific provisions are made for children in the sentencing process through Youth Justice Conferencing.

Parliamentary scrutiny of legislative power [s 8A(1)(b)(v) LRA]

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

36. 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 notes the reasons provided by the Minister that administrative processes are required to be put into effect at the Rural Fire Service to satisfy the object of the Bill. However, the Minister also advised that it is expected that the Bill will be introduced immediately as it is anticipated that these changes will be soon be completed.

37. 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 B

11. TRANSPORT ADMINISTRATION AMENDMENT (RAIL TRAILS) BILL 2009

Date Introduced: 23 September 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon David Campbell MP
Portfolio: Transport

Purpose and Description

1. The object of this Bill is to amend the Transport Administration Act 1988 as follows:
 - (a) to allow the Minister for Transport to authorise, on a case by case basis and following public consultation, the closure of a disused railway line (so that a special Act of Parliament is no longer required to authorise closure),
 - (b) to allow railway tracks and other works relating to a railway line to be sold or disposed of without necessitating a closure of the railway line concerned,
 - (c) to allow the Minister for Transport to enter into an arrangement with the Minister for Lands for the management of a disused railway line as Crown land under the Crown Lands Act 1989, without necessitating a closure of the railway line concerned.

Background

2. According to the Minister at the present time there are just over 3,000 kilometres of non-operational rail lines across New South Wales where train services have ceased operating—some services ceased operating more than 30 years ago. This currently idle asset offers enormous potential benefit for communities in rural and regional New South Wales.
3. The bill introduces changes to allow for their use by the public through their development, especially as rail trails for walking, cycling or potentially horse riding. Rail trails are in place worldwide. Victoria, South Australia, Queensland, Tasmania and Western Australia have converted disused rail lines for rail trails. The Minister is aware that there are eight proposals for rail trails in New South Wales
4. The model involves transferring on a case-by-case basis disused corridors to the Lands Administration Ministerial Corporation within the Land and Property Management Authority, which then will work with community groups to develop the corridors as rail trails or for other community purposes. This is similar to rail trails model in Victoria. It is anticipated that in many cases the Land and Property Management Authority would pass the care, control and management of the corridor to a reserve trust manager, for example, a local council.
5. Proposals to formally close and sell a rail line would be subject to community consultation and, in assessing such a proposal, consideration would be given to relevant factors that could include why closure is being sought, the potential for

Transport Administration Amendment (Rail Trails) Bill 2009

reintroduction of train or other transport services and the broader public interest considering the views of key stakeholders and the local communities. The bill therefore enables the Minister for Transport to authorise, on a case-by-case basis and following public consultation, the closure of a line declared by the Minister to be a disused railway line. This would facilitate the sale of such corridors where appropriate.

The Bill

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

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

Schedule 1 Amendment of Transport Administration Act 1988 No 109

At present, section 99A of the *Transport Administration Act 1988* prevents a rail infrastructure owner from closing a railway line unless authorised by an Act of Parliament. A railway line is closed if the land concerned is sold or otherwise disposed of, or the railway tracks and other works concerned are removed.

Schedule 1 [1] repeals section 99A. Section 99A is replaced by new provisions relating to closure inserted by **Schedule 1 [2]**. The new provisions largely restate the existing provisions of section 99A, subject to the changes that are explained below.

Schedule 1 [5] enables savings and transitional regulations to be made as a consequence of the changes.

Closure of railway lines on case by case basis

The new provisions allow the Minister for Transport to authorise the closure of a disused railway line on a case by case basis, following public consultation. A special Act of Parliament will no longer be required. A disused railway line is a railway line, or a part of a railway line, declared by the Minister, by order published in the Gazette, to be a disused railway line. The Minister may authorise the closure of a disused railway line only after giving public notice of the proposal to close the railway line. The notice must invite submissions from the public in relation to the proposal. The Minister must have regard to submissions received during the submission period in deciding whether or not to authorize the closure of the railway line concerned.

Sale or other disposal of railway tracks and other works (without closure)

The new provisions allow a rail infrastructure owner to sell or otherwise dispose of railway tracks and other works used in connection with a railway line. This will no longer be regarded as a closure of the railway line concerned. However, the sale or other disposal of the land concerned will continue to require the authorisation of the Minister for Transport as referred to above.

Management of disused railway line as Crown land (without closure)

The new provisions allow the Minister for Transport to enter into an arrangement with the Minister for Lands for the management of a disused railway line as Crown land. For the purposes of the arrangement, the Minister for Transport may direct that any assets, rights or

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liabilities of a rail authority, or a subsidiary of a rail authority, relating to a disused railway line be transferred to the Lands Administration Ministerial Corporation. This type of arrangement is not a closure of the railway line. When land is transferred to the Lands Administration Ministerial Corporation under such an arrangement it becomes Crown land under the *Crown Lands Act 1989*. The land can be dedicated or reserved or otherwise dealt with as authorised by the *Crown Lands Act 1989*, subject to certain restrictions. In particular, the land cannot be sold, exchanged or otherwise disposed of. The new provisions allow the Minister to terminate an arrangement for the management of a disused railway line as Crown land if satisfied that the land concerned is required for transport purposes under the Transport Administration Act 1988. In such a case, the Minister may direct that any assets, rights or liabilities of the Crown relating to the land be transferred to a rail authority or a subsidiary of a rail authority. (Schedule 1 [3] and [4] are consequential amendments relating to this aspect of the new provisions.)

Issues Considered by the Committee

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| <p>6. The Committee has not identified any issues under section 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.

Appendix 1: Index of Bills Reported on in 2009

	Digest Number
Aboriginal Land Rights Amendment Bill 2009	10
Animal Welfare Legislation Amendment Bill 2009	12
Appropriation Bill 2009	9
Appropriation (Budget Variations) Bill 2009	4
Appropriation (Parliament) Bill 2009	9
Appropriation (Special Offences) Bill 2009	9
Associations Incorporation Bill 2009	2
Barangaroo Delivery Authority Bill 2009	2
Biofuel (Ethanol Content) Amendment Bill 2009	3
Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2009	11
Casino Control Amendment Bill 2009	9
Child Protection (Nicole's Law) Bill 2009*	13
Children and Young Persons (Care and Protection) Amendment Bill 2009	6
Children and Young Persons (Care and Protection) Amendment (Children's Employment) Bill 2009	2
Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009	2
Civil Procedure Amendment (Transfer of Proceedings) Bill 2009	6
Coroners Bill 2009	8
Courts and Other Legislation Amendment Bill 2009	8
Crimes (Administration of Sentences) Amendment Bill 2009	10
Crimes (Administration of Sentences) Amendment (Private Contractors) Bill 2009	2
Crimes (Appeal and Review) Amendment Bill 2009	2
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2009	11

	Digest Number
Crimes (Criminal Organisations Control) Bill 2009	5
Crimes (Forensic Procedures) Amendment Bill 2009	7
Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009	11
Crimes Legislation Amendment (Possession of Knives in Public) Bill 2009*	13
Crimes (Sentencing Procedure) Amendment (Council Law Enforcement Officers) Bill 2009	5
Criminal Legislation Amendment Bill 2009	6
Criminal Organisations Legislation Amendment Bill 2009	6
Crown Lands Amendment (Special Purpose Leases) Bill 2009	13
Education Amendment Bill 2009	3
Education Amendment (Educational Support For Children With Significant Learning Difficulties) Bill 2008*	1
Education Amendment (Publication of School Results) Bill 2009	9
Education Amendment (School Attendance) Bill 2009	13
Education Further Amendment (Publication of School Results) Bill 2009	11
Electricity Supply Amendment (Energy Savings) Bill 2009	7
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	8
Energy Legislation Amendment (Infrastructure Protection) Bill 2009	7
Fisheries Management Amendment Bill 2009	10
Food Amendment (Meat Grading) Bill 2008*	1
Game and Feral Animal Control Amendment Bill 2009	8
Garling Inquiry (Clinician and Community Council) Bill 2009*	5
Gas Supply Amendment (Ombudsman Scheme) Bill 2009	5
Government Information (Information Commissioner) Bill 2009	9
Government Information (Public Access) Bill 2009	9
Government Information (Public Access) (Consequential Amendments and Repeal) Bill 2009	9

	Digest Number
Greyhound Racing Bill 2009	5
Harness Racing Bill 2009	5
Hawkesbury-Nepean River Bill 2009	4
Health Legislation Amendment Bill 2009	4
Heritage Amendment Bill 2009	7
Home Building Amendment (Insurance) Bill 2009	6
Housing Amendment (Registrable Persons) Bill 2009	13
Hurlstone Agricultural High School Site Bill 2009	3, 6
Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009	4
Industrial Relations Further Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009	13
Land Acquisition (Just Terms Compensation) Amendment Bill 2009	7
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	2
Liquor Amendment (Special License) Conditions Bill 2008	1
Liquor Amendment (Temporary License Freeze) Bill 2009	11
Liquor and Registered Clubs Legislation Amendment Bill 2009	13
Local Government Amendment (Planning and Reporting) Bill 2009	10
Major Events Bill 2009	12
Mining Amendment (Safeguarding Land And Water) Bill 2009*	7
Motor Accidents Compensation Amendment Bill 2009	6
Motor Accidents (Lifetime Care And Support) Amendment Bill 2009	7
Motor Sports (World Rally Championship) Bill 2009	9
NSW Lotteries (Authorised Transaction) Bill 2009	8
NSW Trustee and Guardian Bill 2009	8
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	2

	Digest Number
National Parks and Wildlife (Broken Head Nature Reserve) Bill 2009	9
Occupational Health and Safety Amendment (Authorised Representatives) Bill 2009	11
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	8
Parliamentary Remuneration Amendment (Salary Packaging) Bill 2009	10
Parking Space Levy Bill 2009	3
Personal Property Securities (Commonwealth Powers) Bill 2009	9
Prevention of Cruelty to Animals Amendment Bill 2009	13
Protection of Public Ownership Bill 2009	12
Racing Legislation Amendment Bill 2009	5
Real Property Amendment (Land Transactions) Bill 2009	12
Real Property and Conveyancing Legislation Amendment Bill 2009	4
Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009	8
Road Transport (Driver Licensing) Amendment (Demerit Points) Bill 2009*	13
Road Transport (General) Amendment (Consecutive Disqualification Periods) Bill 2009	10
Road Transport Legislation Amendment (Traffic Offence Detection) Bill 2009	9
Rookwood Necropolis Repeal Bill 2009	8
Rural Fires Amendment Bill 2009	13
Rural Lands Protection Amendment Bill 2009	8
Shop Trading Amendment Bill 2009	12
State Emergency and Rescue Management Amendment Bill 2009	8
State Emergency Service Amendment Bill 2009	9
State Revenue Legislation Amendment Bill 2009	9
State Revenue Legislation Further Amendment Bill 2009	9
Statute Law (Miscellaneous Provisions) Bill 2009	9

	Digest Number
Surveillance Devices Amendment (Validation) Bill 2009	4
Succession Amendment (Intestacy) Bill 2009	5
Telecommunications (Interception and Access) (New South Wales) Amendment Bill 2008	1
Transport Administration Amendment (CountryLink Pensioner Booking Fee Abolition) Bill 2009	3
Transport Administration Amendment (Rail Trails) Bill 2009	13
Western Lands Amendment Bill 2008	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1		
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
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	8/08/09				10
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	6/02/09		9	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07	13/2/09	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	5/01/09		14	2
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07	22/01/09	1		2
Parking Space Levy Bill 2009	Minister for Transport	23/03/09	26/05/09			3, 8
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1, 2		
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1		
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2009

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Aboriginal Land Rights Amendment Bill 2009	N, R		N, R	N	
Animal Welfare Legislation Amendment Bill 2009		N			
Associations Incorporation Bill 2009		N, R			N, R
Barangaroo Delivery Authority Bill 2009	N				
Biofuel (Ethanol Content) Amendment Bill 2009	N			N	N, R
Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2009	R, N				
Child Protection (Nicole's Law) Bill 2009*	R, N				
Courts and Other Legislation Amendment Bill 2009	R, N				
Crimes (Administration of Sentences) Amendment Bill 2009	R, N, C	N, R	N, R		
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2009	R, N				
Crimes (Criminal Organisations Control) Bill 2009	R, N		R		
Crimes (Forensic Procedures) Amendment Bill 2009	N				
Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009	R, N				
Crimes Legislation Amendment (Possession of Knives in Public) Bill 2009*		R, N			
Criminal Legislation Amendment Bill 2009		N			
Criminal Organisations Legislation	R, N			N	
Crown Lands Amendment (Special Purpose Leases) Bill 2009		N, R			
Education Amendment (School Attendance) Bill 2009	R, N			N	
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	N				
Fisheries Management Amendment Bill 2009	R, N			N	
Game and Feral Animal Control Amendment Bill 2009	R, N				

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Gas Supply Amendment (Ombudsman Scheme) Bill 2009				N	
Greyhound Racing Bill 2009				N	
Harness Racing Bill 2009				N	
Hawkesbury-Nepean River Bill 2009				N	
Health Legislation Amendment Bill 2009	N				
Heritage Amendment Bill 2009	N			N, R	
Home Building Amendment (Insurance) Bill 2009	N				
Housing Amendment (Registrable Persons) Bill 2009	N, R		R		
Industrial Relations Further Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009				N	
Land Acquisition (Just Terms Compensation) Amendment Bill 2009	N				
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	N, R, C	R			
Liquor Amendment (Special Licence) Conditions Bill 2008				N, R	
Liquor Amendment (Temporary Licence Freeze) Bill 2009	R, N		R, N	R, N	
Major Events Bill 2009	R, N	R, N		R, N	R, N
Motor Accidents Compensation Amendment Bill 2009				N	
Motor Sports (World Rally Championship) Bill 2009	N				
NSW Lotteries (Authorised Transaction) Bill 2009	R, N				
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	N		N	N	
Occupational Health and Safety Amendment (Authorised Representatives) Bill 2009	N				
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	R, N				
Parking Space Levy Bill 2009				N	N, C
Racing Legislation Amendment Bill 2009				N	
Real Property Amendment (Land Transactions) Bill 2009	N			N	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Road Transport (General) Amendment (Consecutive Disqualification Periods) Bill 2009*	N			N	
Real Property and Conveyancing Legislation Amendment Bill 2009	N, R				
Rural Fires Amendment Bill 2009	N	N		N	
Succession Amendment (Intestacy) Bill 2009	N			N	
Surveillance Devices Amendment (Validation) Bill 2009	N, R				
Western Lands Amendment Bill 2008				R	

Key

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

Appendix 4: Index of correspondence on regulations

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008	Digest 2009
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12	
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08	5/01/09	10	2
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10	