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Legislation Review Committee

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No 4 of 2008

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TABLE OF CONTENTS

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

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

9 Functions with respect to Regulations:

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

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

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

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

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

Section B: Ministerial correspondence – Bills previously considered

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

Part Two – Regulations

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

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

Appendix 1: Index of Bills Reported on in 2008

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

Appendix 2: Index of Ministerial Correspondence on Bills for 2008

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

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

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

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

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

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Criminal Case Conferencing Trial Bill 2008

Issue: Onus of Proof – Discount for guilty pleas - Part 4 Clause 17 (6): The burden of establishing the matters referred to in subsection (5) lies on the offender and must be proved on the balance of probabilities.

24. The Committee is of the view that the principle that the prosecutor should bear the onus of proving all the elements of an offence against the accused, which is fundamental to the maintenance of personal rights and liberties, should also be consistently carried through to the evidential burden for sentencing discount.

25. The Committee considers that the prosecution should carry the burden of proof, not the offender, in Clause 17 (6) to establish why there are substantial grounds in Clause 17 (5) for allowing a greater sentence discount. Accordingly, the Committee draws Parliament's attention to the proposed Clause 17 (6), which may be unduly trespassing on personal rights and liberties.

2. Education Amendment Bill 2008

Issue: Retrospectivity – Schedule 1 [11] – insertion of proposed Schedule 3, Part 8 - payments by overseas students

13. The Committee notes that this provision (the insertion of proposed Schedule 3, Part 8) applies retrospectively before the commencement of the legislation and the proposed section 31A.

14. The Committee considers that the retrospective application of the provision may adversely impact and unduly trespass on personal rights, and refers this to Parliament.

3. Environmental Planning And Assessment Amendment (Restoration Of Community Participation) Bill 2008*

Issue: Retrospectivity – Application of Amendments - Schedule 1 [9] proposed subsection (3): Section 148A, as inserted by the *Environmental Planning and Assessment Amendment (Restoration of Community Participation) Act 2008*, extends to development applications (within the meaning of that section) made to the Minister or a consent authority within 1 year before the commencement of that section.

9. The Committee notes that the insertion of Schedule 1 [9], proposed subsection (3) applies retrospectively before the commencement of the legislation and the proposed section 148A.

10. The Committee considers that the retrospective application of the proposed section 148A, breach of which is an offence, may adversely impact and unduly trespass on personal rights and liberties, and refers this to Parliament.

14. The Committee considers that, except in extraordinary circumstances, it is inappropriate for an absolute liability offence, which does not allow for a defence or reasonable excuse. The Committee, therefore, considers the proposed section 148A, as creating absolute liability offences, with the absence of any defence of reasonable excuse, which may amount to an undue trespass on individual rights and liberties, and refers it to Parliament.

Issue: Ill-Defined and Wide Powers – Proposed Section 148A - Donations by property developers and others

15. The Committee notes the proposed section 148A creates offences without specifying the range of maximum penalty units or if such offences carry a term of imprisonment.

16. The Committee considers that the lack of definition of specifying the range of maximum penalty may unduly trespass on individual rights and should be subject to control by legislation rather than be dependent on insufficiently defined administrative powers, and refers this to Parliament.

4. Fines Amendment Bill 2008

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

5. Gas Supply Amendment Bill 2008

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

6. Growth Centres (Development Corporations) Amendment Bill 2008

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

7. Housing Amendment (Tenant Fraud) Bill 2008

Issue - Excessive Punishment:

Schedule 1 [1] provides for a penalty of 3 months imprisonment for an offence under section 69 (1) or (2) of the Principal Act which relate to fraudulently obtaining accommodation or a rental rebate or any other advantage or concession from the Corporation.

Schedule 1 [2] inserts proposed section 69A – proposed section 69A creates an offence (maximum penalty $2,200 or 3 months imprisonment or both) if a person intentionally fails to notify the Corporation of any change in the person's

circumstances that removes or reduces the person's entitlement to accommodation or a rental rebate or any other advantage or concession from the Corporation. Notification is to be given within 28 days.

14. Accordingly, the Committee considers that the proposed penalties for sections 69 (1) or (2) of the Principal Act and for the proposed section 69A, could be regarded as too severe, which may be an undue trespass on personal rights and liberties, and refers this to Parliament.

Schedule 1 [3] inserts proposed section 72A – provides that person who lives or has lived with another person (the tenant) who obtains a benefit from the Corporation (whether or not as a tenant of the Corporation) is jointly and severally liable for certain amounts owed to the Corporation by the tenant if the amount is owed because the tenant improperly obtained a benefit to which the tenant was not entitled because of the person living there and the person was over 18 years at the time and knew, or should reasonably have suspected, that the tenant was improperly obtaining the benefit.

15. The Committee notes that, from a preliminary search, most of the other Australian jurisdictions do not have a comparable provision as the above proposed section 72A. The Committee considers that a person who has lived with the tenant as being jointly and severally liable for amounts owed by the tenant, when that person is no longer living with the tenant, or no limits have been set on how long since that person has moved or whether they were still in communication with the tenant, could be harsh and excessive so as to trespass unduly on personal rights and liberties; and refers this to Parliament.

Issue: Ill-Defined and Wide Powers – Schedule 1 [2] inserts proposed section 69B – permits the Corporation, for the purposes of preventing or investigating fraud against the Corporation, or prosecuting a person for any such fraud, to request, collect, use and disclose information (including personal information) from certain registers of information, including the driver licence register.

17. The Committee considers that the lack of definition or set of circumstances or criteria to specify grounds for preventive purposes, could make personal rights and liberties unduly dependent on insufficiently defined administrative power, and refers this to Parliament.

8. Local Government Amendment (Elections) Bill 2008

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

9. Public Sector Employment and Management Amendment Bill 2008

Right to Privacy: Schedule 1 Section 20 (5) and (5A)

The concept of shared eligibility lists does raise issues of sharing information across government departments. The legislation does not address the issue of what information is to be shared. Will it consist of interview panel reports, referee's reports etc? Sharing of this

information is problematic without the consent of the applicant, particularly if the applicant has not seen these reports themselves. The Bill also does not stipulate which department is to maintain ultimate control of the information.

9. The Committee is concerned that the Bill does not sufficiently address the issue of how much applicant information will be shared between departments for the purposes of shared eligibility lists and whether the applicant's consent must be obtained. The Committee refers the issue to Parliament.

10. State Revenue Legislation Amendment Bill 2008

Issue: Retrospectivity – *Amendment of Duties Act 1997*: Schedule 1 [23] and [33] – to be taken to have commenced the date on which this Bill is introduced in the Legislative Assembly.

14. The Committee notes that the amendment of *Duties Act 1997* in Schedule 1 [23] is intended as an anti-avoidance measure. The Committee also notes that Schedule 1 [33] is a related amendment to ensure that an exemption provision does not operate to permit the practice of using declarations of trust to avoid land rich duty.

15. However, the Committee will always be concerned where provisions are taken to have commenced on the date on which the Bill is introduced into Parliament. The Committee notes that these provisions will apply retrospectively before the commencement of the legislation.

16. The Committee considers that the retrospective application of the provisions may adversely impact and unduly trespass on personal rights, and refers this to Parliament.

19. The Committee will always be concerned with retrospective applications of provisions. However, the Committee considers the retrospectivity of the amendment of *Unclaimed Money Act 1995* in Schedule 7 [16] does not trespass unduly on personal rights and liberties as it provides arrangements to extend Commonwealth laws relating to unclaimed money to superannuation providers to all superannuation benefits other than those provided by public sector schemes.

11. Superannuation Administration Amendment Bill 2008

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

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CRIMINAL CASE CONFERENCING TRIAL BILL 2008

Date Introduced:	2 April 2008
House Introduced:	Legislative Council
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General, Justice

Purpose and Description

1. This Bill provides for a trial scheme of compulsory pre-committal conferences and codification of sentence discounts for guilty pleas; and for other purposes.

2. There are three major components to this trial. The first is a compulsory conference between the parties; the second is the procedures involving the holding of a conference; and the third is the introduction of identifiable and appropriate discounts that will attach to an early plea of guilty.

3. The first part of the scheme requires parties, still in the Local Court, to attend a compulsory conference. The aim of the conference is to consider the evidence and to discuss the prospects of entering an appropriate plea, or reaching agreement on the facts.

4. The amendments are not intended to apply to people who have intended to plead not guilty and who wish to go to trial.

5. The Bill provides for the scheme to apply to proceedings in relation to an indictable offence—other than an indictable offence being dealt with summarily—if committal proceedings for the offence will be heard in the Local Court sitting at the Downing Centre, Sydney or at Central Sydney and the accused is charged between 1 May 2008 and 1 May 2009. A compulsory conference is to be held between the legal representative of an accused person and the prosecution before the accused is committed for trial. A conference does not have to be held where the accused person has pleaded guilty or agrees to plead guilty before a conference is held; the offence is an offence for which a compulsory conference need not be held, such as offences carrying life imprisonment; the accused does not have a legal representative; the prosecution is not conducted by the Director of Public Prosecutions; or where a magistrate has made an order that a conference need not be held because it is impossible to hold a conference.

6. The purpose of the conference is to determine whether there is any offence or there are any offences to which the accused person is willing to plead guilty and other matters on which the participants are able to reach agreement. These are to be recorded in a compulsory conference certificate after the conference and filed with the court. Before the compulsory conference is held, a copy of a brief of evidence is to be

served on the accused person, or his or her legal representative, and a pre-conference disclosure certificate is to be similarly served and is to be filed. The pre-conference disclosure certificate must certify that a full brief of evidence has been served on the accused. The legal representative of the accused person and the prosecution are to be present at a compulsory conference, whether in person or by audiovisual link or telephone. The legal representative of the accused is to obtain written instructions from the accused before the conference unless reasonably able to obtain instructions personally, by audiovisual link or by telephone at the time of the conference.

7. After the conference, a compulsory conference certificate must be completed, signed and filed with the court. The certificate is to set out certain matters, including, for example, the offences to which the accused person has agreed to plead guilty. The compulsory conference certificate is to be treated as confidential and cannot be required to be produced by a subpoena in any proceedings before a court, tribunal or body. It is admissible as evidence before a sentencing court only for certain limited purposes relating to the imposition of a lower penalty for a guilty plea. The accused must also sign the certificate.

8. The current sections 21A and 22 of the *Crimes (Sentencing Procedure) Act 1999* require a court that is passing sentence on an offender who has pleaded guilty to an offence to take into account as a mitigating factor that the offender has pleaded guilty and when the offender pleaded guilty or indicated an intention to plead guilty. Those sections do not set any maximum amount of sentence discount that a court may allow for the guilty plea, but the exercise of that sentencing discretion is the subject of a guideline judgment in *R v Thomson* [2000] NSWCCA 309.

9. The Bill provides for a discount of 25 per cent if the offender pleads guilty at any time before committal. A discount of up to 12.5 per cent will be allowed if the offender pleads guilty at any time after committal. However, under the scheme, an offender must establish, before being entitled to a discount of between 12.5 per cent and 25 per cent, that they have substantial grounds for allowing the discount. Substantial grounds exist only if one of the four grounds is satisfied.

10. Certain offences are excluded from the trial, such as life sentences offences—which at present include the offence of murder, certain serious heroin or cocaine trafficking offences and an offence under section 61JA of the Crimes Act 1900—and offences under Commonwealth law. The regulations allow for the inclusion of Commonwealth offences at a later time. An offence may be excluded by the Director of Public Prosecutions if the director is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can be met only by imposition of a penalty with no allowance for discount and that it is highly probable that a reasonable jury, properly instructed, would convict the accused person of the offence.

Background

11. According to the Second Reading Speech:

> The Government has for some time been concerned with the trend in the late entry of pleas of guilty in criminal trials in this State. Despite the fact that criminal courts in New South Wales have made major improvements in reducing delay and achieving improvements in productivity,

> there has been a disturbing trend in the practice of late pleas of guilty and late terminations of proceedings.
>
> The Bureau of Crime Statistics and Research "NSW Criminal Courts Statistics Annual Report for 2006" showed that in 2006 there were 1,839 cases finalised up to committal for trial to the District Court, 496 had proceeded to trial and 1,060 had proceeded to sentence. In 283 matters no charges were proceeded with at all—they were either no billed by the Director of Public Prosecutions or otherwise disposed of. The trauma and distress caused to witnesses—particularly victims—the waste in resources to the criminal justice agencies, and the uncertainty for the accused brought about by these non-starters is apparent to all.

12. The bringing together of the parties before the trial may result in a plea being entered on the initial charges laid, sometimes an alternative charge is offered, or, that the prosecution does not proceed. Over the past two years as part of the administrative trial, the Director of Public Prosecutions and the Legal Aid Commission have already been having conferences at an early stage to facilitate early pleas and to identify and define relevant issues. However, under this proposed model, it will be compulsory for all practitioners, whether privately funded or funded by the Legal Aid Commission, to attend.

13. The Bill aims to re-create some of the factors that lead to agreement on the eve of trial, at a much earlier stage in the criminal process. The Second Reading Speech explains that:

> The reforms will provide for the service and disclosure of prosecution material to the defence whilst in the Local Court to allow the defence to assess the case against them in a way that at present often takes place late in proceedings. The evidence from the previous trial, which was not supported by legislation, was inconclusive as to its effect. However, there was sufficient enthusiasm from legal practitioners and victims groups that the Government wanted to conduct a proper assessment before deciding whether the program should be maintained or discontinued. The new scheme under this bill will operate on a 12-month trial basis and will be rigorously evaluated by the Bureau of Crime Statistics and Research to ensure that it is achieving its aims—namely, to lead to a reduction in the number of defendants pleading guilty after being committed to stand trial, a reduction in unnecessary trauma experienced by victims of crime; and a reduction in the time and resources required to prepare for a trial.

14. The current wording of section 22 allows for the exercise of discretion in imposing a discount following a plea of guilty. The guideline judgement of *R v Thomson; R v Houlton* [2000] NSWCCA 309 recognises that there are some rare cases where no discount will apply.

15. The effect of the power to exclude a particular matter from the scheme by the Director of Public Prosecutions means that section 18 and the common law apply to the issue as to what, if any, discount should be imposed following a plea of guilty. In such matters, no automatic discount will attach to a plea entered in the Local Court, and if a plea of guilty be entered, the prosecution will be free to make any submissions it thinks appropriate as to the discount, if any, that should attach to the plea. The extent of the discount will be a matter for discretion for the court after hearing submissions from both parties.

16. The proposed trial involves the DPP providing the police with pre-charge advice as to the appropriateness of a charge. The Bill provides for the DPP and the Commissioner of Police to enter into a memorandum of understanding in relation to requests for advice by police officers to the director on any matter that could be the subject of a compulsory conference.

17. The Law Society of New South Wales commented that they welcome a pilot program for early compulsory case conference and allowing discounts on sentences on an early plea of guilty. According to the President of the NSW Law Society:

> The timely analysis of the facts of law greatly reduces the time lag between an accused being charged and their subsequent trial. It also allows attention to be paid to those matters which will ultimately be contested in court and dispose of those matters which would result in guilty pleas anyway.
>
> A pilot to ascertain the viability of the scheme is a very good start. However, the size of the discounts as the incentives for an early plea need to be meaningful otherwise the effect could be the opposite to that which is intended. That is, more matters going to trial as a consequence of no particular incentives for a plea of guilty.

The Bill

18. The object of this Bill is to establish a 12-month trial scheme commencing on 1 May 2008, and limited to certain indictable proceedings being heard in certain courts, that will:

(a) codify the discounts on sentence to be allowed by the courts in respect of guilty pleas in those proceedings to recognise the saving in resources and time that would otherwise be expended if trials were held, the avoidance of the additional trauma to the victims that might be caused by the holding of trials, the contrition that may be demonstrated by pleading guilty and any other benefit associated with or demonstrated by a guilty plea, and
(b) reduce the maximum amount of sentence discount that may be allowed for guilty pleas in those proceedings, and
(c) require the legal representative of an accused person and the prosecution to participate in a compulsory conference for the principal purpose of determining whether there is any offence to which the accused person is willing to plead guilty before the accused person is committed for trial or sentence.

19. Part 2 Application of provisions of this Act

Clause 4 provides that the proposed Act applies only to proceedings in relation to an indictable offence (other than an indictable offence being dealt with summarily) if committal proceedings for the offence will be heard in the Local Court sitting at the Downing Centre, Sydney or at Central, Sydney. The regulations can extend the application of the proposed Act to other courts or substitute the courts to which it applies. Provision is made for the proposed Act to apply also to such proceedings that have been transferred from one of those courts after certain steps have been completed in the compulsory conference process.
Clause 5 provides that the proposed Act applies only to an offence for which a court attendance notice was filed on or after 1 May 2008 but before 1 May 2009. The regulations can extend that period.

Part 3 Compulsory conferences

Clause 6 requires (with some specified exceptions) the legal representative of an accused person and the prosecution to participate in a compulsory conference before the accused is committed for trial. The exceptions include circumstances where the accused person has pleaded guilty, or agrees to plead guilty, before a conference is held, the offence is an offence for which a compulsory conference need not be held under the section, the accused does not have a legal representative, the prosecution is not conducted by the Director of Public

Prosecutions and where a Magistrate has made an order that a conference need not be held because it is impossible or impracticable to hold a conference. The purpose of such a conference is to determine whether there is any offence to which the accused person is willing to plead guilty and other matters on which the participants are able to reach agreement. These are to be set out in a compulsory conference certificate to be completed after the conference and filed with a Local Court. (See clause 12)

Clause 7 sets out the steps that are to be taken in relation to the holding of compulsory conferences.

Clause 8 sets out the requirements for the brief of evidence that is to be served on the accused person or his or her legal representative.

Clause 9 requires certain matters to be set out or certified by the prosecution in a pre-conference disclosure certificate that is to be served on the accused person or his or her legal representative and filed with the court.

Clause 10 requires a Magistrate to give the accused person a statement in writing in the form of words prescribed by the regulations explaining the effect of participating in a compulsory conference and the effect of the discounting of sentence provisions contained in proposed Part 4.

Clause 11 requires the legal representative of the accused person and the prosecution to be present at a compulsory conference, whether in person or by audio visual link or telephone.

Clause 12 provides for the completion, signing, filing and amendment of compulsory conference certificates.

Clause 13 describes the effect of a compulsory conference certificate and the use that may be made of it. The compulsory conference certificate is to be treated as confidential and cannot be required to be produced by a subpoena in any proceedings before a court, tribunal or body. It is admissible as evidence before a sentencing court only for certain limited purposes relating to the imposition of a lower penalty for a guilty plea (see clause 17 (7)). A court may refuse to admit a certificate as evidence if the conference has not been held, or certificate completed, as required by the proposed Part unless it is satisfied there is a good and proper reason for the failure to comply and it is in the interests of justice to admit the evidence.

Clause 14 provides that the disclosure of any information during or in relation to a compulsory conference is not, for the purposes of section 22A of the *Crimes (Sentencing Procedure) Act 1999*, a pre-trial disclosure. Section 22A enables the court to impose a lesser penalty according to the degree to which the defence has made pre-trial disclosures.

Clause 15 provides for the making of practice directions in connection with compulsory conference steps. They must not be inconsistent with the Act or regulations.

Part 4 Sentences—guilty pleas

Clause 16 requires courts to determine sentence discounts for guilty pleas in relation to certain indictable offences in accordance with clause 17 and makes it clear that no greater discounts are to be allowed for guilty pleas. Current sentencing guidelines set out in *R v Thomson* [2000] NSWCCA 309 indicate that a maximum sentence discount of 35 per cent is available. The clause also provides that no discounts for guilty pleas are to be allowed in cases where the court intends to impose a sentence of life imprisonment. The clause does not apply to indictable offences being dealt with summarily or offences excluded from the application of the clause by clause 18. Clause 16 does not affect or limit any mitigating factor that a court is required to take account of when determining the appropriate sentence for an offence.

Clause 17 sets out the applicable discounts that must or may be allowed for guilty pleas. A discount of 25% must be allowed if the offender pleads guilty at any time before committal (clause 17 (1)). A discount of up to 12.5% may be allowed if the offender pleads guilty at any

time after committal (clause 17 (2)), but any such discount is to be proportionate to the remaining benefit of the guilty plea as determined by reference to matters set out in clause 16 (2) (such as savings in time and resources, avoidance of additional trauma to victims and the demonstration of contrition). However, a discount that is greater than 12.5% but not greater than 25% may be allowed for a guilty plea after committal if substantial grounds exist for allowing a greater discount (clause 17 (4)). These include, for example, that the offender was found unfit to be tried and pleaded guilty when subsequently found fit to be tried (clause 17 (5)).

Clause 17 (6) provides that the burden of establishing the matters referred to in 17 (5) lies on the offender and must be proved on the balance of probabilities.

Clause 17 (7) provides for a court to take into account the compulsory conference certificate relating to the offence in certain limited circumstances when determining the applicable discount for a guilty plea (see clause 12).

Clause 18 excludes offences under Commonwealth law from the application of clause 16 (unless the regulations otherwise provide) and enables the prosecution to exclude other offences from the operation of that clause. An offence may be excluded by the Director of Public Prosecutions if the Director is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met by imposition of a penalty with no allowance for discount under clause 16 and that it is highly probable that a reasonable jury, properly instructed, would convict the accused person of the offence. The clause provides that in cases where the prosecutor has excluded an offence the sentencing court is to take account of the prosecutor's reasons for excluding the offence when passing sentence on the offender.

Issues Considered by the Committee

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

Issue: Onus of Proof – Discount for guilty pleas - Part 4 Clause 17 (6): The burden of establishing the matters referred to in subsection (5) lies on the offender and must be proved on the balance of probabilities.

20. Subsection (5) provides for substantial grounds for allowing a greater sentencing discount for the purposes of subsection (4).

21. The Bill provides for a discount of 25 per cent if the offender pleads guilty at any time before committal. A discount of up to 12.5 per cent will be allowed if the offender pleads guilty at any time after committal. However, under the scheme, an offender must establish, before being entitled to a discount of between 12.5 per cent and 25 per cent, that they have substantial grounds for allowing the discount. Substantial grounds exist only if one of these four grounds is satisfied.

22. The first ground for meeting the substantial ground test arises when an offender offers, prior to committal for trial, to enter a plea of guilty to a statutory alternative to the offence charged and where that offer is rejected by the prosecution and the accused is subsequently convicted of it at trial. The second arises when an accused offers to plead to an alternative offence at conference and where the offer is refused by the prosecution prior to committal for trial but is accepted in the superior court. Thirdly, it allows for where the offer to plead guilty to an alternative offence is made for the first time and accepted after committal for trial, and the offender had no reasonable opportunity to offer to plead guilty to such an offence before the committal. Lastly,

substantial grounds may be established when the offender was found unfit to be tried and pleaded guilty when subsequently found fit to be tried.

23. Clause 17 (6) reverses the onus of proof from the prosecution to the offender to establish the grounds set out in Clause 17 (5).

24. The Committee is of the view that the principle that the prosecutor should bear the onus of proving all the elements of an offence against the accused, which is fundamental to the maintenance of personal rights and liberties, should also be consistently carried through to the evidential burden for sentencing discount.

25. The Committee considers that the prosecution should carry the burden of proof, not the offender, in Clause 17 (6) to establish why there are substantial grounds in Clause 17 (5) for allowing a greater sentence discount. Accordingly, the Committee draws Parliament's attention to the proposed Clause 17 (6), which may be unduly trespassing on personal rights and liberties.

The Committee makes no further comment on this Bill.

2. EDUCATION AMENDMENT BILL 2008

Date Introduced:	2 April 2008
House Introduced:	Legislative Council
Minister Responsible:	Hon John Della Bosca MLC
Portfolio:	Education and Training

Purpose and Description

1. This Bill amends the *Education Act 1990* with respect to overseas students and admission to government schools; and for other purposes.

2. Under the proposed scheme, the Director General of the Department of Education and Training will have the discretion to set fees to be paid by overseas students or classes of overseas students studying at government schools. This will include students who travel to Australia under a study visa and the children of temporary residents of Australia. These fees will be published on the department's website. The director general will also have the power to exempt an overseas student or class of overseas students from any requirement to pay a fee and to order the refund of a fee that has been paid.

3. Section 22 of the Education Act provides that a child must attend school at all times when the school is open for the child's instruction or participation in school activities. The bill amends section 25 to make it clear that the Minister also has a power to exempt a child from attending school for part of the school day. Such an exemption would be granted to meet a student's personal circumstances.

4. Section 34 of the Education Act provides that the parent of a child may enrol the child at any government school if the school can accommodate the child. The bill amends section 34 of the Act to make clear what the school being able to "accommodate the child" means. The question of whether a school can accommodate a child becomes relevant when the parents apply to enrol the child in a school that is not designated for the local area in which they live. The Act will now make clear that a child's age, the type of school chosen by the parents, the resources allocated to the school, and its existing classroom facilities will be able to be considered when a decision is made whether or not the child can be accommodated at the school.

5. This Bill also amends the Education Act to empower a principal to require a person seeking to enrol a child at a school to provide proof to the satisfaction of the principal of the child's identity, date of birth and home address. This may include a requirement to produce any document or to provide a statutory declaration, or both. The director general may terminate the enrolment of a child at a government school if the child was enrolled as a result of providing false information.

6. It further amends the Education Act to add the Department of Corrective Services to the list of agencies that can be asked to provide information to schools about students with a history of violent behaviour. The Department of Corrective Services has assumed responsibility for the Kariong Juvenile Correctional Centre. This aims to help

the Department of Education and Training to assess the risk of adult offenders who seek to resume their studies at a government school.

Background

7. Financial contributions have been collected from overseas students studying in New South Wales government schools since the early 1990s. Victoria, Queensland, South Australia, Western Australia and Tasmania all have legislation allowing them to impose fees on overseas students attending government schools.

8. According to the Second Reading Speech:

> Recently, although untested by the courts, there has been some debate in legal circles about the power of the New South Wales Government to charge such fees in the absence of a specific legislative provision enabling it to do so. Given the amount of revenue involved, it is prudent for the New South Wales Government to make plain and unambiguous its power to collect a financial contribution from overseas students in its own education legislation. This will make the system for collecting fees from overseas students in New South Wales transparent and clear to all.
>
> The scheme set out in the bill preserves the features of the existing policy under which fees have been collected from overseas students since the early 1990s. No new categories of fee-paying students will be created by the legislation and this scheme will not apply to Australian citizens or permanent residents of Australia. The director general will take steps to ensure that the current categories of exemptions from the requirement to pay fees, such as those given to residents of Norfolk Island and participants in student exchange programs, will be retained. Existing requirements to give access to education to New Zealanders will also continue to be honoured.

9. The Second Reading Speech further explains:

> Some may argue that confirming the power to collect fees from overseas students is an admission that there was no authority to impose them in the first place. To provide certainty and avoid unwarranted litigation, the bill provides that such fees paid in the past for instruction received in New South Wales government schools were validly imposed.

The Bill

10. The objects of this Bill are to amend the *Education Act 1990* as follows:

(a) to confirm that overseas students may be required to pay fees in order to attend government schools,
(b) to give principals of government schools the power to require proof of a child's name, age and residential address prior to the enrolment of that child at the school,
(c) to add the Department of Corrective Services to the list of agencies that may be asked to provide certain information about students in relation to health and safety at schools,
(d) to make other minor amendments in respect of admission to government schools, exemption from attendance, district councils and adult students.

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 (except as otherwise specified).
Clause 3 is a formal provision that gives effect to the amendments to the *Education Act 1990* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Overseas students

Schedule 1 [6] inserts proposed section 31A into the *Education Act 1990* (the *Principal Act*) to confirm that overseas students may be required to pay a fee in order to receive instruction, or to participate in school activities, in government schools. The Director-General may fix any such fees payable by order published in the Gazette. The proposed section allows the Director-General to vary the fees for different classes of students and to exempt certain overseas students (or classes of overseas students) from the requirement to pay a fee.

Schedule 1 [11] contains a consequential provision to confirm the validity of the imposition of any fees or charges in relation to the attendance of an overseas student at a government school before the commencement of proposed section 31A.

Admission to government schools

Section 34 of the Principal Act currently provides that a child may be enrolled at a government school if the child is eligible to attend the school and the school can accommodate the child. The section also provides that a child is entitled to be enrolled at the government school that is designated for the intake area within which the child's home is situated and that the child is eligible to attend.

Schedule 1 [7] amends section 34 to provide guidance as to the matters that may be taken into consideration in determining whether a government school can accommodate a child. The amendments to section 34 also make it clear that nothing in Part 6 (Government schools) prevents the principal of a government school from accepting an application for the enrolment of an adult at that school.

Schedule 1 [8] inserts proposed section 34A into the Principal Act to allow the principal of a school to require a person seeking to enrol a child at a government school to provide proof of the child's identity, date of birth and home address for the purpose of establishing a child's eligibility to attend or entitlement to be enrolled at the school. Such a requirement must be complied with in order for the child to be entitled to be enrolled at the school (unless the request cannot be reasonably complied with in the circumstances). A principal is entitled to refuse the child's enrolment at the school (and any prior enrolment may be terminated) if false or misleading information is provided in response to such a request.

Miscellaneous

Schedule 1 [2] amends section 25 of the Principal Act to make it clear that the existing power of the Minister to exempt a child from enrolment and attendance at a school can be limited to times specified in the certificate.

Schedule 1 [3] adds the Department of Corrective Services to the list of agencies that may be asked to provide information to the Department of Education and Training, a non-government schools authority or a school about a particular student in order to assess whether the enrolment of the student will constitute a risk to the health or safety of any person.

Schedule 1 [4] makes an amendment by way of statute law revision.

Schedule 1 [9] amends section 115 of the Principal Act so that a district council for a specified area may be established by the Minister by order published in the Gazette (rather than being established by the Minister for an area prescribed by regulation).

Issues Considered by the Committee

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

Issue: Retrospectivity – Schedule 1 [11] – insertion of proposed Schedule 3, Part 8 - payments by overseas students

12. This is intended as a consequential provision to confirm the validity of the imposition of any fees or charges in relation to the attendance of an overseas student at a government school:

> The imposition by the Director-General of any fee or other charge that has been paid for or in relation to instruction provided in a government school to an overseas student ***before*** **the commencement of section 31A** (as inserted by the *Education Amendment Act 2008*) **is taken to have been lawfully imposed for all purposes**.

13. The Committee notes that this provision (the insertion of proposed Schedule 3, Part 8) applies retrospectively before the commencement of the legislation and the proposed section 31A.

14. The Committee considers that the retrospective application of the provision may adversely impact and unduly trespass on personal rights, and refers this to Parliament.

The Committee makes no further comment on this Bill.

3. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (RESTORATION OF COMMUNITY PARTICIPATION) BILL 2008*

Date Introduced:	3 April 2008
House Introduced:	Legislative Council
Minister Responsible:	Sylvia Hale MLC
Portfolio:	Private Member – The Greens

Purpose and Description

1. This Bill amends the *Environmental Planning and Assessment Act 1979* to restore a measure of community and Council control over planning decisions, to increase accountability, to improve definitions, and for other purposes.

2. This Bill seeks to amend the *Environmental Planning and Assessment Act 1979* in three ways:

- add additional objectives to the Act to make the reduction of greenhouse emissions, the mitigation of the effects of climate change and the protection and enhancement of the health and wellbeing of the community overarching objectives of the planning system;

- increase the level of community involvement in the determination of applications for approval of development projects under part 3A of the Act by requiring environmental assessments of part 3A projects, the publishing of submissions relating to part 3A projects and the extension of appeal rights in relation to part 3A projects; and,

- return a measure of community control over decision making, increase accountability and remove conflicts of interest by banning donations from property developers to political parties, officials and candidates.

Background

3. The first group of amendments relates to the objectives of the Act, which recognise that the planning system involves a balancing of the interests of a variety of stakeholders and those of the community. The existing objectives of the Act include encouraging the proper management of natural and artificial resources, the orderly and economic use and development of land, the provision and coordination of communication and utility services, the provision of land for public purposes, the provision and coordination of community services and facilities, the protection of the environment, and the provision and maintenance of affordable housing. It is proposed that the Act recognises that the existing objectives need to be balanced with the public interest objective of the planning system—to protect and enhance the health and wellbeing of the population.

4. By placing greenhouse gas emissions and mitigation of the effects of climate change within the objects of the Act, planners, developers, councils and community representatives will be encouraged to take them into account when considering key planning issues.

5. According to the Second Reading Speech, the other two amendments are as follows:

> The second group of amendments relates to community involvement in decisions made under part 3A of the Act. These amendments seek to increase transparency, accountability and community involvement in decision making under part 3A, the section of the Act that gives discretionary powers to the Minister for Planning to call in developments and approve or refuse them. The proposed amendments make it mandatory for the Minister to publish guidelines with respect to the environmental assessment requirements for approving projects and for the proponent of a project to prepare an environmental assessment of the project.
>
> The proposed amendments require public submissions regarding an environmental assessment of a project to be published on the website of the department, provided to the proponent of the project and included in the director general's report to the Minister on the project. They also extend the circumstances in which an objector to a project can appeal against a determination of the Minister to give approval to a project under part 3A so that appeal rights are the same as for a development being dealt with under part 4 of the Act. These amendments will make the decision-making process by the Minister more transparent and will allow greater scope for the Minister's decisions to be appealed. In situations where the Minister is given wide discretionary powers it is imperative from the point of view of maintaining public confidence in the system that the Minister's decisions are made in a completely transparent way and that they are subject to review.
>
> The final amendments dealing with developer donations seek to restore a measure of community and council control over decision making, increase accountability and remove conflicts of interest by banning donations from property developers to political parties, officials and candidates. The bill makes it an offence for a political party or candidate to accept a donation from a property developer. It also makes it an offence for anyone involved in property development to make a donation to a political party or candidate. Further, it makes it an offence for any person who has made a donation to a political party or candidate to put forward a development application, tender or expression of interest in development work for 12 months after making the donation. It also will be an offence to make a donation for 12 months after a development application process is complete. The purpose of these amendments is, in one simple step, to remove the vast majority of conflicts of interest that have brought the State's planning system into such disrepute.

6. The Bill is introduced against the background of the Independent Commission Against Corruption [ICAC] inquiries into the Tweed, Liverpool, Rockdale, Strathfield and most recently Wollongong councils have provided evidence that political donations have affected decisions relating to developments.

7. The Second Reading Speech also explained:

> This bill has been drafted broadly to apply to anyone involved in the property development process, other than home renovators—that is, a person whose sole involvement with property development is the building, renovating or extending of the person's place of residence. It also addresses the issue of third parties by making it an offence to solicit a third party to make a donation or to accept such a donation.

The Bill

8. The object of this Bill is to amend the Environmental Planning and Assessment Act 1979 (the principal Act):

(a) to provide for further objectives of the principal Act, and
(b) to increase the level of community involvement in the determination of applications for approval of development projects that are made under Part 3A of the principal Act, and
(c) to make it an offence for any property developer to make a donation to an elected office holder, candidate for election, political party or party official, or for such a donation to be accepted, and
(d) to make it an offence for any person to make a development application under the principal Act or lodge an expression of interest in carrying out a development within 1 year after making a donation to an elected office holder, candidate for election, political party or party official, or to make such a donation within 1 year after the person's development application is determined.

Schedule 1 Amendments

Schedule 1 [1] extends the objects of the principal Act. The new objects are:

(a) to encourage the reduction of greenhouse gas emissions and mitigation of the effects of climate change, and
(b) to encourage the protection and enhancement of the health and wellbeing of the community.

Schedule 1 [2] makes it mandatory for the Minister to publish guidelines with respect to the environmental assessment requirements for approving projects under Part 3A of the principal Act.

Schedule 1 [3] makes it mandatory, for the purpose of the environmental assessment requirements under Part 3A of the principal Act, for the proponent of a project to prepare an environmental assessment of the project.

Schedule 1 [4] and [6] require public submissions regarding an environmental assessment of a project under Part 3A of the principal Act to be published on the website of the Department, provided to the proponent of the project and included in the Director-General's report to the Minister on the project.

Schedule 1 [5] allows the Director-General to edit a submission before providing it to a person, or publishing it, for the purpose of ensuring the privacy of the person who made it, or for certain other purposes.

Schedule 1 [7] extends the circumstances in which an objector to a project can appeal against a determination of the Minister to give approval to a project under Part 3A of the principal Act.

Schedule 1 [8] makes it an offence for a property developer to make or offer to make (including through another person) a donation to a member of Parliament, an elected member of a local council, a candidate for election, a political party or party official. It will also be an offence to accept or solicit such a donation. A *property developer* includes any person who has made a development application under the principal Act (or an application for approval under Part 3A) that is undetermined. It will also be an offence for any person (whether or not a property developer) to make a development application under the principal Act (including under Part 3A), or to lodge an expression of interest in carrying out a development, within 1 year after making a donation to a member of Parliament, an elected member of a local council, a candidate for election, political party or party official, or to make such a donation within 1 year after the person's development application is determined. The new offences will not prevent donations by home renovators.

Issues Considered by the Committee

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

Issue: Retrospectivity – Application of Amendments - Schedule 1 [9] proposed subsection (3): Section 148A, as inserted by the *Environmental Planning and Assessment Amendment (Restoration of Community Participation) Act 2008*, extends to development applications (within the meaning of that section) made to the Minister or a consent authority within 1 year before the commencement of that section.

9. The Committee notes that the insertion of Schedule 1 [9], proposed subsection (3) applies retrospectively before the commencement of the legislation and the proposed section 148A.

10. The Committee considers that the retrospective application of the proposed section 148A, breach of which is an offence, may adversely impact and unduly trespass on personal rights and liberties, and refers this to Parliament.

Issue: Absolute Liability - Proposed Section 148A - Donations by property developers and others:

11. The proposed section makes it an offence for a property developer to make or offer to make (including through another person) a donation to a member of Parliament, an elected member of a local council, a candidate for election, a political party or party official. It also makes an offence to accept or solicit such a donation. A *property developer* includes any person who has made a development application under the principal Act (or an application for approval under Part 3A) that is undetermined. It will also be an offence for any person (whether or not a property developer) to make a development application under the principal Act (including under Part 3A), or to lodge an expression of interest in carrying out a development, within 1 year after making a donation to a member of Parliament, an elected member of a local council, a candidate for election, political party or party official, or to make such a donation within 1 year after the person's development application is determined.

12. The Committee notes that under Australian law, crimes are generally considered to have 2 aspects: a physical aspect (guilty act or actus reus) and a mental aspect (criminal intent or mens rea). At common law, there is a presumption that a prosecutor must show that an accused person had the requisite criminal intent to commit the offence.

13. The proposed section does not include, expressly or by implication, any defence or reasonable excuse.

14. The Committee considers that, except in extraordinary circumstances, it is inappropriate for an absolute liability offence, which does not allow for a defence or reasonable excuse. The Committee, therefore, considers the proposed section 148A, as creating absolute liability offences, with the absence of any defence of reasonable excuse, which may amount to an undue trespass on individual rights and liberties, and refers it to Parliament.

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

Issue: Ill-Defined and Wide Powers – Proposed Section 148A - Donations by property developers and others

15. The Committee notes the proposed section 148A creates offences without specifying the range of maximum penalty units or if such offences carry a term of imprisonment.

16. The Committee considers that the lack of definition of specifying the range of maximum penalty may unduly trespass on individual rights and should be subject to control by legislation rather than be dependent on insufficiently defined administrative powers, and refers this to Parliament.

The Committee makes no further comment on this Bill.

4. FINES AMENDMENT BILL 2008

Date Introduced:	2 April 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Frank Sartor MP
Portfolio:	Planning

Purpose and Description

1. This Bill amends the *Fines Act 1996* in relation to the enforcement of fines and in relation to other matters concerning the administration of that Act; and for other purposes.

2. The Bill implements six proposals which address fines avoidance practices, improve the options for resolving outstanding fines and facilitate improved administration by the State Debt Recovery Office.

3. The first proposal relates to deemed service of penalty notices. Most penalty notices and reminder notices are served by mail. If returned to the State Debt Recovery Office as return-to-sender mail, the notice is not validly served and cannot be enforced. There are instances which involve the fine recipient supplying a false address, or deliberately returning mail unopened knowing that it relates to a fine. The amendment will prevent alleged offenders from deferring payment of a fine until proceedings for the offence become statute barred. The amendment does not extend to enforcement orders for which actual service before enforcement continues to be a requirement, such as cancellation of the person's driver licence or vehicle registration.

4. The second proposal relates to false nominations for traffic offences. For some offences, such as speed camera or red light camera offences, the owner of the vehicle is deemed to be responsible for the offence unless he or she provides the name and address of the person actually in charge of the vehicle at the time of the offence. The State Debt Recovery Office has faced problems in prosecuting people who falsely nominate another driver to avoid the fine and licence demerit points. The Bill makes three amendments to the Fines Act to address these problems. First, it creates an offence under the Fines Act of knowingly providing false or misleading information in a statement nominating another person as the driver. Second, it authorises the requirement of provision in the statement of additional information about the driver, such as driver licence number and date of birth, to assist in identifying the driver. Third, it provides the State Debt Recovery Office with investigation powers so that investigation and prosecution of individual offences will not be subject to the availability of police resources.

5. The third proposal in the Bill deals with a person's right to elect to have a penalty notice offence dealt with by a court. The amendment will make clear that payment of the fine payable under a penalty notice does not prevent a person from exercising his or her right to have the matter dealt with by a court if the election is made within the required time period.

6. The fourth proposal involves two amendments that will provide flexibility in the fines enforcement process: first, to provide flexibility in the use of time to pay orders by allowing them to be varied if the fine defaulter's financial circumstances change; and, second, to allow part payment of penalty notices.

7. The fifth proposal is to formally recognise the current structure of the State Debt Recovery Office. The State Debt Recovery Office and the Infringement Processing Bureau originally were separate agencies but they have now been integrated as the fines division of the Office of State Revenue. This integration has enhanced the role of the State Debt Recovery Office as the central fine enforcement agency, but the Fines Act does not adequately reflect the expanded functions of the State Debt Recovery Office. The amendments will recognise these functions, provide greater accountability in relation to financial matters, and remove redundant legislative requirements.

8. The sixth proposal is to recognise the practice of the State Debt Recovery Office of using the services of police prosecutors in the Local Court when prosecuting matters that have been the subject of a penalty notice. Most prosecuting authorities, such as local councils, have contracted through the State Debt Recovery Office to use the services of police prosecutors. Despite this practice being supported by decisions of the Supreme Court, magistrates have a discretion to refuse leave for police prosecutors to appear. The Bill provides a statutory right for a police prosecutor to appear for the prosecution in proceedings for an offence in relation to which a penalty notice has been issued.

Background

9. This Bill aims to make improvements to processes relating to the administration of penalty notices and fines enforcement.

10. In 1996 the Government introduced the Fines Act as a major reform of the fines enforcement system. It is now 10 years since the establishment of the State Debt Recovery Office as the central agency to coordinate fines enforcement processes.

The Bill

11. The object of this Bill is to amend the *Fines Act 1996*:

(a) to make it clear that persons may pay an amount payable under a penalty notice (or penalty reminder notice) by part payments, so long as the full amount is paid within the time required by the notice concerned, and
(b) to provide that a person may elect to have a matter that is the subject of a penalty notice (or penalty reminder notice) dealt with by a court, even if the whole or part of the amount payable under such a notice has been paid, and
(c) to provide that a penalty reminder notice may be issued and a penalty notice enforcement order may be made even if the relevant penalty notice or penalty reminder notice (or both) was returned as being undelivered to its sender after being sent to the person at an address supplied by the person at the time of the offence concerned or current in the records of the Roads and Traffic Authority, and
(d) to clarify the manner in which a person served with a penalty reminder notice for a vehicle or vessel offence may name some other person as the person who was in

charge of the vehicle or vessel concerned at the relevant time relating to the offence, and
(e) to make amendments consequential on the merging of the Infringement Processing Bureau and the State Debt Recovery Office, and
(f) to allow the State Debt Recovery Office and its staff to disclose information to certain tax and other officers, and
(g) to make other miscellaneous amendments, and
(h) to make law revision amendments and amendments of a savings and transitional nature.

The Bill also amends the *Criminal Procedure Act 1986* to make it clear that criminal proceedings relating to an offence for which a penalty notice was issued, the prosecutor of the offence may be represented and appear by a police prosecutor. It also makes a consequential amendment to the *Road Transport (Driver Licensing) Act 1998*.

12. Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
Clause 3 is a formal provision that gives effect to the amendments to the *Fines Act 1996* set out in Schedule 1.
Clause 4 is a formal provision that gives effect to the amendments to the *Criminal Procedure Act 1986* and the *Road Transport (Driver Licensing) Act 1998* set out in Schedule 2.
Clause 5 provides for the repeal of the proposed Act after the proposed Act has commenced. Once the proposed Act has commenced it will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Fines Act 1996
Amendments relating to certain notices sent to recently reported address and returned to sender
Sections 25 and 26 of the Principal Act provide that a penalty reminder notice may be issued and served on a person if a penalty notice was served on the person and it
appears that the amount payable under the penalty notice has not been paid within the time required by the notice. Section 42 (1) of the Principal Act provides that a penalty notice enforcement order may be made only if a penalty notice and a penalty
reminder notice have been served on the person.
Schedule 1 [31] inserts proposed section 126A into the Principal Act to provide that:
(a) despite sections 25 and 26, a penalty reminder notice may be issued to and served on a person even if the penalty notice to which it relates was returned as being undelivered to its sender after being sent to the person at the person's recently reported address, unless the appropriate officer concerned has received some other evidence that the penalty notice was not served on the person, and
(b) despite section 42 (1), a penalty notice enforcement order may be made in relation to an offence even if the penalty notice or a penalty reminder notice (or both) in relation to the offence was returned as being undelivered to its sender after being sent to the person at the person's recently reported address, unless the State Debt Recovery Office has received some other evidence that the penalty notice was not served on the person.

Amendments relating to method of naming other person in charge of vehicle or vessel at time offence occurred

Section 38 of the Principal Act provides that a person on whom a penalty reminder notice is served in relation to a vehicle or vessel offence is not liable to make any payment under the penalty notice if the person on or before the due date specified in the penalty reminder notice supplies by statutory declaration the name and address of some other person who was in charge of the vehicle or vessel concerned at all relevant times relating to the offence. It is an offence under section 25 of the *Oaths Act 1900* to wilfully and corruptly make and subscribe a statutory declaration, knowing it to be untrue in any material particular. The offence carries a maximum penalty of imprisonment for 5 years.

Schedule 1 [12] and [13] amend section 38 of the Principal Act to provide that such a person is to give the name and address of the person in charge of a vehicle or vessel in a notice that:

(a) is verified by statutory declaration, and

(b) is given to the appropriate officer for the penalty notice to which the penalty reminder notice relates (or other person or body specified in the penalty reminder notice).

Schedule 1 [16] inserts proposed section 38 (3A) and (3B) into the Principal Act. Proposed section 38 (3A) makes it an offence for a person, in such a notice, to make a statement or provide information knowing that it is false or misleading in a material particular. The offence is to carry a maximum penalty of 50 penalty units (currently $5,500). Proposed section 38 (3B) makes it clear that if the same facts establish an offence under section 38 and an offence under the *Oaths Act 1900*, the person is not liable to be convicted of both offences.

Amendments consequent on the merger of the State Debt Recovery Office and the Infringement Processing Bureau

The following proposed amendments relating to the administration and execution of the Principal Act are made as a consequence of the merger of the State Debt Recovery Office and the Infringement Processing Bureau.

Schedule 1 [18] replaces section 41 of the Principal Act to make it clear that the State Debt Recovery Office may, on application by an appropriate officer for a penalty notice or its own initiative, make a penalty notice enforcement order.

Schedule 1 [19], [24] and [25] make consequential amendments.

Schedule 1 [26] inserts proposed section 100 (4A) into the Principal Act to provide that an order under section 100 allowing further time to pay a fine may be amended or revoked by a further order made on the application of the person liable to pay the fine or on the State Debt Recovery Office's own initiative.

Schedule 1 [27] clarifies the functions of the State Debt Recovery Office with respect to the types of arrangements that it may enter into with persons who issue penalty notices, or on whose behalf penalty notices are issued, regarding such penalty notices.

Amendments relating to disclosure of certain information to tax and other officers

Section 117A of the Principal Act sets out the circumstances in which the State Debt Recovery Office, the Director of the Office, a member of the staff of the Office and other persons engaged in the administration of that Act may disclose personal information obtained in relation to a person in the administration or execution of that Act.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

5. GAS SUPPLY AMENDMENT BILL 2008

Date Introduced:	2 April 2008
House Introduced:	Legislative Council
Minister Responsible:	Hon Ian Macdonald MLC
Portfolio:	Primary Industries, Energy, Mineral Resources, State Development

Purpose and Description

1. This Bill amends the *Gas Supply Act 1996* with respect to ensuring the continuity of supply of natural gas to customers; and for other purposes.

2. The Bill adds an objective to the *Gas Supply Act 1996* of facilitating the continuity of supply of natural gas to consumers.

3. To achieve this objective, the Bill enables the Minister for Energy to approve market operations rules covering the establishment and operation of a wholesale natural gas market scheme. This will ensure the continuity of supply of natural gas to consumers.

4. It also adds definitions for "natural gas transmission pipeline" and "shipper of natural gas" to the Act, extending the Act for the first time to the wholesale gas market in NSW.

5. It will allow for the appointment of a scheme regulator and provide that regulator with compliance powers to make orders against scheme participants as well as the power to impose civil penalties of up to $50,000 on scheme participants.

6. In addition, the Bill provides for a limitation on the civil liability of a scheme operator or an officer or employee of the scheme operator for an act or omission while exercising functions under the rules unless the act or omission is done or made in bad faith or through negligence. The scheme operator can enter into an agreement with a person varying or excluding the operation of the provisions that limit or exclude liability. It does not exclude or limit liability for death or bodily injury.

Background

7. In August 2005, the Government established mandatory reliability licence conditions for electricity distributors. The Government is now focussing on improving the reliability of natural gas supplies.

8. Last November, the NSW Government announced that new gas laws were to be introduced prior to the 2008 winter period that were designed to ensure a more reliable gas supply to both residential and business customers. This Bill provides the legislative base for the establishment of the New South Wales Gas Supply Continuity Scheme. Amendments in this Bill have been developed in consultation with the gas industry and major gas users.

9. Gas industry stakeholders and major gas users are currently being consulted on the details of the market operations rules that will govern the operation of the scheme. The market operations rules will apply to the owners and operators of natural gas transmission pipelines and shippers of natural gas on those pipelines, as well as natural gas distributors and retailers.

10. The scheme enabled by this Bill will contain a competitive tender mechanism for responding to shortages of gas that threaten the ongoing operation of the State's gas transmission pipeline system. Currently, the NSW wholesale gas market is based on complex bilateral contracts and there are no regulatory provisions requiring sufficient supplies of natural gas to be purchased to meet consumers' demands. The scheme will not interfere in these contracts or mandate that gas is purchased to meet demand. However, the scheme operator, by introducing significant incentives that strongly encourage shippers of natural gas in New South Wales, will keep transmission pipeline imbalances within acceptable operating limits.

11. The scheme tender process will also allow producers and shippers of natural gas with spare production capacity to be paid for the delivery of that gas into the pipeline to offset a critical imbalance. In the Second Reading Speech, the Minister stated:

> I am very pleased to announce that, for the first time in Australia, users of natural gas will be able to be paid to reduce their demand, allowing the critical imbalances to be rectified through a demand side management mechanism.
>
> To provide the appropriate incentives to shippers of natural gas to keep pipeline imbalances in the operational range, the costs of rectifying any critical imbalances through the tender process will be back charged to the shippers by the scheme operator on a pro rata basis. Accordingly, shippers who create imbalances though their gas purchase decisions will have a strong financial incentive to maintain their supply demand imbalance at acceptable levels. Currently, insufficient incentives exist in the bi-lateral contracts to ensure this occurs, so when a critical imbalance occurs, a broad range of consumers can have their gas supplies curtailed.
>
> Curtailment of gas supplies arising from critical imbalances is what the inquiry into the June 2007 supply disruption identified as the cause of that event. The bill and the rules, therefore, directly address the cause of that disruption. The rules for the scheme will contain provisions for curtailment of customers whose shippers' imbalances have caused the supply problem. This provides further incentives for the market to keep demand supply imbalances within acceptable levels. The rules will require transmission pipeline operators to clearly define those acceptable levels for their pipelines and keep the market informed of the pipeline status utilising a traffic light notification system.

The Bill

12. The object of this Bill is to amend the *Gas Supply Act 1996* to ensure the continuity of supply of natural gas to customers by enabling the Minister for Energy to approve market operations rules with respect to the establishment and operation of a wholesale natural gas market scheme.

Schedule 1 Amendments

Schedule 1 [2] provides that it is an object of the *Gas Supply Act 1996* (the ***Principal Act***) to facilitate the continuity of supply of natural gas to customers.

Schedule 1 [4] inserts proposed section 33K (1) (d1) into the Principal Act to enable the Minister for Energy (the ***Minister***) to approve rules under section 33K with respect to the establishment and operation of a wholesale natural gas market scheme to ensure the

continuity of supply of natural gas to customers. The rules will apply to the owners and operators of natural gas transmission pipelines, shippers of natural gas and authorised reticulators and suppliers (the ***scheme participants***). **Schedule 1 [5]** provides that any such rule may make provision for or with respect to interruptions in the supply of natural gas and the functions of the scheme regulator (being the person identified as such in the rules) with respect to ensuring compliance with the rules, which may include the power to make orders against scheme participants and the power to impose civil penalties of up to $50,000 on scheme participants. The rules may also make provision for or with respect to the costs payable by a scheme participant if the scheme regulator makes an order against the scheme participant or imposes a civil penalty on the scheme participant and the recovery of any such costs or civil penalty.

Schedule 1 [8] sets out the definitions of ***natural gas transmission pipeline*** and ***shipper of natural gas***.

Schedule 1 [6] amends section 33K (5) (c) to provide that the Minister is not required to make available a copy of a rule with respect to the establishment and operation of a wholesale natural gas market scheme to each supplier or reticulator as is the case with other rules approved under section 33K.

Schedule 1 [7] inserts proposed section 33K (5) (d) that requires the Minister to make available on the internet site of the Department of Water and Energy, a copy of any rule approved by the Minister under section 33K.

Schedule 1 [13] clarifies that proposed section 33K (5) (d) does not apply to a rule approved by the Minister before the commencement of that proposed paragraph.

Schedule 1 [9] clarifies that a person may be convicted of an offence under section 33L of the Principal Act of contravening market operations rules even though that person may have been required to pay a civil penalty under market operations rules in respect of the same act or omission.

Schedule 1 [10] inserts proposed section 33LA into the Principal Act, which provides that the scheme operator under rules approved in respect of a matter under proposed section 33K (1) (d1) or an officer or employee of the scheme operator does not incur any civil monetary liability for an act or omission in the exercise of a function under the rules unless the act or omission is done or made in bad faith or through negligence. The proposed section also provides that the operator of a natural gas transmission pipeline, or an officer or employee of the operator, does not incur any civil monetary liability in respect of a disclosure of information to the scheme operator in compliance with, or in purported compliance with, a requirement under the rules unless the disclosure is made in bad faith or through negligence. The civil monetary liability for an act, omission or disclosure done or made through negligence is not to exceed the prescribed maximum amount. The scheme operator may enter into an agreement with a person varying or excluding the operation of a provision of the proposed section. The proposed section does not apply to any liability of an officer or employee of the scheme operator to the scheme operator or to any liability for death or bodily injury.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

6. GROWTH CENTRES (DEVELOPMENT CORPORATIONS) AMENDMENT BILL 2008

Date Introduced:	2 April 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Frank Sartor MP
Portfolio:	Minister for Planning

Purpose and Description

1. This Bill amends the *Growth Centres (Development Corporations) Act 1974* to provide that development corporations may be governed by a board or a chief executive, and the Growth Centres Commission be converted to a development corporation governed by a chief executive.

2. The Bill also makes a number of law revision amendments.

Background

3. The proposed changes aim to help the Government meet its commitment to delivering land supply targets identified in the State Plan and Metropolitan Strategy by ensuring that the Growth Centres Commission is able to meet challenges in achieving land supply targets in the north-west and south-west growth centres.

4. Having established systems, procedures and protocols and moving firmly into implementation phase with the Minister's announcement of the rezoning for almost 12,000 lots, town centres and employment lands in the south-west in December last year the commission is no longer in need of guidance from an independent board.

5. According to the Agreement in Principle speech:

> To ensure that the Government continues to roll out adequate supplies of zoned and serviced land the commission will be managed by its chief executive officer, who will continue his crucial intra-government coordination role, commenced on start-up and continuing through this implementation phase. It is important to note that the Growth Centres Commission would not have achieved its success to date without the close cooperation of the six growth centres councils. Indeed, there are subcommittees of the commission known as local government coordination committees that consist of the mayors and general managers of each council as well as the commission's chief executive officer and board members. The work of these committees has been a major contribution to the relationship with councils. Under the proposed amendments in this bill these local government coordination committees would continue in operation.

6. There are currently four development corporations constituted under the Growth Centres (Development Corporations) Act 1974: the Hunter Development Corporation, the Festival Development Corporation, the Cooks Cove Development Corporation, and the Growth Centres Commission. These development corporations are established

with a governing body or board of which the chief executive is a member with other appointees.

7. Changes to allow the development corporation to be governed by wither a board or a chief executive will enable development corporations to be constituted in a manner reflecting their mission and goals.

8. According to the Agreement in Principle speech this change is necessary because the Growth Centres Commission

> has moved on from the initial phase of establishing the broad framework for the delivery of land supply targets in north-west and south-west growth centres to the critical implementation phase. Whilst the members of the Growth Centres Commission board played an invaluable role in establishing this broad framework, it is now imperative that the Growth Centres Commission works in close cooperation with government agencies to ensure that land supply targets are delivered in a timely manner.

9. The Agreement in Principle speech states:

> The Growth Centres Commission will report to the Minister for Planning through an advisory committee of senior public servants charged with responsibility for delivering the New South Wales Government's land supply targets identified in the State Plan and Metropolitan Strategy, including the Director General of Planning, the Director General of Environment and Climate Change, the Secretary to the Treasury, the Chief Executive Officer of the Roads and Traffic Authority and the Coordinator General. There is no proposed change to the constitutional arrangements for the other three existing development corporations.

10. Other amendments are designed to update existing provisions from the 1974 Act that have become outdated and administratively burdensome.

11. Under the current Act orders are required to are establish, dissolve or amalgamate corporations, or expand or reduce the land covered by a corporation. Multiple orders and procedural steps may be required to make changes to the constitution of corporations. According to the Agreement in Principle speech

> The bill amends the Act to allow a single order to be made which constitutes or dissolves a development corporation, changes it name, alters the land to which it applies and/or changes its constitutional arrangements from a board-governed to a chief executive-governed corporation. This will reduce red tape by minimising unnecessary administrative steps and streamlining procedures under the Growth Centres (Development Corporations) Act 1974. It will ensure also that all relevant information in respect of a corporation is identified in a single schedule to the Act.

12. The bill also includes provisions of a savings and transitional nature necessary to give effect to the amendments.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Growth Centres (Development Corporations) Act 1974* set out in Schedule 1.
Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] and [2] insert and amend a number of definitions in section 3 (1) of the *Growth Centres (Development Corporations) Act 1974* (***the Principal Act***).
Schedule 1 [3] makes law revision amendments.
Schedule 1 [4] repeals and replaces Part 2 of the Principal Act to give effect to paragraph (a) of the object of the proposed Act outlined in the Overview above.
Proposed section 4 deals with the constitution of development corporations and growth centres. These corporations and growth centres are constituted by the proposed Act by being specified from time to time in Schedule 1 to the Principal Act.
A development corporation is a body corporate with the corporate name specified in column 1 of that Schedule. The growth centre in respect of which a development corporation is constituted is the area of land described in column 2 of that Schedule in relation to the development corporation. Proposed section 4 (4) makes it clear that a development corporation is to be either a chief executive governed development corporation or a board governed development corporation as specified from time to time in column 3 of that Schedule.
Proposed section 5 provides for the constitution of new development corporations, the dissolution, amalgamation, change of name and nature of governance of development corporations and the establishment, abolition and alteration of growth centres. This is achieved by way of an order of the Governor, published in the Gazette, appropriately amending Schedule 1 to the Principal Act.
Proposed section 6 deals with the governance of development corporations. It provides that the affairs of a development corporation are to be managed and controlled by:
(a) if the development corporation is a chief executive governed development corporation—the chief executive of the development corporation, or
(b) if the development corporation is a board governed development corporation—the chief executive, subject to and in accordance with any directions given to the chief executive by the board of the development corporation.
The proposed section also provides that in the exercise of its functions, a development corporation is, except where it makes a recommendation to the Minister administering the Principal Act (***the Minister***), subject to the control and direction of the Minister. (Currently, the Minister for Planning is responsible for the general administration of the Principal Act. However, the Minister for the Central Coast is responsible for the administration of the Act in so far as it relates to the Festival Development Corporation.)
Proposed section 6A deals with development corporation boards. The proposed section provides that there is constituted a development corporation board for each board governed development corporation. The board is to consist of:
(a) not less than 4 persons appointed by the Governor, and
(b) the chief executive of the development corporation, and
(c) if a person is appointed as the chief executive—the Director-General of the Department of Planning (***the Director-General***) (or a person nominated by that Director-General).

Proposed section 6B deals with chief executives of development corporations. The proposed section provides that the Minister is to appoint a chief executive for each development corporation.
Schedule 1 [9]–[16] make consequential amendments to provisions of the Principal Act.
Schedule 1 [17] is a consequential amendment inserts an updated provision relating to protection from personal liability (formerly clause 14 of Schedule 2 to the Principal Act) into the main body of the Principal Act. **Schedule 1 [19]–[24]** make consequential amendments and law revision amendments to Schedule 2 (Provisions relating to the constitution and procedure of development corporations) to the Principal Act.
Schedule 1 [18] repeals Schedule 1 to the Principal Act and replaces it with proposed Schedules 1 and 1A.
Proposed Schedule 1 repeats matter relating to the four existing growth centres and inserts information relating to their corresponding existing development corporations (being the Hunter Development Corporation, the Festival Development Corporation, the Cooks Cove Development Corporation and the Growth Centres Commission). The proposed Schedule gives effect to paragraph (b) of the object of the proposed Act outlined in the Overview above by providing that the Growth Centres Commission is to be a chief executive governed development corporation. The remaining bodies are to be board governed development corporations.
Proposed Schedule 1A contains provisions dealing with orders dissolving, amalgamating or changing the name or nature of governance of development corporations. **Schedule 1 [5]–[8]** make consequential amendments.
Schedule 1 [26] makes an amendment to allow regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.
Schedule 1 [27] inserts a number of savings and transitional provisions and validation provisions into Schedule 6 to the Principal Act. **Schedule 1 [25]** makes a consequential amendment.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

7. HOUSING AMENDMENT (TENANT FRAUD) BILL 2008

Date Introduced:	3 April 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Matt Brown MP
Portfolio:	Housing

Purpose and Description

1. This Bill amends the *Housing Act 2001* with respect to tenant fraud; and for other purposes.

2. This Bill amends existing section 69 of the *Housing Act 2001* to create a penalty of imprisonment for obtaining housing by falsely representing financial or other circumstances. It maintains the existing penalty of a fine of up to $2,200 and adds to that penalty a term of imprisonment of up to three months, or both.

3. It creates an offence for a tenant to fail to report to Housing New South Wales a change in circumstances which impacts on their entitlement to a rental rebate or other benefit within 28 days. The sanction for breach is a fine of up to $2,200 or a term of imprisonment of up to three months or both.

4. It will also enable Housing New South Wales to access certain public registers and databases for the purposes of fraud prevention, detection, investigation and prosecution. The proposed new section 69B allows Housing New South Wales to disclose information to the bodies to whom a request for information is made. It allows limited data exchanges between Housing New South Wales and other State agencies and bodies for the purpose of reducing fraud on the public revenue.

5. The relevant databases are the driver licence register under the *Road Transport (Driver Licensing) Act 1998*, the vehicle registration register under the *Road Transport (Vehicle Registration) Act 1997*, the Business Names register under the *Business Names Act 2002*, the Real Property register under section 31B of the *Real Property Act 1900*, the Register of Interest in Goods under section 4 of the *Registration of Interest in Goods Act 1986*, and any register maintained under the *Maritime Services Act 1935* or the *Marine Safety Act 1998* with respect to registrable vessels.

6. The Bill also proposes to make a person other than just the tenant legally liable for obtaining the benefit of a rental rebate where that person has wrongly obtained the benefit of a rebate. The current tenancy agreement does not presently recognise the legal liability of anyone other than the tenant. This provision extends liability to an adult occupant who knowingly and wrongly obtains the benefit of a rent rebate.

7. The proposed new section 72B enables Housing New South Wales to register an interest in real property when there has been a fraud perpetrated against Housing New South Wales and the tenant owns undeclared real property.

8. The Bill will introduce new fraud powers that allow Housing New South Wales the statutory right by notice to cancel or reduce a rent rebate for a specified period in order to recover a judgement debt against the tenant. This is because as a State entity, Housing New South Wales cannot recover an overpayment by deducting from a Commonwealth benefit received by a tenant. Such Commonwealth benefits cannot be garnisheed or subjected to other forms of civil recovery.

Background

9. According to the Agreement in Principle Speech:

> This bill will allow Housing New South Wales to address rental rebate fraud with the seriousness it deserves. Housing New South Wales directly manages some 130,000 public housing properties. It is the largest single property provider in the country and provides properties for residents in our State who are most in need of housing. Housing New South Wales charges market rent for its accommodation and provides a rental rebate to eligible tenants based on income criteria. In 2003-04 Housing New South Wales collected approximately $529.5 million in rent from its 340,000 tenants.
>
> The cost of rental rebate fraud has been estimated at between 5 per cent and 10 per cent of the value of all rental subsidies. These figures are based on industry standards. In dollar terms this means that even if only 5 per cent of rental rebate subsidies is claimed fraudulently there is an annual cost to Government of $26 million. If 10 per cent is used for the calculation the annual cost to Government of fraud reaches $52 million. Those funds could be used to provide up to 200 new homes per year—to provide homes for those most in need of assistance.

10. With regard to the proposed powers for exchange of information and disclosure of information from public registers, the Agreement in Principle speech sets out the following:

> It is therefore necessary in the public interest to provide a legislative solution that enables Housing New South Wales to obtain or even exchange information with certain specified State agencies for fraud-related purposes. Currently checks cannot readily be undertaken of applicants at the time of making an application for public housing or in the course of their tenancies. Nor can random checks of high-risk-profile groups be undertaken to verify information already provided to Housing New South Wales. That can be done only if there is a current investigation. This bill will allow Housing New South Wales to undertake a more robust approach to fraud preventions and detection as well as investigation and prosecution.

The Bill

11. The object of this Bill is to reduce tenant fraud with respect to public housing by amending the *Housing Act 2001* (***the Principal Act***):

(a) to provide for a penalty of 3 months imprisonment for offences under section 69 (false statements and representations) of the Principal Act, and

(b) to create an offence if a person intentionally fails to notify the New South Wales Land and Housing Corporation (***the Corporation***) of a change in the person's circumstances that removes or reduces the person's entitlement to a benefit, and

(c) to allow the Corporation to access and use information on certain registers for the purpose of preventing, investigating or prosecuting fraud, and

(d) to make a person who lives with a tenant who improperly obtains a benefit from the Corporation liable in certain circumstances to repay the benefit, and

(e) to permit the Corporation, in respect of certain debts, to place a charge on land owned by the debtor or to recover the debt by reducing a benefit payable to the debtor,

and (f) to provide that a prosecution or proceedings in respect of an offence under the Principal Act may only be instituted by the Corporation, and

(g) to provide an amnesty for certain persons who notify the Corporation that they are incorrectly or improperly obtaining a benefit from the Corporation.

Schedule 1 Amendments

Schedule 1 [1] provides for a penalty of 3 months imprisonment for an offence under section 69 (1) or (2) of the Principal Act which relate to fraudulently obtaining accommodation or a rental rebate or any other advantage or concession from the Corporation.

Schedule 1 [2] inserts proposed sections 69A and 69B in the Principal Act.

Proposed section 69A creates an offence (maximum penalty $2,200 or 3 months imprisonment, or both) if a person intentionally fails to notify the Corporation of any change in the person's circumstances that removes or reduces the person's entitlement to accommodation or a rental rebate or any other advantage or concession from the Corporation. The notification is to be given within 28 days after the person first becomes aware of the change and that his or her entitlement will be removed or reduced because of the change.

Proposed section 69B permits the Corporation, for the purposes of preventing or investigating fraud against the Corporation, or prosecuting a person for any such fraud, to request, collect, use and disclose information (including personal information) from certain registers of information, including the driver licence register.

Schedule 1 [3] inserts proposed sections 72A and 72B in the Principal Act.

Proposed section 72A provides that a person who lives or has lived with another person (the ***tenant***) who obtains a benefit from the Corporation (whether or not as a tenant of the Corporation) is jointly and severally liable for certain amounts owed to the Corporation by the tenant if the amount is owed because the tenant improperly obtained a benefit to which the tenant was not entitled because of the person living there and the person was over 18 years at the time and knew, or should reasonably have suspected, that the tenant was improperly obtaining the benefit.

Proposed section 72B permits the Corporation after obtaining an order of a court in proceedings against a person for the recovery of money, to apply to the Registrar-General for registration of the order as a charge on land owned by the person. Such an application may only be made if the amount, or part of the amount, is payable because the person improperly obtained a rental rebate or any other advantage or concession from the Corporation.

Schedule 1 [4] permits the Corporation to recover an amount awarded to it by a court in debt proceedings against a person by reducing or cancelling any rental rebate to which the person may otherwise be entitled.

Schedule 1 [5] provides that a prosecution or proceeding in respect of an offence under the Principal Act may only be instituted by or on behalf of the Corporation.

Schedule 1 [7] inserts a number of savings and transitional provisions in the Principal Act as a consequence of the amendments made by the proposed Act. In particular, the provisions provide for an amnesty in certain circumstances for persons who notify the Corporation that they are incorrectly or improperly obtaining a benefit from the Corporation. If a person notifies the Corporation of his or her conduct before the end of the amnesty period (1 October 2008 or such other day as may be prescribed by the regulations) and before the Corporation has commenced an investigation into the conduct, the person cannot be prosecuted for any fraud offence in relation to that conduct (other than an offence that involves violence or a threat against a person) and no action or proceeding may be brought by the Corporation to recover any penalty, damages or other money from the person in respect of the conduct or any benefit obtained as a result of that conduct before the notification.

Issues Considered by the Committee

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

Issue - Excessive Punishment:

Schedule 1 [1] provides for a penalty of 3 months imprisonment for an offence under section 69 (1) or (2) of the Principal Act which relate to fraudulently obtaining accommodation or a rental rebate or any other advantage or concession from the Corporation.

Schedule 1 [2] inserts proposed section 69A – proposed section 69A creates an offence (maximum penalty $2,200 or 3 months imprisonment or both) if a person intentionally fails to notify the Corporation of any change in the person's circumstances that removes or reduces the person's entitlement to accommodation or a rental rebate or any other advantage or concession from the Corporation. Notification is to be given within 28 days.

12. From a preliminary search, the Committee notes that most of the other Australian jurisdictions did not have provisions in similar legislation that carried a maximum penalty of imprisonment or for a fine of $2,200 (or both), except for Northern Territory's Housing Act which recently carries a penalty of imprisonment for 6 months or a fine of $1,000 (but not both) for knowingly making false statements in documents.

13. However, the Committee further notes that under the Northern Territory's Housing Act, notification of a change in income only carries a penalty fine of $1,000 and does not attract a term of imprisonment, in contrast to the above proposed section 69A which carries a maximum penalty of $2,200 or 3 months imprisonment or both. By way of comparison, the Victorian Housing Act carries a penalty of 21 penalty units but no imprisonment for wilfully giving false information. Queensland's Housing Act only carries a maximum penalty of 10 penalty units (much lesser penalty than NSW) for knowingly making or stating false or misleading information; unauthorised use of subletting of rental accommodation; and knowingly giving a false or misleading document.

14. Accordingly, the Committee considers that the proposed penalties for sections 69 (1) or (2) of the Principal Act and for the proposed section 69A, could be regarded as too severe, which may be an undue trespass on personal rights and liberties, and refers this to Parliament.

Schedule 1 [3] inserts proposed section 72A – provides that person who lives or has lived with another person (the tenant) who obtains a benefit from the Corporation (whether or not as a tenant of the Corporation) is jointly and severally liable for certain amounts owed to the Corporation by the tenant if the amount is owed because the tenant improperly obtained a benefit to which the tenant was not entitled because of the person living there and the person was over 18 years at the time and knew, or should reasonably have suspected, that the tenant was improperly obtaining the benefit.

15. The Committee notes that, from a preliminary search, most of the other Australian jurisdictions do not have a comparable provision as the above proposed section 72A. The Committee considers that a person who has lived with the tenant as being jointly and severally liable for amounts owed by the tenant, when that person is no longer living with the tenant, or no limits have been set on how long since that person has moved or whether they were still in communication with the tenant, could be harsh and excessive so as to trespass unduly on personal rights and liberties; and refers this to Parliament.

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

Issue: Ill-Defined and Wide Powers – Schedule 1 [2] inserts proposed section 69B – permits the Corporation, for the purposes of preventing or investigating fraud against the Corporation, or prosecuting a person for any such fraud, to request, collect, use and disclose information (including personal information) from certain registers of information, including the driver licence register.

16. The Committee is concerned that the scope for preventing (as opposed to investigating alleged fraud or prosecuting fraud) is extremely wide, and may become a fishing expedition for information, including personal information which may trespass on individual rights to privacy.

17. The Committee considers that the lack of definition or set of circumstances or criteria to specify grounds for preventive purposes, could make personal rights and liberties unduly dependent on insufficiently defined administrative power, and refers this to Parliament.

The Committee makes no further comment on this Bill.

8. LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2008

Date Introduced:	4 April 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Paul Lynch MP
Portfolio:	Local Government

Purpose and Description

1. This Bill amends the *Local Government Act 1993* in relation to the conduct of local government elections, the alteration of ward boundaries, the reduction of councilor numbers, and the role of councils during election periods; and for other purposes.

Background

2. Some of the amendments will aim to improve council efficiency or ensure the smooth running of electoral functions or the efficient administration of local government elections:

- including allowing councils for a limited period, to apply to reduce the number of councillors without having to conduct a constitutional referendum of electors;
- providing the optional preferential voting system for elections where only one position is to be filled but the proportional voting system applies for elections where 2 or more positions are to be filled;
- providing that a person is validly nominated for election to civic office if the person is enrolled when the roll of electors closes;
- clarifying the procedures that are to be followed if a nominated candidate dies;
- expressly providing for the use of mobile pre-polling booths in accordance with the regulations.

The Bill

3. The object of this Bill is to amend the *Local Government Act 1993* (the *Principal Act*) in connection with:

• the conduct of local government elections, and
• the alteration of ward boundaries, and
• applications for the reduction of councillor numbers, and
• the role of councils during election periods, and
• associated matters.

4. Amendments include the following:

(a) to make it clear that an alteration of the number of a council's wards does not require approval at a constitutional referendum of electors,
(b) to allow councils, for a limited period, to apply to reduce the number of councillors without having to conduct a constitutional referendum of electors,
(c) to provide that the optional preferential voting system applies to elections where only one position is to be filled, and that the proportional voting system applies for elections where 2 or more positions are to be filled,
(d) to provide expressly for the use of mobile pre-polling booths in accordance with the regulations,
(e) to express electoral functions as being exercisable by the Electoral Commission rather than the Electoral Commissioner,
(f) to transfer certain electoral functions from returning officers to the Electoral Commission,
(g) to permit the Electoral Commission to appoint a returning officer for more than one local government area,
(h) to provide for the appointment by the Electoral Commission of polling place managers and election assistants as well as returning officers (who are collectively referred to as election officials),
(i) to make it clear that the Electoral Commission can authorise the sub-delegation of functions delegated to election officials,
(j) to provide that information on candidates' information sheets must be available (rather than displayed) at polling places and must be published on the websites of the Electoral Commission and the council,
(k) to vary the 3-week period (or 14-day period in the case of a first election) during which mayors are to be elected by councillors following an ordinary or first election, so that it commences from the date of declaration of the poll,
(l) to clarify the procedures that are to be followed if a nominated candidate dies,
(m) to amend a council's charter to state that the council is to exercise its functions responsibly, including during election periods for ordinary elections and to observe caretaker government conventions,
(n) to provide that a person is validly nominated for election to civic office if the person is enrolled when the roll of electors closes,
(o) to confirm that the Director-General or other officer of the Department of Local Government may be appointed as an administrator of a council.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

9. PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT AMENDMENT BILL 2008

Date Introduced:	2 April 2008
House Introduced:	Legislative Assembly
Minister Responsible:	John Della Bosca MP
Portfolio:	Minister for Industrial Relations

Purpose and Description

1. The purpose of this Act is to amend the *Public Sector Employment and Management Act 2002* to facilitate the appointment of long-term Departmental temporary employees to officer positions in the Public Service by removing the requirement that such a temporary employee can only be appointed to such a position if the position has substantially the same duties as those performed during the period of temporary employment. The Bill also enables public sector employees who are on long term secondments (i.e. for at least 2 years) to be appointed to new positions in the agencies to which they are seconded without having to advertise the position or serve a period of probation, but only if they have been selected on merit at some stage for a similarly graded position. The Bill also enables an eligibility list that is created for a particular Departmental position to remain current for 12 months and to be used in relation to other similar positions (including similar positions in other departments).

Background

2. This bill implements recommendations of the review of employment processes in the New South Wales public sector undertaken by the Council on the Cost and Quality of Government (COCQOG). In conducting the review, COCQOG consulted widely with public sector agencies.

3. Under the *Public Sector Employment and Management Act 2002 o*fficer positions are those held by persons employed in chief or senior executive positions or other staff positions in the Department.

4. Vacant officer positions must currently be advertised in the *Public Sector Notices* weekly publication by the Department of Commerce. The bill formalises the use of the jobs.nsw.gov.au website as the main place to advertise vacancies in the NSW public service. This reflects COCQOG recommendations that e-recruitment is now the dominant form of recruitment.

5. Notices of appointment, which must currently be published in the Public Sector Notices, will also be able to be posted on the jobs.nsw.gov.au website under this bill. According to the Agreement in Principle Speech these 'changes will help modernise public sector employment practices and will facilitate the establishment of a more comprehensive Government employment website'[1]

[1] The Hon. Tony Kelly MP, Legislative Assembly Hansard, 2 April 2008.

6. This bill also makes changes to the use of eligibility lists. An eligibility list, of eligible applicants who meet all the selection criteria for a position, arranged in order of merit. Under the current Act eligibility remains current for 12 months for entry-level positions and six-months for other positions. This bill increases the length of validity for lists to 12 months for all graded positions. The bill also allows the use of eligibility lists across departments to fill positions which are substantially the same. According to the Agreement in Principle speech the 'changes will assist in maximising the employment of identified talent among agencies and are expected to reduce costs'[2]

7. Under current arrangements a temporary employee may be appointed to a permanent position if a number of requirements are met. These requirements include that the duties of the permanent position are substantially the same as those for the original temporary position that the person was employed in on a basis of merit. According to the Agreement in Principle speech:

> In many cases, the duties for the permanent position will not be substantially the same as the duties for the first temporary position. This is particularly the case if the person has been employed on a temporary basis for more than two years. The bill removes the requirement that duties must be substantially the same. The requirement is considered unnecessary, given the person must still meet the selection criteria for the permanent position in order to be appointed. Importantly, no-one will be able to be appointed to a permanent position at a particular grade unless he or she obtained that, or a similar grade, through a merit selection process.[3]

8. The bill also implements changes for the simplification of the process for converting long-term secondments (at least two years) to permanent appointments. It changes the current requirements preventing a long-term secondee from being permanently appointed to a higher position which they have been acting in without the host agency satisfying the requirements of the *Public Sector Employment and Management Act 2002* regarding the advertising and filling of that position. According to the Agreement in Principle speech:

> The bill provides for a simpler process to appoint a person to the position that he or she has been seconded to, if certain requirements are met. Importantly, a person will be appointed to the new position only if that person was selected for secondment on the basis of merit to the same or a similar level. The person must also meet the selection criteria for that position. Accordingly, none of the proposed changes affects the merit principle. Public sector agencies and unions have been widely consulted on the proposed bill and support the changes proposed.[4]

The Bill

Outline of provisions
Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
Clause 3 is a formal provision that gives effect to the amendments to the *Public Sector Employment and Management Act 2002* set out in Schedule 1.
Clause 4 is a formal provision that gives effect to the amendments to the Act and Regulation set out in Schedule 2.

[2] The Hon Tony Kelly, Legislative Assembly Hansard, 2 April 2008
[3] The Hon Tony Kelly, Legislative Assembly Hansard, 2 April 2008
[4] The Hon Tony Kelly, Legislative Assembly Hansard, 2 April 2008

Clause 5 provides for the repeal of the proposed Act on the day after the date of assent. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Public Sector Employment and Management Act 2002

At present under section 18 of the Act, if it is proposed to make an appointment to a vacant position in a Department, the Department Head must advertise the vacancy in the Public Sector Notices. **Schedule 1 [2]** provides instead for the vacancy to be advertised on the NSW Government's recruitment website. **Schedule 1 [1]** removes the definition of ***Public Sector Notices*** as that term will no longer appear in the Act.

Schedule 1 [3] enables an eligibility list for any Public Service position (being a list of the persons who applied for appointment to the position and who are eligible for appointment, but were not selected for appointment) to remain current for 12 months after the list was created instead of, as is the case at present for positions other than a base grade or entry level position, for only 6 months. **Schedule 1 [4]** enables an eligibility list to apply not only to the relevant position for which it was created but also to any other position that is substantially the same as the relevant position. The other position may be a position in another Department.

Schedule 1 [5] is a consequential amendment.

Schedule 1 [7] removes a provision that refers to the requirement, under section 19 of the GREAT Act, for notice of a proposed appointment to be published in the Public Sector Notices if the appointment is subject to an appeal under the GREAT Act.

Schedule 1 [6] replaces this provision with a note drawing attention to the requirement under the GREAT Act for notice of proposed appointments to be published and distributed to employees.

Schedule 1 [8] makes it clear that the provision requiring persons to serve a period of probation when they first enter the Public Service is subject to exceptions contained elsewhere in the Act and not just the Part in which the provision appears. Section 31 of the Act currently provides for the appointment of long-term Departmental temporary employees (ie persons who have been employed on a temporary basis in a Department for a continuous period of at least 2 years) to officer positions in the Department. Such an appointment may only be made if the duties of the position concerned are substantially the same as those performed by the employee at the time the employee was selected on merit to perform those duties.

Schedule 1 [9] removes the requirement that the officer position to which the temporary employee is appointed must have substantially the same duties as those performed by the person as a temporary employee. Instead of this requirement, it is made clear that the employee must have been performing duties at the same or similar grade to the officer position to which the employee is being appointed and that the employee was, at some stage during the temporary employment, selected on merit to perform duties at that grade.

Schedule 1 [10] is a consequential amendment.

At present under section 86 (6) of the Act, a public sector employee who has voluntarily transferred from one agency to the service of another public sector agency (***the host agency***) becomes an employee of the host agency if the transfer (or the secondment as it is otherwise known) has continued for at least 2 years and the employee decides to remain with the host agency. **Schedule 1 [11]** enables the head of the host agency to appoint the person to a new position in the agency without having to advertise the position or requiring the person to serve a period of probation.

Such an appointment is subject to certain requirements (such as the new position must not be above Grade 12 level). Also, if the new position is graded higher than the person's original

position in the home agency and the new position is not advertised, the person may be appointed to the new position only if the person has at some stage been selected on merit to perform duties at that higher grade in the host agency.
Schedule 1 [12] enables regulations of a savings and transitional nature to be made as a consequence of the proposed Act.
Schedule 1 [13] makes it clear that the amendments made by the proposed Act extend to existing eligibility lists, persons who are currently employed as Departmental temporary employees and persons who are on existing voluntary secondments.

Schedule 2 Amendment of other legislation
Schedule 2.1 amends section 19 of the *Government and Related Employees Appeal Tribunal Act 1980* to provide that the notice of appointment that a public sector employer is required to publish can appear on the NSW Government's recruitment website and that the notice is taken to have been distributed in accordance with that section if that website contains the notice and is made available to the employees.
Schedule 2.2 amends the *Government and Related Employees Appeal Tribunal Regulation 2005* to make a minor correction to a cross-reference to a provision of the GREAT Act and to remove a reference to the Public Service Notices in the prescribed form for notice of appointments.

Issues Considered by the Committee

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

Right to Privacy: Schedule 1 Section 20 (5) and (5A)

The concept of shared eligibility lists does raise issues of sharing information across government departments. The legislation does not address the issue of what information is to be shared. Will it consist of interview panel reports, referee's reports etc? Sharing of this information is problematic without the consent of the applicant, particularly if the applicant has not seen these reports themselves. The Bill also does not stipulate which department is to maintain ultimate control of the information.

9.	**The Committee is concerned that the Bill does not sufficiently address the issue of how much applicant information will be shared between departments for the purposes of shared eligibility lists and whether the applicant's consent must be obtained. The Committee refers the issue to Parliament.**

The Committee makes no further comment on this Bill.

10. STATE REVENUE LEGISLATION AMENDMENT BILL 2008

Date Introduced:	2 April 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Frank Sartor MP
Portfolio:	Planning

Purpose and Description

1. This Bill makes miscellaneous amendments to certain State revenue legislation.

2. This Bill aims to provide tax concessions and first home benefits for people who have legitimate claims and addresses tax avoidance practices by others attempting to avoid their legal responsibilities.

3. The Bill makes amendments to the *Duties Act 1997*, the *First Home Owner Grant Act 2000*, the *Health Insurance Levies Act 1982*, the *Land Tax Management Act 1956*, the *Payroll Tax Act 2007*, the *Taxation Administration Act 1996* and the *Unclaimed Money Act 1995*.

4. It also repeals the *Debits Tax Act 1990*, the *Stamp Duty Act 1920* and the *Taxation Administration Regulation 2003*.

Background

5. The Agreement in Principle explains the following amendments relating to duties:

> Land rich duty is payable when a person acquires a significant interest in a company or trust that holds land worth $2 million or more. The land rich provisions of the Duties Act ensure the same duty is payable on an indirect acquisition of an interest in land as would be payable on a direct purchase of a similar interest.
>
> A practice has been identified where land rich duty is avoided by declaring a trust instead of transferring shares in the company or units in the trust. This effectively gives the purchaser ownership and control of an interest in land without incurring a liability to duty. The Office of State Revenue has identified 17 transactions where this practice was used in the last year involving duty in excess of $50 million. To address this avoidance practice, the bill imposes land rich duty on an acquisition where the capacity in which a person holds an interest in a land rich company or trust changes, including by way of declaration of trust. Those transactions are already dutiable in most other States and Territories. To ensure this loophole is closed immediately, this anti-avoidance measure will take effect from the date on which the bill was introduced.
>
> The bill also makes an amendment to prevent the use of contrived arrangements to obtain a duties concession for partitions of land. A partition occurs when jointly owned land is split up between the owners. The duties concession recognises each party's existing interest in the land. A duty avoidance practice has been identified in which people who wish to exchange land each acquire a small interest in the other party's land and subsequently partition the jointly-owned land paying minimal duty. The amendment will prevent this abuse but will ensure genuine partitions remain eligible for the concession.

> The bill makes a number of amendments relating to concessions and exemptions from duties. One such amendment clarifies the duties concession under First Home Plus. In some cases an applicant will not be eligible for the concession when buying a home on multiple occupancy land such as a duplex where both houses are on a single title. The Government believes that eligibility for the concession should be determined by whether the applicant is a genuine first home buyer rather than by the form of land title under which the home is held. The proposed amendment will allow the duties concession to be approved for the purchase of a separate home on multiple occupancy land. This is particularly beneficial for people in rural communities.
>
> The bill makes two significant extensions to the duties concession for transfers out of a deceased estate. The first is where the executor, administrator or trustee of the estate appropriates property to a beneficiary in satisfaction of the beneficiary's entitlement under the will. For example, the trustee might transfer a house to a beneficiary instead of paying a cash legacy. At present the duty payable varies depending on the wording of the will. The bill provides that an appropriation of estate property in satisfaction or partial satisfaction of a beneficiary's entitlement is liable to duty of $10 in all circumstances. The second extension is when the beneficiaries agree to vary their entitlements under the will. For example, a beneficiary who is entitled to a one-half interest in a house might agree to buy the house from the estate for a purchase price of one-half its value. The amendment will impose duty on only the transfer of the one-half interest in the house that is in excess of the beneficiary's entitlement.

6. This Bill provides clarification on the types of charitable and benevolent bodies that are eligible for exemption from duties to include charitable trusts and trustees. A new duties concession is also provided for an application to register a motor vehicle that has been modified for a person with a disability. Duty will be calculated on only the value of the vehicle after deducting the value of the modifications made to enable the person with a disability to drive the vehicle or to enable someone else to transport the person with a disability.

7. It also implements 2 proposals relating to eligibility for the First Home Owner Grant. Firstly, the list of interests in land that is eligible for the grant. While most of those interests are detailed in the Act, other interests are currently recognised as legitimate interests in a public ruling issued by the Chief Commissioner of State Revenue. Incorporating those interests in the Act will provide greater certainty for taxpayers and their professional advisors. The interests to be included in the Act are when a person builds a home or a self-contained dwelling annex, such as a granny flat, or purchases a movable home, in each case on land owned by another person. The second proposal is to adopt a provision from the First Home Plus scheme to allow a first home buyer to remain eligible for the grant if an additional purchaser is added as a purchaser for finance purposes only. This addresses the common practice of some lenders especially for loans to young first homebuyers where they require a guarantor to be on the title.

8. According to the Agreement in Principle, the following amendments of the Land Tax Management Act are proposed:

> Currently a land tax exemption applies to land used and occupied as the principal place of residence of one or more owners provided that all of the owners are natural persons. The exemption can apply to two or more parcels of land or two or more strata units provided that the land is not physically separated and is owned by the same person or the same joint owners. If those criteria are satisfied, eligibility for the exemption should be determined by the owner's use of the property as a single residence regardless of the number of lots. This sole use and occupation test was confirmed in the Supreme Court by what is known as Ryan's case. However, several recent decisions of the Administrative Decisions Tribunal and the Supreme Court have highlighted the possibility of inconsistent interpretation of those tests. To

remove any ambiguity, the amendments spell out and define the principles adopted in Ryan's case. The amendments provide that where there are separate buildings located on separate lots and the buildings are separately occupied or are capable of separate occupation the exemption will apply to only one of the lots.

This is consistent with the principles under the Valuation of Land Act that identify when two or more parcels of land can be valued as one parcel. In the case of two or more strata lots the exemption will apply to all the lots only if there is internal access between the lots allowing use as one residence, except for lots used for an ancillary purpose such as a garage or storage area. Where only part of a lot satisfies the amended requirements for exemption, a partial exemption will apply based on the proportion of the lot or the buildings that satisfies the criteria for exemption.

The Bill

9. The objects of this Bill are as following:

(a) to amend the *Duties Act 1997*:

(i) to prevent the use of duty concession on partitions of land to avoid duty on exchanges of land that are not genuinely between joint owners, and

(ii) to extend the circumstances in which a duty concession applies in relation to deceased estates, and

(iii) to introduce a duty concession for the enlargement of a term in land into a fee simple, and

(iv) to introduce a duty exemption for pharmacists who incorporate, and

(v) to allow the First Home Plus duty concession to be claimed, in certain circumstances, in respect of a purchase of land even if the land constitutes a multiple occupancy, and

(vi) to prevent the avoidance of land rich duty by means of a declaration of trust, and

(vii) to introduce a concession on the duty payable for registration of a motor vehicle in respect of any motor vehicle that has been modified for the purpose of use by, or transport of, a person with a disability, and

(viii) to extend the duty exemption for charities to a person who acts as a trustee of a charity when acting in that capacity, and

(ix) to provide that the stamping of an instrument under the Act is a tax assessment for the purposes of the *Taxation Administration Act 1996*, and

(x) to extend provisions that relate to quoted marketable securities to stapled securities that are quoted on a stock exchange, and

(xi) to remove obsolete and redundant provisions in the Act and make other changes by way of statute law revision,

(b) to amend the *First Home Owner Grant Act 2000*:

(i) to allow the grant to be claimed (in certain circumstances) if a person builds a home on land owned by another, purchases a manufactured home and installs it on land owned by another or purchases land with the assistance of another person who acquires a small interest in the property, and

(ii) to extend (from 2 years to 3 years) the period during which proceedings for an offence against the Act must be commenced,

(c) to amend the *Health Insurance Levies Act 1982* for statute law revision purposes,

(d) to amend the *Land Tax Management Act 1956*:

(i) to clarify an exemption for non-profit associations, and

(ii) to clarify the application of the principal place of residence exemption to land comprised of 2 or more lots or strata lots, and

(iii) to extend a concession to land owned by one person that is comprised of multiple residential occupancies, and

(iv) for statute law revision purposes,

(e) to amend the *Payroll Tax Act 2007*:

(i) to clarify an exemption for charitable bodies, and

(ii) to modify grouping provisions,

(f) to amend the *Taxation Administration Act 1996*:

(i) to allow tax officers to disclose information obtained under taxation laws in connection with the administration of the *Fines Act 1996*, and

(ii) to allow information obtained under taxation laws to be disclosed to the Commissioner of NSW Fire Brigades and the Commissioner of the NSW Rural Fire Service, and

(iii) to extend (from 2 years to 3 years) the period during which proceedings for an offence against a taxation law must be commenced, and

(iv) for statute law revision purposes,

(g) to amend the *Unclaimed Money Act 1995* as a consequence of changes to Commonwealth law dealing with unclaimed superannuation benefits and for statute law revision purposes,

(h) to repeal the *Debits Tax Act 1990* (as the tax under that Act has been abolished),

(i) to repeal the *Stamp Duties Act 1920* (which was replaced by the *Duties Act 1997*) and to make provision for the final determination of duty payable in respect of leases that are chargeable with duty under that Act,

(j) to repeal the *Taxation Administration Regulation 2003* and transfer the remaining provisions of that regulation to the *Taxation Administration Act 1996*.

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.
Clause 3 is a formal provision that gives effect to the amendments to the Acts referred to in Schedules 1–7.
Clause 4 repeals the *Debits Tax Act 1990*, the *Stamp Duties Act 1920* and the *Taxation Administration Regulation 2003*. The *Stamp Duties Act 1920* has been replaced by the *Duties Act 1997*. Debits tax was abolished on 1 January 2002.
Schedules 1 and 6 include savings and transitional provisions relating to the repeal of these Acts that are explained further below. The provisions of the *Taxation Administration Regulation 2003* that remain relevant are to be transferred to the *Taxation Administration Act 1996* by **Schedule 6**.
Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act

will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Issues Considered by the Committee

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

Issue: Retrospectivity – *Amendment of Duties Act 1997*: Schedule 1 [23] and [33] – to be taken to have commenced the date on which this Bill is introduced in the Legislative Assembly.

11. The proposed section 163G (2)(e) to be inserted by the above Schedule reads as follows:

> If a person holds an interest in the land rich landholder (whether or not as trustee for another person) and the capacity in which the person holds the interest changes (including if there is a change in the beneficial ownership of an interest held by a person as a trustee).
>
> Note. For example, the capacity in which a person holds a unit or share in a land rich landholder changes if the person declares a trust in respect of the unit or share.

12. The commencement provision in this Bill specifies that the above provision will commence on the date on which the Bill is introduced in the Legislative Assembly.

13. Schedule 1 [23] extends the situations in which an acquisition of interests in land rich landholders will be dutiable under the land rich duty provisions. For example, if a person who holds a unit or share in a land rich landholder declares a trust in respect of the unit or share.

14. The Committee notes that the amendment of *Duties Act 1997* in Schedule 1 [23] is intended as an anti-avoidance measure. The Committee also notes that Schedule 1 [33] is a related amendment to ensure that an exemption provision does not operate to permit the practice of using declarations of trust to avoid land rich duty.

15. However, the Committee will always be concerned where provisions are taken to have commenced on the date on which the Bill is introduced into Parliament. The Committee notes that these provisions will apply retrospectively before the commencement of the legislation.

16. The Committee considers that the retrospective application of the provisions may adversely impact and unduly trespass on personal rights, and refers this to Parliament.

17. Amendments of *Unclaimed Money Act 1995* in Schedule 7 [1] – [10], [12] and [13] extend Commonwealth laws relating to unclaimed money to superannuation providers by making amendments that are consequential on the extension of the Commonwealth *Superannuation (Unclaimed Money and Lost Members) Act 1999* to all superannuation benefits other than those provided by public sector superannuation schemes. The amendments remove provisions that require unclaimed superannuation benefits to be paid to the Chief Commissioner of State Revenue. Existing arrangements will continue for NSW public sector superannuation schemes.

18. Schedule 7 [16] provides that the new arrangements are taken to have effect from 1 July 2007.

19. The Committee will always be concerned with retrospective applications of provisions. However, the Committee considers the retrospectivity of the amendment of *Unclaimed Money Act 1995* in Schedule 7 [16] does not trespass unduly on personal rights and liberties as it provides arrangements to extend Commonwealth laws relating to unclaimed money to superannuation providers to all superannuation benefits other than those provided by public sector schemes.

The Committee makes no further comment on this Bill.

11. SUPERANNUATION ADMINISTRATION AMENDMENT BILL 2008

Date Introduced:	2 April 2008
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Frank Sartor MP
Portfolio:	Planning

Purpose and Description

1. This Bill amends the *Superannuation Administration Act 1996* and certain other public sector superannuation Acts with respect to surplus funds in employer reserves and disputes; and for other purposes.

2. The Bill seeks to:

- amend the *Superannuation Administration Act 1996* to enable the SAS Trustee Corporation, known as STC, to return non-State sector surplus employer reserves to funding providers with the approval of the Treasurer;

- enable STC, with the approval of the Treasurer, to transfer surpluses between State sector employers' reserve accounts within the pooled fund so that the State sector can record additional financial assets that are excess to individual State sector employer superannuation funding requirements on the State sector balance sheet; and

- insert a time limit of two years within which a person aggrieved by a decision made by the STC can lodge a dispute against that decision with the STC Disputes Committee.

Background

3. The bill also makes miscellaneous minor amendments to the Superannuation Administration Act 1996 that will correct references to other Acts that have become outdated or no longer are appropriate.

4. According to the Agreement in Principles Speech:

> Some local government council employers had surplus reserves as at 30 June 2007 that might be better used by those councils to provide local community services rather than to sit indefinitely in STC employer reserve accounts. At 30 June 2007 STC held $699 million in financial assets for and on behalf of State sector employers that could not be recorded as assets on the State sector balance sheet—this is despite the State sector having contributed the funds to the pooled fund.
>
> The bill will allow these funds to be transferred within the State sector, which will have the effect of allowing these financial assets to be recorded on the State sector balance sheet, with the result that net financial liabilities recorded on the State sector balance sheet will be lower. A surplus in excess of recovery available from schemes exists in an employer's superannuation reserve when the value of assets exceeds the combined value of current and future

superannuation liabilities. The extent of the surplus currently unavailable to the State sector is determined actuarially in accordance with accounting standards. Under accounting standard AASB119 "Employee Benefits", that part of a surplus that cannot be returned to an employer, no longer is recorded as an asset in the employer's financial statements.

Employers are informed of the extent of the surplus on their superannuation position statements. These statements are prepared on an AASB119 basis by an actuary for STC at the end of every financial year. The Superannuation Administration Act 1996 already enables transfers of funds from one Crown-funded employer's reserve to another Crown-funded employer's reserve. Without this bill the permanent surplus funds held in some State sector employer reserves would be held indefinitely in the pooled fund, even after all liabilities have been paid out. Permanent surpluses currently cannot be applied to funding superannuation liabilities over and above the current and future superannuation liabilities for that employer. In relation to the proposed two-year dispute limitation period, it should be noted that currently there is no time limit within which to lodge a dispute against an STC decision with the STC Disputes Committee.

5. The Commonwealth regime has a limit of two years in which an aggrieved person can make a complaint about the trustee's decision to the Superannuation Complaints Tribunal. The State Pooled Fund schemes should also have a two-year dispute lodgement period. This will be consistent with Commonwealth superannuation law. Under current provisions, there is an inconsistency between the provisions for STC and Commonwealth regulated superannuation funds.

The Bill

6. The objects of this Bill are as follows:

(a) to amend the *Superannuation Administration Act 1996* to enable STC Trustee Corporation to transfer State sector surplus employer reserves to other such reserves and to return non State sector surplus employer reserves to those employers,
(b) to insert a two year time limit to dispute an STC Trustee Corporation decision under the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987* or the *Superannuation Act 1916* from the date of notification of the right to dispute that decision,
(c) to make other statute law revision amendments.

Schedule 1 Amendment of Superannuation Administration Act 1996
STC Trustee Corporation is the trustee of a number of closed defined benefit superannuation schemes. The proposed amendments will allow the transfer of surplus funds between the reserves of State sector employers and the payment of surplus funds in the reserves of non State sector employers to those employers. Surplus funds are funds that exceed the amount required to meet the current and future liabilities under the scheme to which they relate as determined in accordance with Accounting Standard AASB 119: *Employee Benefits* or another standard prescribed by the regulations.
Schedule 1 [1] inserts the definitions of ***State sector employer*** and ***surplus funds***.
Schedule 1 [6] inserts a new section 81A. The proposed section provides that:

(a) the STC may, at the request of the Treasurer, debit all or part of the surplus funds from a State sector employer reserve and credit those funds to a reserve of that employer in another STC scheme, or the reserves of one or more other State sector employers in the same or another STC scheme, and

(b) the STC may, at the request of an employer who is not a State sector employer, such as a local council, debit all or part of the surplus funds from the employer's reserve and pay that amount to the employer.

Schedule 1 [3], [5] and [7] make statute law revision amendments following the enactment of the *First State Superannuation Legislation Amendment (Conversion) Act 2005*.

Schedule 2 Amendment of other Acts

The *Superannuation Administration Act 1996* currently provides for the determination of disputes under section 67 but does not contain any express requirements, including a time frame, for the lodgement of those disputes.

Schedule 2.1 inserts proposed section 23E into the *Police Regulation (Superannuation) Act 1906*. The proposed section provides expressly for an aggrieved person to dispute a decision made by STC Trustee Corporation under that

Act, whether made before or after the commencement of the section, and to have the dispute determined under the *Superannuation Administration Act 1996*. Notice of the decision and the right to dispute it must be provided by STC. Notice of the dispute must be served on STC within 2 years of notification of the right to dispute that decision. The proposed dispute provision does not apply to a decision to which section 21 of that Act applies (which allows for application to the District Court within 6 months of being notified of certain decisions of STC or the Commissioner of Police).

Schedule 2.2, 2.3 and 2.4 insert proposed sections 33B, 54B and 85A into the *State Authorities Non-contributory Superannuation Act 1987*, *State Authorities Superannuation Act 1987* and *Superannuation Act 1916*, respectively. Each proposed section provides expressly for an aggrieved person to dispute a decision made by STC Trustee Corporation under the respective Act, whether made before or

after the commencement of the section, and to have the dispute determined under the *Superannuation Administration Act 1996*. Notice of the decision and the right to dispute it must be provided by STC. Notice of the dispute must be served on STC within 2 years of notification of the right to dispute that decision.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

Part Two – Regulations

SECTION A: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Mobility Parking Scheme) Regulation 2007 • Letter dated 25 March 2008 from the Minister for Roads to the Committee.	02/11/2007 page 8210

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1. Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Mobility Parking Scheme) Regulation 2007

Outline of the Regulation/Issues

Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Mobility Parking Scheme) Regulation 2007

Recommendation

That the Committee resolve to write to the Minister:

a) to thank the Minister for Roads for his reply

Grounds for comment

Personal rights/liberties	See comment below.
Business impact	
Objects/spirit of Act	
Alternatives/effectiveness	
Duplicates/overlaps/conflicts	
Needs elucidation	
SLA, ss 4,5,6, Sched 1, 2	
Other	

Persons contacted	Arch Hennessey Senior Policy Officer Roads and Traffic Authority

Explanatory Note

The object of this Regulation is to amend the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* to make further provision with respect to the issue to and use of mobility parking scheme authorities by persons with disabilities.

In particular this Regulation:

(a) updates the conditions to which a scheme authority is subject, and

(b) provides that the Roads and Traffic Authority (the ***Authority***) may require evidence that an individual seeking a scheme authority is a disabled person, and

(c) provides that the Authority may require the holder of a scheme authority to provide evidence that the holder is a disabled person or that the scheme authority has not been misused (failure to comply with such a requirement may be used as a basis for revoking the scheme authority), and

(d) permits the Authority, in order to determine if a person is a disabled person, to require the person to be examined by a specified medical practitioner or a medical practitioner belonging to a specified class and to require any such medical practitioner to provide the Authority with such information as it may require in relation to the individual's disability, and

(e) creates an offence (maximum penalty $2,200) if the holder of a scheme authority permits another person to have possession of, or access to, the scheme authority where the holder suspects or should reasonably suspect that the other person will use the scheme authority in contravention of any condition to which it is subject.

Comment

8. The Committee notes that ensuring mobility parking scheme authorities are only used for legitimate purposes assists people with disabilities to have easier access to various facilities.

9. The addition of clause 126FA to the Regulation places the onus of establishing that the scheme authority has not been misused on the holder of the permit. The circumstances in which the RTA can request such evidence are not limited.

10. The Committee notes that reversing the onus of proof may be justified where knowledge of the facts are peculiarly in the possession of one party. Accordingly, requiring the permit holder to provide evidence that it has not been misused may be warranted.

11. The Roads and Traffic Authority (RTA) informed the Secretariat that clause 126FA was designed to empower them to require a person to have his or her disability re-certified following a complaint to the Authority that the permit was being misused. However, the wording of clause 126FA is broader than this and arguably enables its application to other circumstances.

12. The Committee resolved to write to the Minister at its meeting on 4 December 2007 for clarification on the following:

> *Could the terms of clause 126FA be narrowed so as to apply only in circumstances where there is a need for recertification of the disability of the permit holder, such as following a complaint to the RTA? If this is not possible, could you please explain the reasons for the breadth of the clause.*

13. The Minister replied in a letter received on 25 March 2008 (refer to attachment). With reference to clause 126FA, the following reasons were provided by the Minister:

> *The RTA receives reports from various sources, usually members of the public, about the alleged misuse of Mobility Parking Scheme cards. At the request of the NSW*

Disability Council, the RTA introduced an Mobility Parking Scheme hotline to enable the public to report such cases to the RTA for investigation.

Clause 126FA of the Road Transport (Safety and Traffic Management)(Road Rules) Regulation 1999 provides the RTA with the authority to investigate and adequately respond to such reports, and to make informed decisions about the veracity of the reports.

In practice, the RTA does not require Mobility Parking Scheme card holders to 'show cause', unless there is sufficient evidence produced by an informant and following thorough investigation by the RTA. Card holders are afforded the opportunity to respond in writing to reports, which the RTA considers before any action is taken that could lead to the Mobility Parking Scheme card being revoked.

To help protect Mobility Parking Scheme card holders against possible unfair action by the RTA in relation to their cards, an appeal process was introduced, under Clause 29A of the Road Transport (General) Regulation 2005, which did not previously exist.

The changes to the Road Transport (Safety and Traffic Management)(Road Rules) Regulation 1999 are designed to improve the integrity of the Mobility Parking Scheme for the benefit of the genuine users of the scheme.

14. The Committee thanks the Minister for Roads for his reply.

The Committee considers that this Regulation requires no further action.

LRC2525
(08/151)

NEW SOUTH WALES

Minister for Roads
Minister for Commerce

M07/8779

Mr Alan Shearan MP
Chair
Legislation Review Committee
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

RECEIVED
25 MAR 2008
LEGISLATION REVIEW COMMITTEE

Dear Mr Shearan

Thank you for your letter regarding clause 126FA of the *Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Mobility Parking Scheme) Regulation 2007.* I apologise for the delay in my response.

The NSW Government is concerned about reports of abuse of the Mobility Parking Scheme, which is to the detriment of genuinely disabled people who may find it more difficult to find a suitable parking space.

Intelligence gathered from special operations conducted by Sydney City Council, North Sydney Council and other Councils, in partnership with the Roads and Traffic Authority (RTA) and NSW Police, revealed that offenders are either able bodied people who have obtained Mobility Parking Scheme cards fraudulently, or people who are using Mobility Parking Scheme cards issued to genuinely disabled people, such as family members.

While on-road enforcement of the Mobility Parking Scheme is the responsibility of local council rangers, the RTA is responsible for the administration of the Scheme. The RTA receives reports from various sources, usually members of the public, about the alleged misuse of Mobility Parking Scheme cards. At the request of the NSW Disability Council, the RTA introduced an Mobility Parking Scheme hotline to enable the public to report such cases to the RTA for investigation.

Clause 126FA of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* provides the RTA with the authority to investigate and adequately respond to such reports, and to make informed decisions about the veracity of the reports.

In practice, the RTA does not require Mobility Parking Scheme card holders to 'show cause', unless there is sufficient evidence provided by an informant and following thorough investigation by the RTA. Card holders are afforded the opportunity to respond in writing to reports, which the RTA considers before any action is taken that could lead to the Mobility Parking Scheme card being revoked.

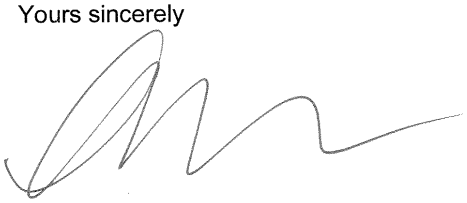
Level 36, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Tel (02) 9228 3535 Fax (02) 9228 4469

To help protect Mobility Parking Scheme card holders against possible unfair action by the RTA in relation to their cards, an appeal process was introduced, under Clause 29A of the *Road Transport (General) Regulation 2005*, which did not previously exist.

The changes to the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* are designed to improve the integrity of the Mobility Parking Scheme for the benefit of the genuine users of the scheme.

If you require any further information, you may wish to contact Ms Ann King, General Manager, Driver and Vehicle Services, RTA on (02) 9218 6558

Yours sincerely



HON ERIC ROOZENDAAL MLC
MINISTER FOR ROADS
MINISTER FOR COMMERCE

Appendix 1: Index of Bills Reported on in 2008

	Digest Number
Conveyancing Amendment (Mortgages) Bill 2007*	1
Crimes Amendment (Drink and Food Spiking) Bill 2008	2
Criminal Case Conferencing Trial Bill 2008	4
Education Amendment Bill 2008	4
Energy Services Corporations Ownership (Parliamentary Powers) Bill 2008*	2
Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008	4
Fines Amendment Bill 2008	4
Food Amendment (Public Information on Offences) Bill 2008	2
Gaming Machines Amendment (Temporary Freeze) Bill 2008	2
Gas Supply Amendment Bill 2008	4
Growth Centres (Development Corporations) Amendment Bill 2008	4
Housing Amendment (Tenant Fraud) Bill 2008	4
Local Government Amendment (Election Date) Bill 2008	2
Local Government Amendment (Elections) Bill 2008	4
Marine Parks Amendment Bill 2007	1
Mining Amendment Bill 2008	3
National Parks and Wildlife (Leacock Regional Park) Bill 2008	3
Occupational Health and Safety Amendment (Liability of Volunteers) Bill 2008*	3
Public Sector Employment Management Amendment Bill 2008	4
Road Transport Legislation Amendment (Car Hoons) Bill 2008	2
Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2008*	3
State Revenue Legislation Amendment Bill 2008	4
Superannuation Administration Amendment Bill 2008	4
TAFE (Freezing of Fees) Bill 2007*	1

	Digest Number
Totalizator Amendment Bill 2008	2

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07		1	
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7	
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07		1	
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1,2	
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1	

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

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Crimes Amendment (Drink and Food Spiking) Bill 2008				R	
Criminal Case Conferencing Trial Bill 2008	N, R				
Education Amendment Bill 2008	N, R				
Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008	N, R	N, R			
Food Amendment (Public Information on Offences) Bill 2008				R	
Gaming Machines Amendment (Temporary Freeze) Bill 2008	N				
Housing Amendment (Tenant Fraud) Bill 2008	N, R	R			
Mining Amendment Bill 2008	N				
Public Sector Employment and Management Amendment Bill 2008	R				
Road Transport Legislation Amendment (Car Hoons) Bill 2008	R		R	R	
Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2008*	N, R				
State Revenue Legislation Amendment Bill 2008	N, R				

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

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

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