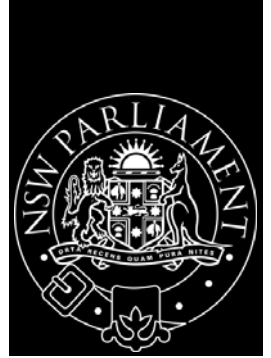


PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 4 of 2007

23 October 2007

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* Denotes Private Member's Bill

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations:

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

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

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

Section B: Ministerial correspondence – Bills previously considered

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

Part Two – Regulations

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

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

Appendix 1: Index of Bills Reported on in 2007

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 2007

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 2007

This table specifies the action the Committee has taken with respect to Bills that received comment in 2005 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 2007

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. **Animals (Regulation of Sale) Bill 2007***

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

2. **Bail Amendment Bill 2007**

Issue: Excessive Punishment – Clause 1 of Schedule 1 Amendments – Section 8B Presumption against bail for serious firearms and weapons offences

9. The Committee asks Parliament to consider whether the extension of a presumption against bail in respect of offences against sections 44A and 62 of the *Firearms Act 1996*, trespasses unduly on personal rights and liberties, such as the presumption of innocence.
11. The Committee asks Parliament to consider whether the limits on the number of bail applications may trespass unduly on personal rights and liberties, such as the right to be treated as though innocent. However, the Committee notes that this section does not affect the power of a court to review a decision in relation to bail under Division 2 of Part 6 or the right of a person to request such a review.

Issue: Retrospectivity – Clause 4 of Schedule 1 Savings and transitional provisions – Proposed Section 36

14. The Committee asks Parliament to consider whether the retrospective effect of this amendment may trespass unduly on personal rights and liberties, where an accused person would not have a presumption against bail in respect of the alleged commission of the particular firearms offences before the commencement of the amending legislation.

Issue: Retrospectivity – Clause 4 of Schedule 1 Savings and transitional provisions – Proposed Section 37 - Limit on bail applications

17. The Committee asks Parliament to consider whether the retrospective effect of this amendment on the limit on bail applications may trespass unduly on personal rights and liberties, with regard to bail applications made before the commencement of this amending legislation.
19. The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation instead of on assent, is an inappropriate delegation of legislative power.
20. The Committee notes that the Bill is to commence on proclamation and understands that this is so the courts and the legal profession can be advised of changes before they take effect.

3. Courts Legislation Amendment Bill 2007

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

4. Crimes (Sentencing Procedure) Amendment Bill 2007

Retrospectivity: Schedule 1[16]

13. The Committee will always be concerned to identify the retrospective effects of legislation that may have an adverse impact on a person.
14. The Committee notes the right established by Article 15 of the *International Covenant on Civil and Political Rights* that a person not be subject to a heavier penalty than what was applicable at the time of the commission of the offence.
15. Accordingly, the Committee concludes that the rights and liberties of such persons are unduly trespassed.

Commencement by proclamation: Clause 2

17. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power.
18. The Committee notes that the Bill is to commence on proclamation and understands that this is so the courts and the legal profession can be advised of changes before they take effect.

5. Criminal Legislation Amendment Bill 2007

Double jeopardy: Schedule 1[10]

16. It is the opinion of the Committee that there are sound reasons for the State not being able to make repeated attempts to convict an individual for an alleged offence.
17. The Committee notes that the proposed amendments to s 208 of the *Criminal Procedure Act* would not prevent any later proceedings in any court for the same matter against the same person, if the previous proceedings were withdrawn by the prosecution.
18. However, the Committee notes that s 208 refers to circumstances where the matter was withdrawn by the prosecution rather than a situation where the accused was previously convicted or acquitted of the charges.
19. Accordingly, the Committee asks Parliament to consider whether the rights and liberties of such persons are unduly trespassed.

Reversal of onus of proof: Schedule 4[1] and [4]

26. The Committee notes that these offences place the onus of proof on the defendant in relation to establishing that it was not unlawful for him or her to possess instructions for the manufacture or production of a prohibited drug, or more than a set quantity of a prohibited drug precursor. This is a key element of the offence.
27. The Committee notes that the presumption of innocence is a fundamental right. Reversing the onus of proof is inconsistent with this right.
28. However, the Committee notes that a reversal of the onus of proof may be appropriate in some circumstances particularly where knowledge of the factual circumstances is in the possession of one party.
29. Accordingly, the Committee asks Parliament to consider whether the reversal of the onus of proof in these circumstances unduly trespasses on rights and liberties.

Commencement: Clause 2

32. The Committee has concerns about parts of the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power.

6. Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Bill 2007

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

7. Evidence Amendment Bill 2007

Commencement by proclamation: Clause 2

11. The Committee will usually be concerned if a Bill is to commence on proclamation rather than on assent. However, given the need to provide the legal profession with time to understand the amendments and the expressed intention to determine the commencement date in consultation with relevant parties, the Committee believes that providing for the Bill to commence on proclamation is an appropriate delegation of legislative power.

8. Food Amendment Bill 2007

Issue: Privacy – Clause 17 of Schedule 1 – Proposed section 136A Certain information may be provided to and by Food Authority

14. The Committee notes some of this information to be exchanged between the enforcement agencies and NSW Health in the proposed amending section, may include personal information such as the details of a food business from which the identify of a person can be ascertained or personal health information such as the symptoms and recent food consumption history of an affected individual. The amendment will enable councils, the Food Authority, the Department of Health and any public health organisation as defined in the *Health Services Act 1997* to lawfully exchange such information.
15. However, the Committee also notes that such an exchange of information is limited to the circumstances where the agency providing the information considers it as essential to exercise its functions under the Food Act and the *Public Health Act 1991*.
16. Therefore, the Committee considers this to be an appropriate balance between the need to protect the public from illness caused by contaminated food and the need to ensure the privacy of individuals, and is not an undue trespass to personal rights and liberties.
18. The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

9. Law Enforcement (Powers and Responsibilities) Amendment Bill 2007

Commencement by proclamation: Clause 2

10. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power.

10. Roads Amendment (Lane Cove Tunnel Filtration) Bill 2007*

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

11. Road Transport (General) Amendment (Written-off Vehicles) Bill 2007

Strict liability: Schedule 1[5] – Proposed sections 254, 256, 257, 258, 259, 264, 267, and 268

- 17. The Committee stresses that the presumption of innocence is a fundamental right. It highlights that the imposition of strict liability removes the requirement that the prosecution prove the defendant intended to commit the offence.**
- 18. However, the imposition of strict liability may be acceptable in circumstances where it is designed to protect the public interest and after consideration of any defences available and the type of penalties that may be imposed.**
- 19. Given the public interest in ensuring compliance with proposed Part 6.2, the existence of some safeguards, and the maximum penalty that may be imposed is 20 penalty units, the Committee concludes that personal rights and liberties are not unduly trespassed by the inclusion of strict liability offences.**

Commencement by proclamation: Clause 2

- 21. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power.**

12. Summary Offences Amendment (Spray Paint Cans) Bill 2007

Issue: Strict Liability – Clause 4 of Schedule 1 – Proposed Section 10E Confiscation of spray paint cans from minors

- 11. The Committee concludes that personal rights and liberties are not unduly trespassed by the strict liability offence given the inclusion of the following, balanced with the public interest of preventing graffiti:**
- 12. - a defence of lawful excuse for the possession of a spray paint can;**
- 13. - inclusion of procedures to be followed with regard to the seizure of spray paint cans;**
- 14. - the procedure to be followed after their seizure, including if the spray paint can is not immediately disposed, it must then be kept for a period of 7 days to allow the person to make an application for its return;**
- 15. - police officers to give reasons for seizing a spray paint can;**
- 16. - police officers to inform persons from whom the spray paint can is seized with a receipt specifying details of the seized spray paint can and claim for the seized can; and**
- 17. - provision to make an application to court for the return of the seized spray paint can.**

13. Tow Truck Industry Amendment Bill 2007

13. The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. ANIMALS (REGULATION OF SALE) BILL 2007*

Date Introduced:	18 October 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Ms Clover Moore MP
Portfolio:	Member for Sydney, Independent

Purpose and Description

1. This Bill aims to regulate the sale of mammals other than livestock so that mammals will only be able to be kept at shops or markets and offered for sale if they are kept on behalf of animal shelters (or council pound), and returned to the shelters at night; and for other purposes.

Background

2. This Bill aims to protect the lives and well-being of dogs, cats and other mammals by prohibiting their sale in pet shops, fairs and markets. This aims to prevent impulse buying of mammals by restricting sales to registered breeders, pounds, animal shelters and veterinarians where animals will be matched with buyers, who will be informed about mammal's special needs.
3. Under this Bill, mammals will only be able to be kept at shops or markets and offered for sale if they are kept on behalf of animal shelters and returned to the shelters at night. Prospective buyers will be required to attend the animal shelter to make a purchase as mammals cannot be sold at the shop or market. This will allow the RSPCA to take part in the Road to Home Program, which increases the recovery and re-homing of abandoned pets (as found in Queensland, with an increase of recovery and re-homing by 40%).
4. This Bill will prevent the sale of mammals through printed and electronic material. The pet shop will not be able to advertise to act as an intermediary for the sale of the mammal unless the animal is at an animal shelter or council pound.
5. The Bill will not restrict shops or markets from the selling of other animals such as birds or fish or from selling pet foods and accessories.
6. It will also ban the sale of mammals to persons under the age of 16. This is in line with the changes to the United Kingdom Animal Welfare Act. Persons under the age of 16 may not understand the responsibilities of owning a pet and such purchases may lead to parents abandoning the animal. The Pet Industry Association of Australia

has a national code of practice based on the Department of Agriculture's code of practice for animals in pet shops. However, it is voluntary. It covers animal housing, care and management and written information for the purchaser. The seven-day health warranty is encouraged, but there is no provision for returning the animal because of behavioural problems.

7. Animal behaviourists claim that a pet shop is a stressful environment for an animal. The animal is too young to be taken away from its mother and is subject to constant handling and lack of quiet times. Animal behaviourists say that this can lead to depressed immune systems and illness. The RSPCA and the Animal Welfare League of New South Wales and the police have power under the *Prevention of Cruelty to Animals Act 1979* to oversee the health and well-being of animals in pet shops.
8. The current lack of regulation with regard to the source of the animals for sale is also addressed by the Bill. Animals may come from unregistered backyard breeders, puppy farms or other pet owners. Purchasers have no guarantee of the pet's genetic history, past treatment or possible behaviour problems. Unregistered backyard breeders and puppy farms breed dogs and cats in large numbers. They sell them without identification or microchip and without screening the new owner. The Bill will aim to reduce the oversupply of mammals. It will ensure that a person wishing to acquire a cat, a dog or a mammal will have to go to a registered breeder, and/or a pound or a shelter.
9. The Bill will also require all mammals sold by animal shelters, council pounds and veterinary practices to be microchipped.
10. Austria has introduced similar legislation. Belgium and Croatia recently introduced legislation and many pet shops in America re-home animals only from shelters. The following organisations are said to support this Bill in the Agreement in Principle speech when the Bill was introduced: the RSPCA, Animal Liberation, Young Lawyers Animal Rights Committee, Saying No to Animals in Pet Shops, World League for the Protection of Animals, Dogs New South Wales, the American Staffordshire Club of New South Wales, Doggie Rescue, the Cat Protection Society and the Humane Society International.
11. In the Agreement in Principle speech, the following background was given:

Australia has the highest rate of pet ownership in the world. Yet the most recent statistics of the Department of Local Government show that over 60,000 dogs and cats are killed each year in New South Wales alone. Those numbers do not include animals dumped in national parks where domestic animals die of starvation, are killed by other animals or harm the natural ecosystem. If we want to consider ourselves as a humane society we need to take action to prevent the cruel dumping and killing of so many companion animals. That is the basis of the bill I introduce to the House today. I repeat: Australia has the highest rate of pet ownership in the world. Four out of five Australians have owned a pet and almost two-thirds of Australian households currently own pets...

In 2005-06 the New South Wales RSPCA received over 38,000 dogs and cats at its shelters, of which 18,000 had to be killed. As I said, the most recent statistics of the Department of Local Government show that 60,000 dogs and cats are killed each year in New South Wales—a number that equates with the population of a medium-size town. This number does not include other animals such as rabbits, mice and guinea pigs that are put down, nor does it include animals that are dumped in national parks where domestic animals die of starvation or cause harm to our natural ecosystem.

The Bill

12. The object of this Bill is to protect the lives and well-being of dogs, cats and other mammals (but not livestock) as follows:
- (a) by prohibiting the keeping for sale of mammals at shops or markets,
 - (b) by prohibiting the sale of mammals at shops or markets,
 - (c) by regulating the advertising or brokering of the sale of mammals from shops or markets,
 - (d) by regulating the publishing of any advertisement for the sale of mammals,
 - (e) by prohibiting the sale of mammals to children,
 - (f) by prohibiting the carrying on of a business of selling mammals, or propagating mammals for sale, by anyone other than a recognised breeder,
 - (g) by requiring any person who offers a mammal for sale to inform prospective purchasers of the special needs and requirements of the mammal,
 - (h) by requiring all mammals sold by animal shelters, council pounds and veterinary practices to be microchipped.
13. The Bill also amends other Acts and Regulations to make it an offence to fail to collect a mammal from a council pound, or to fail to either collect or surrender a companion animal at an animal shelter, after being notified that it is there.

Part 1 Preliminary

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

Clause 2 provides for the commencement of the proposed Act on a date that is 3 months after the date of assent, or on any earlier proclaimed date.

Clause 3 states the object of the proposed Act, which is to protect the lives and well-being of dogs, cats and other mammals (but not livestock).

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 provides that the proposed Act does not apply to livestock.

Clause 6 provides that the proposed Act does not affect any regulation of, or prohibition on, the keeping or sale of a mammal under the *National Parks and Wildlife Act 1974*, the *Prevention of Cruelty to Animals Act 1979* or any other Act or statutory rule.

Part 2 Offences

Division 1 Offences concerning the sale of mammals at shops and markets

Clause 7 prohibits the keeping for sale of mammals at shops or markets.

Clause 8 prohibits the selling of mammals at or from shops or markets.

Clause 9 regulates the advertising of the sale of mammals at shops or markets. Such advertising is permitted only if the mammal is at an animal shelter, council pound or veterinary practice or is being cared for in a prescribed private home (that is, a private dwelling at which a person looks after lost, stray, abandoned or surrendered mammals for the purposes of providing refuge until those mammal can be claimed or sold by certain non-profit organisations).

Clause 10 regulates the brokering of the sale of mammals at or from shops or markets (by acting, or purporting to act, as an intermediary to negotiate and obtain the sale of a mammal). Such brokering is permitted only if the mammal is at an animal shelter, council pound or veterinary practice or is being cared for in a prescribed private home.

Division 2 Offence of publishing advertisement for the sale of mammals

Clause 11 prohibits the publishing of advertisements for the sale of mammals except in certain circumstances.

Division 3 Offence of selling mammals to children

Clause 12 prohibits the sale of mammals to children.

Division 4 Offences concerning the sale of mammals generally

Clause 13 prohibits the carrying on of a business of selling dogs or cats, or propagating dogs or cats for sale, by anyone other than certain recognised breeders. The proposed section provides for the sale and propagation of other mammals to be included within the scope of the prohibition by the regulations.

Clause 14 requires anyone who displays a mammal for sale, or otherwise offers it for sale, to provide prospective purchasers with a written statement about the special needs and requirements of the mammal. If the mammal is sold, the purchaser must be provided with a written copy of the statement. The written statement covers such matters as the usual life-span of mammals of that species or breed, the minimum requirements for the humane shelter, accommodation, exercising and socialising of the mammal and the costs associated with feeding, registering and keeping the mammal and obtaining veterinary care for the mammal.

Clause 15 requires mammals sold by an animal shelter, council pound or veterinary practice or breeder to be microchipped.

Part 3 Recognised breeders

Clause 16 provides for the regulations to prescribe standards that are required to be complied with by recognised breeders and provides for the Minister to withdraw the recognition of a recognised breeder if the breeder fails to comply with the standards prescribed by the regulations.

Clause 17 provides that inspectors under the *Prevention of Cruelty to Animals Act 1979* may exercise powers under that Act if the inspector believes on reasonable grounds that a recognised breeder has failed to comply with any of the standards prescribed by the regulations.

Part 4 Miscellaneous

Clause 18 provides that the proposed Act binds the Crown.

Clause 19 provides that offences under the proposed Act are to be dealt with summarily before a Local Court or the Supreme Court.

Clause 20 provides that, in certain circumstances, there will be a presumption that a person carries on a business of selling mammals.

Clause 21 deals with offences by corporations.

Clause 22 provides for the issue of penalty notices for offences under the proposed Act.

Clause 23 provides for the making of regulations under the proposed Act.

Clause 24 gives effect to the amendments to Acts and regulations specified in Schedule 1.

Schedule 1 Amendment of Acts and regulations

Schedule 1.1, 1.2 and 1.3 make amendments that are consequential on the fact that dogs and other mammals will no longer be permitted to be sold or kept for sale at pet shops.

Schedule 1.4 provides for the administration of penalty notices issued under the proposed Act to be carried out under the *Fines Act 1996*.

Schedule 1.5 makes it an offence under the *Impounding Act 1993* for a person to fail to collect an impounded animal if the person is notified by an impounding authority that the animal has been impounded.

Schedule 1.6 [1] makes it clear that the prohibition on abandoning animals set out in section 11 of the *Prevention of Cruelty to Animals Act 1979* includes dumping animals.

Schedule 1.6 [2] makes it an offence under the *Prevention of Cruelty to Animals Act 1979* for a person to fail to collect or surrender an animal if the person is notified by the RSPCA, or another organisation that operates an animal shelter, that the animal has been taken or otherwise come into its possession.

Issues Considered by the Committee

14. The retail and sales of products or goods can be legislated and regulated. This Bill does not prohibit the sale of mammals at or from shops or markets if:

- the mammal is kept at the shop or market on behalf of a person or organisation that operates an animal shelter or a person who, ordinarily cares for the mammal in a prescribed private home; and
- the mammal is not left unattended at the shop or market;
- and it is not kept there overnight;
- and the mammal is not sold at the shop or market.

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

The Committee makes no further comment on this Bill.

2. BAIL AMENDMENT BILL 2007

Date Introduced:	17 October 2007
House Introduced:	Legislative Council
Minister Responsible:	The Hon John Hatzistergos
Portfolio:	Attorney General, Justice

Purpose and Description

1. This Bill proposes to amend the *Bail Act 1978* to make provisions with respect to bail for accused persons, including, a presumption against bail in respect of certain serious firearms offences and to limit the number of applications in respect to bail by a person, and for statute law revision purposes.

Background

2. This Bill is based on the Government's reforms over the past years to strengthen the bail laws and protect the community while defendants are awaiting trial. Parts of these changes include removing the presumption in favour of bail for a range of offences. The changes already included presumptions against bail for offences such as drug importation, firearm offences, repeat property offences and riots and more demanding exceptional circumstances test for murder and serious personal violence.
3. In the Second Reading Speech when the Bill was introduced, the impact of the bail law changes are referred to:

These extensive changes have delivered results. There is no doubt that the inmate population, particularly those on remand, has risen considerably as a result of the changes. In fact, the number of remand prisoners has increased by 20 per cent in the last three years alone and new jails are being opened to accommodate the increase. The latest figures from the New South Wales reoffending database on bail decisions have shown that from 1995 to 2005 bail refusals in the District Court and Supreme Court have almost doubled, with an increase from 25.8 per cent to 46.4 per cent.

4. This Bill implements the Government's commitment at the last election. Schedule 1, item [1] adds additional firearms offences to the list for presumption against bail. Under the current section 8B of the Bail Act, there is a presumption against bail for serious firearms and weapons offences such as the possession or use of a prohibited firearm, the unauthorised manufacture of firearms and the selling of firearms on an ongoing basis. This Bill aims to add 2 more firearms offences – those connected with a prescribed person involved in a firearms dealing business and the offence of shortening of firearms (as the modification of the firearm enhances the performance of the firearm or facilitates the hiding of the weapon).
5. Currently, there is also no limit on the number of times an accused could apply to the Local Court for bail. The Bill will limit the number of bail applications made by the accused in the Local Courts. Provisions already exist to limit the number of bail applications in the Supreme Court. This will also prevent 'magistrate shopping', with the hope of obtaining a different outcome from a different magistrate or judge.

The Bill

6. The object of this Bill is to amend the *Bail Act 1978*:
- (a) to create a presumption against bail in respect of certain serious firearms offences, and
 - (b) to limit the number of applications in relation to bail that may be made to a court by a person accused of an offence, and
 - (c) for statute law revision purposes.

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

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

Clause 3 is a formal provision that gives effect to the amendments to the *Bail Act 1978*.

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 [1] creates a presumption against bail in respect of offences against sections 44A and 62 of the *Firearms Act 1996*.

Section 44A of the *Firearms Act 1996* makes it an offence for a licensed firearms dealer to involve prescribed persons in the business authorised by the licence. (Prescribed persons include persons who have had a firearms dealer licence revoked, persons who have been convicted of serious offences or persons who have had their firearms licence refused or revoked because of a failure to satisfy good character requirements.) The offence carries a maximum penalty of imprisonment for 14 years.

Section 62 of the *Firearms Act 1996* makes it an offence for a person to shorten a firearm or sell or possess a firearm that has been shortened. The offence carries a maximum penalty of imprisonment for 10 years.

Schedule 1 [2] makes a statute law revision amendment that updates cross-references to provisions of the *Crimes Act 1900* which were amended by the *Crimes Legislation Amendment (Gangs) Act 2006*.

Schedule 1 [3] limits the number of applications in relation to bail that may be made to a court by an accused person. At present, there is no limit on the number of applications that may be made to a court by an accused person in relation to bail. The amendment will require a court to refuse to entertain an application for bail by a person accused of an offence if an application by the person in relation to that bail has already been made and dealt with by a court, unless:

- (a) the person was not legally represented when the previous application was dealt with, and the person now has legal representation, or
- (b) the court is satisfied that new facts or circumstances have arisen since the previous application that justifies the making of another application.

The amendment will also prevent further applications being made to a court by lawyers for an accused person (except where the application would be permitted under paragraph (a) or (b) above).

Schedule 1 [4] provides for transitional matters.

Issues Considered by the Committee

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

Issue: Excessive Punishment – Clause 1 of Schedule 1 Amendments – Section 8B Presumption against bail for serious firearms and weapons offences

7. The proposed Schedule 1 [1] creates a presumption against bail in respect of offences against sections 44A and 62 of the *Firearms Act 1996*. Section 44A of the *Firearms Act 1996* makes it an offence for a licensed firearms dealer to involve prescribed persons in the business authorised by licence. (Prescribed persons include those who have had a firearms dealer licence revoked, who have been convicted of serious offences or persons who have had their firearms licence refused or revoked because of a failure to satisfy good character. Section 62 of the *Firearms Act 1996* makes it an offence for a person to shorten a firearm or sell or possess a firearm that has been shortened.
8. The Committee notes that all persons who have been arrested and charged have the right to the presumption of innocence. This includes the right to be treated as though innocent. The Committee considers that the extension of a presumption against bail in respect of these offences in section 8B(1)(c) of the *Bail Act 1978* trespasses on these rights.

<p>9. The Committee asks Parliament to consider whether the extension of a presumption against bail in respect of offences against sections 44A and 62 of the <i>Firearms Act 1996</i>, trespasses unduly on personal rights and liberties, such as the presumption of innocence.</p>
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Issue: Excessive Punishment – Clause 3 of Schedule 1 Amendments – Section 22A Power to refuse to hear bail application

10. This limits the number of bail applications that may be made to a court by an accused person. Currently, there is no limit on the number of applications that may be made to a court by an accused in relation to bail. This proposed amendment will require a court to refuse to entertain a bail application if an application by the person in relation to that bail has already been made and dealt with by court. The exception is unless the person was not legally represented at the previous application and the person now has legal representation, or the court is satisfied that new facts or circumstances have arisen since the previous application. This amendment will also prevent further applications made by lawyers for an accused person except for the above ground on legal representation or new facts or circumstances arising since the previous application.

- 11. The Committee asks Parliament to consider whether the limits on the number of bail applications may trespass unduly on personal rights and liberties, such as the right to be treated as though innocent. However, the Committee notes that this section does not affect the power of a court to review a decision in relation to bail under Division 2 of Part 6 or the right of a person to request such a review.**

Issue: Retrospectivity – Clause 4 of Schedule 1 Savings and transitional provisions – Proposed Section 36

12. Proposed Section 36 Persons charged with firearms offences before commencement of *Bail Amendment Act 2007*: The amendment made to section 8B of the *Bail Amendment Act 2007* extends to a grant of bail to a person in respect of an offence committed before the commencement of that amendment, but only if the person is charged with the offence on or after that commencement.
13. The Committee will always be concerned with any retrospective effect of legislation which impacts on personal rights. The Committee considers that this is likely to unduly trespass on the rights of accused persons, in respect of an alleged offence committed before the commencement of this amendment, where the accused persons would not have a presumption against bail before the commencement of this amending legislation.

- 14. The Committee asks Parliament to consider whether the retrospective effect of this amendment may trespass unduly on personal rights and liberties, where an accused person would not have a presumption against bail in respect of the alleged commission of the particular firearms offences before the commencement of the amending legislation.**

Issue: Retrospectivity – Clause 4 of Schedule 1 Savings and transitional provisions – Proposed Section 37 - Limit on bail applications

15. Proposed section 37 Limit on bail applications: The amendments made to sections 22 and 22A by the *Bail Amendment Act 2007* extend to an application in relation to bail made by or on behalf of a person in a case where an application in relation to that bail has already been made and dealt with by court before the commencement of the amendments.
16. The Committee considers that the retrospective effect of the new proposed section is likely to trespass unduly on individual rights and liberties, with regard to bail applications made before the commencement of this amendment.

- 17. The Committee asks Parliament to consider whether the retrospective effect of this amendment on the limit on bail applications may trespass unduly on personal rights and liberties, with regard to bail applications made before the commencement of this amending legislation.**

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

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

18. The Committee notes that the proposed Act is to commence on a day to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses. There may be good reasons why such discretion is required. The Committee considers that, in some circumstances, this can give rise to an inappropriate delegation of legislative power.

19. The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation instead of on assent, is an inappropriate delegation of legislative power.

20. The Committee notes that the Bill is to commence on proclamation and understands that this is so the courts and the legal profession can be advised of changes before they take effect.

The Committee makes no further comment on this Bill.

3. COURTS LEGISLATION AMENDMENT BILL 2007

Date Introduced:	19 October 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell MP
Portfolio:	Police

Purpose and Description

1. This amends certain Acts with respect to courts, court procedure and jurisdiction; to amend the *Land and Environment Court Act 1979* to ensure consistency with the *Civil Procedure Act 2005*; and for other purposes.

Background

2. This Bill aims to ensure consistency with the *Civil Procedure Act 2005*, especially with respect to amending the *Land and Environment Court Act 1979*.
3. The *Administrative Decisions Tribunal Act 1997* will also be amended so that a document signed by the parties may be admitted as evidence of an agreement or arrangement reached during a mediation session. However, evidence of anything said or any submission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court or tribunal. Similarly, a document prepared for the purposes of, or in the course of, a mediation session or neutral evaluation session, is also not admissible in evidence in any proceedings before any court or tribunal.
4. The *Civil Procedure Act 2005* will be amended by this Bill to expand the membership of the Uniform Rules Committee to include a representative of the Land and Environment Court, and to provide for the appointment of deputies for all members of the Uniform Rules Committee.
5. The Bill will ensure that the *Civil Procedure Act 2005* will apply to civil proceedings in certain classes of the jurisdiction of the Land and Environment Court and to ensure provisions to deal with the transfer of civil proceedings from the Supreme Court to the Land and Environment Court.
6. The application of the Civil Procedure Act and the uniform civil procedure rules in certain classes to the jurisdiction of the Land and Environment Court will make it easier for people to locate all of the rules that apply in that court. Currently, the Land and Environment Court relies on the version of the Supreme Court rules in force before the commencement of the Civil Procedure Act to regulate much of its civil procedure. It will be easier for litigants if they do not have to rely on the old Supreme Court rules and rely instead on the equivalent rule in the uniform civil procedure rules.

7. Other major amendments include amending certain Acts with respect to courts, court procedure and jurisdiction. The *Coroners Act 1980* will be amended to allow the State Coroner to give assistance or request assistance from a coroner in another State or Territory. The *Local Courts Act 1982* will be amended to enable a registrar of the District Court (subject to Rules), to exercise the functions of the registrar of a Local Court (and to make similar provisions with respect to assistant registrars and officers) and to make provision with respect to the civil jurisdiction of the Court. The *District Court Act 1973* will be amended to enable the registrar of a Local Court (subject to Rules) to exercise the functions of a registrar of the District Court (and to make similar provision with respect to the deputy registrars and officers). The *Supreme Court Act 1970* will be amended with regard to the appointment of an Acting Chief Justice, to enable the registrar of the Court of Criminal Appeal to exercise the powers of a registrar of the Supreme Court (and to make similar provision for the officers).
8. The District and Local Courts have merged their registry operations. The change will allow the courts to provide a better registry service. Therefore, registrars and court staff at each location need to have power to deal with both District Court and Local Court proceedings. Amendments to the Supreme Court Act will also allow a registrar or officer of the Court of Criminal Appeal to exercise the powers of a Supreme Court registrar or officer in the same way that a Supreme Court registrar or officer can already exercise the powers of a registrar or officer of the Court of Criminal Appeal. This is needed because the Supreme Court provides registry services for both courts of the Supreme Court and the Court of Criminal Appeal.
9. The *Confiscation of Proceeds of Crime Act 1989* will also be amended with respect to the Local Court's jurisdiction in relation to drug proceeds orders, forfeiture orders and freezing notices. This will make it clear that a Local Court may not make a drug proceeds order against a person for an amount that exceeds the jurisdictional limit (\$60,000) of a Local Court when sitting in its General Division. However, a Local Court can exercise its jurisdiction in relation to a freezing notice in relation to land or property with value exceeding the jurisdictional limit when sitting in its General Division. The Bill will ensure that proceedings on an application for a forfeiture order, drug proceeds order or an application for confirmation or setting aside of a freezing notice before the Local Court, are to be dealt with by the Local Court sitting in its General Division.

The Bill

10. The objects of this Bill are as follows:
 - (a) to amend the *Administrative Decisions Tribunal Act 1997* so that a document signed by the parties may be admitted as evidence of an agreement or arrangement reached during a mediation session,
 - (b) to amend the *Civil Procedure Act 2005*:
 - (i) to expand the membership of the Uniform Rules Committee to include a representative of the Land and Environment Court, and
 - (ii) to provide for the appointment of deputies for all members of the Uniform Rules Committee, and
 - (iii) to apply that Act to civil proceedings in certain classes of the jurisdiction of the Land and Environment Court, and

- (iv) to include provisions dealing with the transfer of civil proceedings from the Supreme Court to the Land and Environment Court,
- (c) to amend the *Confiscation of Proceeds of Crime Act 1989* with respect to the Local Court's jurisdiction in relation to drug proceeds orders, forfeiture orders and freezing notices,
- (d) to amend the *Coroners Act 1980* to allow the State Coroner to provide assistance to, and request assistance from, a coroner in another State or Territory,
- (e) to amend the *District Court Act 1973* to enable the registrar of a Local Court to exercise the functions of a registrar of the District Court (and to make similar provision with respect to the deputy registrars and officers),
- (f) to amend the *Land and Environment Court Act 1979* following the application of the *Civil Procedure Act 2005* to civil proceedings in certain classes of the Land and Environment Court's jurisdiction and to make provision with respect to various other matters including the removal and referral of matters before Commissioners and the removal of the Divisions of the Court,
- (g) to amend the *Local Courts Act 1982* to enable a registrar of the District Court to exercise the functions of the registrar of a Local Court (and to make similar provision with respect to assistant registrars and officers) and to make provision with respect to the civil jurisdiction of the Court,
- (h) to amend the *Supreme Court Act 1970* with respect to the appointment of an Acting Chief Justice and to enable the registrar of the Court of Criminal Appeal to exercise the powers of a registrar of the Supreme Court (and to make similar provision with respect to the officers),
- (i) to make other miscellaneous amendments, including amendments for the purpose of achieving consistency with the *Civil Procedure Act 2005*, amendments in the nature of statute law revision, consequential amendments to other Acts and instruments and amendments of a savings or transitional nature.

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, subject to specified exceptions.

Clause 3 is a formal provision that gives effect to the amendments to the Acts specified in Schedules 1–8.

Clause 4 is a formal provision that gives effect to the consequential amendments to the Act and instrument specified in Schedule 9.

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

Schedule 1 Amendment of *Administrative Decisions Tribunal Act 1997 No 76*

Schedule 1 [1] inserts proposed section 91A into the *Administrative Decisions Tribunal Act 1997* to provide for the issue of practice notes by the President of the Administrative Decisions Tribunal.

Schedule 1 [2] provides that any document signed by the parties is admissible, as evidence of an agreement or arrangement reached during a mediation session, on an application to the Tribunal for orders to give effect to any such agreement or arrangement. The proposed amendment ensures that the *Administrative Decisions Tribunal Act 1997* is consistent with the *Civil Procedure Act 2005* in this respect.

Schedule 1 [3] and [4] also amend the provision of the *Administrative Decisions Tribunal Act 1997* concerning privilege for this purpose and as a consequence of the amendment in **Schedule 1 [2]**.

Schedule 2 Amendment of *Civil Procedure Act 2005* No 28

Schedule 2 [2] makes provision for an additional member of the Uniform Rules Committee established by the *Civil Procedure Act 2005*, being the Chief Judge of the Land and Environment Court or a Judge nominated for the time being by the Chief Judge.

Schedule 2 [1] and [10] make consequential amendments.

Schedule 2 [9] provides for the application of Parts 3–9 of the *Civil Procedure Act 2005* to proceedings in Class 1, 2, 3 or 4 of the jurisdiction of the Land and Environment Court (subject to the uniform rules under that Act which can exclude any class of civil proceedings from the operation of all or any of the provisions of Parts 3–9).

Schedule 2 [8] inserts Division 2A into Part 9 (Transfer of proceedings between courts) of the *Civil Procedure Act 2005* to allow for proceedings to be transferred from the Supreme Court to the Land and Environment Court if the Supreme Court is satisfied that the proceedings could properly have been commenced in the Land and Environment Court.

Schedule 2 [11] makes provision for a deputy to be appointed for each member of the Uniform Rules Committee.

Schedule 2 [12] makes it clear that the deputy for the Chief Justice of the Supreme Court (or the Judge nominated for the time being by the Chief Justice) is not entitled to preside at a meeting of the Uniform Rules Committee.

Schedule 2 [3]–[7] make amendments by way of statute law revision.

Schedule 2 [13] enables regulations to be made of a savings and transitional nature and **Schedule 2 [14]** contains consequential provisions.

Schedule 3 Amendment of *Confiscation of Proceeds of Crime Act 1989* No 90

Schedule 3 [1] amends section 87 of the *Confiscation of Proceeds of Crime Act 1989* to make it clear that a Local Court may not make a drug proceeds order under section 29 of that Act against a person for an amount that exceeds the jurisdictional limit of a Local Court when sitting in its General Division (being \$60,000 at present).

Schedule 3 [2] provides that nothing in section 87 of the *Confiscation of Proceeds of Crime Act 1989* prevents a Local Court from exercising its jurisdiction in relation to a freezing notice issued under section 42C of that Act (to be inserted by the *Confiscation of Proceeds of Crime Amendment Act 2005*) in relation to land or in relation to property whose value exceeds the jurisdictional limit of a Local Court when sitting in its General Division.

Schedule 3 [2] also provides that proceedings on an application for a forfeiture order or drug proceeds order or proceedings on an application for confirmation or setting aside of a freezing notice, that are before the Local Court, are to be dealt with by the Local Court sitting in its General Division.

Schedule 4 Amendment of *Coroners Act 1980* No 27

Section 54A of the *Coroners Act 1980* currently allows the State Coroner to use any of his or her powers as State Coroner or as a coroner to assist a coroner of another State or Territory to investigate a death, suspected death, fire or explosion. **Schedule 4** substitutes section 54A to expand and revise this provision. Section 54A, as substituted, allows:

- (a) the State Coroner to request, in writing, the assistance of a person holding a corresponding office in another State or Territory (or a coroner in another State or Territory) in connection with the exercise of any power under that Act, and
- (b) the State Coroner to assist a person holding a corresponding office in another State or Territory (or a coroner in another State or Territory), in connection with the

exercise of a power under the law of that State or Territory, at the written request of that person.

Schedule 5 Amendment of District Court Act 1973 No 9

Schedule 5 [3] inserts proposed section 18L into the *District Court Act 1973*. The proposed section enables (subject to the rules) the registrar of a Local Court to exercise the functions of a registrar of the District Court, the deputy registrar of a Local Court to exercise the functions of an assistant registrar of the District Court and an officer of a Local Court to exercise the functions of an officer of the District Court.

Schedule 7 [1] makes a similar amendment to the *Local Courts Act 1982*.

Schedule 5 [4] clarifies that the civil jurisdiction of the District Court is not limited to money claims.

Schedule 5 [1] and [2] make consequential amendments.

Schedule 6 Amendment of Land and Environment Court Act 1979 No 204

Schedule 6 [2] and [23]–[34] make amendments consequential on the amendment of the *Civil Procedure Act 2005* in **Schedule 2 [9]** (which provides for the application of Parts 3–9 of that Act to proceedings in Class 1, 2, 3 or 4 of the jurisdiction of the Land and Environment Court) and in order to achieve consistency with the *Civil Procedure Act 2005*.

Schedule 6 [3], [4], [6]–[9], [11], [16]–[18], [20], [21] and [35] make amendments by way of statute law revision.

Schedule 6 [5] confirms that an Acting Commissioner of the Land and Environment Court (*the Court*) has the functions of, and is deemed to be, a Commissioner.

Schedule 6 [10] omits provisions of the *Land and Environment Court Act 1979 (LEC Act)* so that the Court will no longer be divided into Divisions.

Schedule 6 [1], [13] and [14] make consequential amendments.

Schedule 6 [12] substitutes section 31 of the LEC Act. The section, as substituted, applies if the Court determines that proceedings before it are not being dealt with in the manner appropriate to the class of jurisdiction to which they belong. In such circumstances, the Court may order that the proceedings be dismissed or that the proceedings be dealt with in the appropriate manner.

Schedule 6 [15] substitutes section 34 of the LEC Act:

- (a) to ensure that the LEC Act is consistent with the *Civil Procedure Act 2005*, and
- (b) in order that preliminary conferences be renamed conciliation conferences, and
- (c) to enable the Commissioner to adjourn such a conference if there is good reason to, and
- (d) to provide that any document signed by the parties is admissible, as evidence of an agreement or arrangement reached during a conciliation conference, in proceedings for the disposal of the matter by a Commissioner in accordance with the agreement, and
- (e) to further provide that such a document and any other evidence as to an agreement reached during a conciliation conference is not, except in further specified circumstances, admissible in evidence in any proceedings.

Schedule 6 [22] provides that proceedings that are before a Commissioner under section 34 or 36 of the LEC Act may be referred or removed for hearing and determination before a Judge in the same way as proceedings before an associate Judge may be referred or removed for hearing and determination before a Judge in the Supreme Court (subject to any contrary order of the Chief Judge).

Schedule 6 [19] makes a consequential amendment.

Schedule 6 [36] enables regulations to be made of a savings and transitional nature.

Schedule 6 [37] inserts a savings provision.

Schedule 7 Amendment of *Local Courts Act 1982 No 164*

Schedule 7 [1] inserts proposed section 10CA into the *Local Courts Act 1982*. The proposed section enables (subject to the rules) a registrar of the District Court to exercise the functions of the registrar of the Local Court, an assistant registrar of the District Court to exercise the functions of a deputy registrar of the Local Court and an officer of the District Court to exercise the functions of an officer of the Local Court. **Schedule 5 [3]** makes a similar amendment to the *District Court Act 1973*.

Schedule 7 [4] provides that the Local Court sitting in its General Division has jurisdiction to hear and determine proceedings required by any other Act to be dealt with by the Local Court sitting in that Division.

Schedule 7 [2] and [3] make statute law revision amendments.

Schedule 7 [5] enables regulations to be made of a savings and transitional nature.

Schedule 8 Amendment of *Supreme Court Act 1970 No 52*

Schedule 8 [1] amends section 35 of the *Supreme Court Act 1970* to enable the Governor to appoint, by commission under seal, the President of the Court of Appeal, any Judge of Appeal or any Judge to be Acting Chief Justice if there is a vacancy in the office of the Chief Justice (in addition to whenever the Chief Justice is absent from duty).

Schedule 8 [2] also amends this section so that the President of the Court of Appeal is taken to be the Acting Chief Justice while the Chief Justice is absent from Australia and an Acting Chief Justice has not been appointed by commission under seal.

Schedule 8 [3] inserts proposed section 120A (1A) and (1B) into the *Supreme Court Act 1970*. The proposed subsections enable (subject to the rules) the registrar of the Court of Criminal Appeal to exercise the powers of a registrar of the Supreme Court and an officer of the Court of Criminal Appeal to exercise the powers of an officer of the Supreme Court. A similar provision currently exists in the *Criminal Appeal Act 1912* in respect of registrars and officers of the Supreme Court.

Schedule 8 [4] amends section 123 of the *Supreme Court Act 1970* to cure any defect in the form of the appointment of members of the Rule Committee who attended meetings of the Committee held on or after 1 July 2005 and before 1 July 2007.

Schedule 9 Consequential amendments

Schedule 9.1 contains a consequential amendment to the *Community Land Management Act 1989*.

Schedule 9.2 contains a consequential amendment to the *Legal Profession Regulation 2005*.

Issues Considered by the Committee

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

4. CRIMES (SENTENCING PROCEDURE) AMENDMENT BILL 2007

Date Introduced:	17 October 2007
House Introduced:	Legislative Council
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Attorney General, Minister for Justice

Purpose and Description

1. The purpose of the Bill is to amend the *Crimes (Sentencing Procedure) Act 1999*:
 - (a) to provide for a number of new aggravating factors that may be taken into account by a court in sentencing a person for an offence;
 - (b) to change the circumstances in which the remorse of an offender may be taken into account as a mitigating factor in sentencing;
 - (c) to establish standard non-parole periods for a number of offences;
 - (d) to increase the standard non-parole period for the offence of aggravated indecent assault of a child under 10 years of age;
 - (e) for statute law revision purposes.

Background

2. Standard minimum sentences were introduced in NSW in 2002. According to the Second Reading speech, standard minimum sentences 'promote greater transparency and consistency in sentencing while at the same time retaining judicial discretion by allowing judges to take into account the aggravating or mitigating circumstances of each individual case'.¹

The Bill

3. The Bill makes a number of amendments to the *Crimes (Sentencing Procedure) Act 1999*.
4. It inserts a number of new aggravating factors that a court may take into account when sentencing a person including:
 - the offence involved the actual or threatened use of explosives, or a chemical or biological agent;

¹ J Hatzistergos MLC, Legislative Council *Hansard*, 17 October 2007.

- the offence involved the offender causing the victim to take, inhale or be affected by a narcotic drug, alcohol or any other intoxicating substance;
 - the offence was committed in the presence of a child;
 - the offence was committed in the home of the victim or any other person;
 - the actions of the offender were a risk to national security;
 - the offence involved a grave risk of death to another person;
 - the offence was committed for financial gain.
5. The Bill also alters one of the mitigating factors that may be taken into account when sentencing an offender so that remorse shown by the offender may only be considered if the offender has provided evidence of accepting responsibility for his or her actions, and the offender has acknowledged any injury, loss or damage caused by his or her actions or made reparation for them.
6. The Bill introduces a standard non-parole period for the following offences:
- murder of a child – 25 years
 - reckless causing of grievous bodily harm in company – 5 years
 - reckless causing of grievous bodily harm – 4 years
 - reckless wounding in company – 4 years
 - reckless wounding – 3 years
 - organised car or boat rebirthing activities – 4 years
 - cultivation, supply or possession of a large commercial quantity of a prohibited plant – 10 years
 - unauthorised sale of a prohibited firearm or pistol – 10 years
 - unauthorised sale of firearms on an ongoing basis – 10 years
 - unauthorised possession of more than three firearms any one of which is a prohibited firearm or pistol – 10 years
 - unauthorised possession or use of a prohibited weapon (where prosecuted on indictment) – 3 years
7. The Bill also increases the standard non-parole period for the offence of aggravated indecent assault of a child under 10 years of age from five to eight years.

Issues Considered by the Committee

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

Retrospectivity: Schedule 1[16]

8. Schedule 1[16] provides that the amendments made by the Bill are to apply to the determination of a sentence for an offence whenever committed unless:

(a) the court has convicted the person being sentenced of the offence, or

(b) a court has accepted a plea of guilty and the plea has not been withdrawn,

before the commencement of the amendments.

9. The Bill makes a number of changes regarding standard non-parole periods, and the aggravating and mitigating factors that may be taken into account.

10. A standard non-parole period represents the non-parole period for an offence in the middle of the range of objective seriousness (s 54A(1) *Crimes (Sentencing Procedure) Act 1999*). Section 54B requires the court to set the standard non-parole period as the non-parole period for the offence unless it determines that there are reasons for setting a longer or shorter non-parole period. The reasons the court may consider are those stipulated by s 21A, ie aggravating and mitigating factors, in addition to any other objective or subjective factor that affects the relative seriousness of the offence.

11. The Bill inserts a number of new aggravating factors which may result in a higher penalty being applied. Article 15(1) of the International Covenant on Civil and Political Rights states:

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed...

12. There is accordingly the potential that a person who has yet to be convicted, or, who is involved in proceedings that have commenced but has not entered a guilty plea, may be subject to a higher penalty than applied at the time of the commission of the offence.

13. The Committee will always be concerned to identify the retrospective effects of legislation that may have an adverse impact on a person.

14. The Committee notes the right established by Article 15 of the *International Covenant on Civil and Political Rights* that a person not be subject to a heavier penalty than what was applicable at the time of the commission of the offence.

15. Accordingly, the Committee concludes that the rights and liberties of such persons are unduly trespassed.

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

Commencement by proclamation: Clause 2

16. Clause 2 of the Bill specifies that it is to commence on proclamation. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence that Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.

17. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power.

18. The Committee notes that the Bill is to commence on proclamation and understands that this is so the courts and the legal profession can be advised of changes before they take effect.

The Committee makes no further comment on this Bill.

5. CRIMINAL LEGISLATION AMENDMENT BILL 2007

Date Introduced:	19 October 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell MP
Portfolio:	Minister for Police

Purpose and Description

1. The Bill makes a number of amendments to the *Criminal Procedure Act 1986*, *Criminal Appeal Act 1912*, the *Crimes Act 1900*, and the *Drug Misuse and Trafficking Act 1985*.

Background

2. According to the Agreement in Principle speech:

The bill delivers on [the NSW Government's] counter-terrorism election commitment to increase penalties for explosives and to establish a new offence of supplying explosives. This builds upon the significant work the New South Wales Government has done in boosting the State's counter-terrorism capability. We have given our police the powers and the resources they need to detect and arrest terrorists before an attack can be carried out, ensuring unprecedented cooperation and coordination between Commonwealth and State Governments. Importantly the bill also contains tough new measures to crack down on the manufacture of amphetamines, including banning recipes for drug manufacture, limiting the quantities of certain chemicals that can be held, and creating an offence of possessing a drug manufacture apparatus.²

The Bill

Amendment of the *Criminal Procedure Act 1986*

3. The Bill amends the *Criminal Procedure Act 1986* in relation to:
 - **Indictable offences:** clarifies the circumstances in which less serious offences may be dealt with on indictment – Schedule 1[1]
 - **Pre-trial disclosure requirements:** makes further provision for pre-trial disclosure – Schedule 1[2] to [7]
 - **Withdrawal of matters by prosecution:** ensures that the withdrawal of a matter by the prosecution does not prevent later proceedings in respect of the same matter against the same person – Schedule 1[9] and [10]

² B J Collier MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 19 October 2007.

- **Review of penalty notice scheme:** extends the period at the end of which the Ombudsman is to provide a report on the impact of the penalty notice scheme on Aboriginal and Torres Strait Islander communities – Schedule 1[12].

Amendment of the *Criminal Appeal Act 1912*

4. The Bill amends the *Criminal Appeal Act 1912* to make further provision for Crown appeals that are dealt with in the absence of the respondent, including by allowing the Court of Criminal Appeal to issue a warrant for the arrest of an absent respondent in certain circumstances – Schedule 2[1] to [3].

Amendment of *Crimes Act 1900*

5. The Bill amends the *Crimes Act 1900* to:
 - make further provision with respect to proof of recklessness – Schedule 3[1]
 - extend the offence of possessing or making explosives for an unlawful purpose so that it also applies to the supply of explosives for an unlawful purpose, and to increase the penalty for that offence – Schedule 3[2]
 - make further provision with respect to the offence of perjury, so as to recognise the possibility that the offence may be tried summarily (in the absence of a jury) – Schedule 3[3]
 - make further provision with respect to the liability of accessories Schedule 3[4] to [6].

Amendment of *Drug Misuse and Trafficking Act 1985*

6. The Bill amends the *Drug Misuse and Trafficking Act 1985* so as to:
 - prohibit the possession of instructions about how to make prohibited drugs, any apparatus intended to be used in the making of prohibited drugs and any substance capable of being used to make a prohibited drug – Schedule 4[1] to [6]
 - provide a legitimate purpose defence for a person who manufactures, produces, possesses or supplies certain products or substances that are listed as prohibited drugs but are mostly used in connection with industry – Schedule 4[7]
 - remake uncommenced provisions of the *Drug Misuse and Trafficking Amendment Act 2006* – Schedule 4[9] to [12].

Issues Considered by the Committee

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

Double jeopardy: Schedule 1[10]

7. Section 205 of the *Criminal Procedure Act 1986* enables a court to give an accused person a certificate to the effect that a matter has been dismissed if the court has decided to dismiss the matter.

8. Section 206 specifies that the effect of a certificate regarding the dismissal of a matter is to prevent any later proceedings in any court for the same matter against the same person.
9. Section 208 of the *Criminal Procedure Act 1986* as it currently stands provides that if a matter is withdrawn by the prosecutor, the matter is taken to be dismissed and the accused person is taken to be discharged in relation to the offences concerned.
10. Schedule 1[10] of the Bill proposes to insert s 208(2) into the Act so that the dismissal of a matter because of its withdrawal by the prosecutor does not prevent any later proceedings in any court for the same matter against the same person.
11. There is accordingly the potential that numerous proceedings involving the accused may be commenced at different times, if the previous proceedings were withdrawn by the prosecution.
12. The rule against double jeopardy provides that a person shall not be convicted of, or punished for, the same crime twice. The rationale behind the double jeopardy rule is:

The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offence, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.³
13. Article 14(7) of the *International Covenant on Civil and Political Rights* states that 'No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country'.
14. The Committee notes that s 208 of the *Criminal Procedure Act 1986* refers to the withdrawal of a matter by the prosecution as opposed to circumstances in which the accused has been convicted or acquitted of the charges.
15. It also notes the explanation behind the amendment of s 208, as expressed in the Agreement in Principle speech, that the 'amendment lays to rest any technical speculation that the withdrawal of the matter is tantamount to an acquittal, and therefore attracts the double jeopardy principle'.⁴

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| <ol style="list-style-type: none">16. It is the opinion of the Committee that there are sound reasons for the State not being able to make repeated attempts to convict an individual for an alleged offence.17. The Committee notes that the proposed amendments to s 208 of the <i>Criminal Procedure Act</i> would not prevent any later proceedings in any court for the same matter against the same person, if the previous proceedings were withdrawn by the prosecution. |
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³ *Green v United States* (1957) 355 US 184 at 187 per Black J

⁴ B J Collier MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 19 October 2007.

- 18. However, the Committee notes that s 208 refers to circumstances where the matter was withdrawn by the prosecution rather than a situation where the accused was previously convicted or acquitted of the charges.**
- 19. Accordingly, the Committee asks Parliament to consider whether the rights and liberties of such persons are unduly trespassed.**

Reversal of onus of proof: Schedule 4[1] and [4]

20. Schedule 4[1] proposes to insert s 11C into the *Drug Misuse and Trafficking Act 1985*. Proposed s 11C would make it an offence for a person to have in his or her possession a document that contains instructions for the manufacture or production of a prohibited drug.
21. Section 11C(2) provides a number of defences that may be established by the defendant. These include:
- that the defendant is licensed or authorised under the *Poisons and Therapeutic Goods Act 1966* to manufacture or produce the prohibited drug to which the instructions relate;
 - that the defendant is acting in accordance with an authority granted by the Director-General of the Department of Health where the Director-General is satisfied that the manufacture or production of the prohibited drug to which the instructions relate is for the purpose of scientific research, instruction, analysis or study;
 - that the defendant is in possession of the document for the purposes of an activity that is not unlawful; or
 - that the defendant otherwise has a reasonable excuse for possessing the document.
22. Schedule 1[4] proposes to insert s 24B into the *Drug Misuse and Trafficking Act 1985* to make it an offence for a person to possess more than a set quantity of a prohibited drug precursor.
23. Defences are provided in proposed s 24B(2). These include:
- that the defendant is in possession of the precursor for the purposes of an activity that is not unlawful; or
 - that the defendant otherwise has a reasonable excuse for possessing the precursor.
24. These provisions effectively reverse the onus of proof that requires the prosecution to prove all elements of an offence. This is inconsistent with a presumption of innocence, a fundamental right clearly established by Article 14(2) of the *International Covenant on Civil and Political Rights* which states 'Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law'.

25. Reversing the onus of proof may be justified in particular circumstances such as where knowledge of the factual circumstances is peculiarly in the possession of one party. According to the Senate Standing Committee for the Scrutiny of Bills:

Where legislation provides that a particular state of belief is to constitute an excuse for carrying out an action which would otherwise be a crime, and in that way allows a defence to a person who is accused of committing one, the Committee will more readily accept the onus of proof being placed on him or her to prove that excuse.⁵

- 26. The Committee notes that these offences place the onus of proof on the defendant in relation to establishing that it was not unlawful for him or her to possess instructions for the manufacture or production of a prohibited drug, or more than a set quantity of a prohibited drug precursor. This is a key element of the offence.**
- 27. The Committee notes that the presumption of innocence is a fundamental right. Reversing the onus of proof is inconsistent with this right.**
- 28. However, the Committee notes that a reversal of the onus of proof may be appropriate in some circumstances particularly where knowledge of the factual circumstances is in the possession of one party.**
- 29. Accordingly, the Committee asks Parliament to consider whether the reversal of the onus of proof in these circumstances unduly trespasses on rights and liberties.**

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

Commencement: Clause 2

30. Clause 2 provides that only sections 1 to 3, 5, Schedule 1[1], [11], [12] and [15] and Schedule 3[1] and [3] to [6] are to commence of the date of assent. The remainder of the Bill is to commence on a day or days to be appointed by proclamation.
31. The Committee notes that providing for parts of an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence those parts of the Act on a day it chooses after assent or not to commence those parts of the Act, at all. However, there are often good reasons why such discretion is required.

- 32. The Committee has concerns about parts of the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power.**

The Committee makes no further comment on this Bill.

⁵ Senate Standing Committee for the Scrutiny of Bills, *The Work of the Committee during the 38th Parliament (May 1996 – August 1998)*, para 2.108.

6. CROWN LAW OFFICERS LEGISLATION AMENDMENT (ABOLITION OF LIFE TENURE) BILL 2007

Date Introduced:	17 October 2007
House Introduced:	Legislative Council
Minister Responsible:	The Hon John Hatzistergos
Portfolio:	Attorney General, Justice

Purpose and Description

1. This Bill amends the *Director of Public Prosecutions Act 1986*, the *Crown Prosecutors Act 1986*, the *Public Defenders Act 1995* and the *Solicitor General Act 1969*, to make further provision for the term of office of appointees and for other purposes. It introduces fixed term appointments and compulsory retirement for a range of statutory offices in the NSW justice system: the Director of Public Prosecutions, the Deputy Director of Public Prosecutions, the Solicitor for Public Prosecutions, Crown Prosecutors, Public Defenders, and the Solicitor-General. The law currently provides most of these offices with life appointments.

Background

2. In the Second Reading Speech when the Bill was introduced, the following was referred to with respect to life tenure:

Life tenure is an anachronistic concept. Appointments for life are a remnant of a bygone age that has well and truly passed they are out of step with community expectations and are all but extinct in Australia. Life tenure fails to provide an incentive for continuous performance improvement. It also fails to acknowledge that turnover can be appropriate, particularly in positions as difficult, demanding and high profile as those covered by this bill. In fact, New South Wales is Australia's last bastion of life tenure for senior legal officers such as the Director of Public Prosecutions. Most other Australian jurisdictions have recognised that fixed terms for these positions are appropriate and desirable. Overwhelmingly, the law in the Commonwealth and the other States and Territories either specifies a term of appointment for these positions, or allows for fixed terms. In many cases, these are long-standing provisions that received bipartisan support.

The position in New South Wales is an anomaly. This bill will address this anomaly and bring New South Wales into line with the rest of Australia. Fixed terms will further enhance the accountability of statutory officers by providing an opportunity for continuous improvement.

3. The Government has consulted with various stakeholders on the concept of fixed term appointments, including with the current office holders, the Law Society, the judiciary, victim groups and the Bar Association. The Hon Greg James QC was commissioned to review stakeholder submissions and prepare a report with recommendations as to the term of any future appointment of the offices. The amendments in this Bill are said to reflect the views and advice of the James' review.

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4. The changes will not affect the current office holders. The Bill ensures that the approach with future appointments is consistent with the approach taken to other senior statutory appointments in NSW. NSW has already introduced fixed terms for the Crown Advocate, the Ombudsman, the President of the Mental Health Tribunal, the Independent Commission Against Corruption Commissioner and the Privacy Commissioner, the Senior Public Defender (7 year term), and the Deputy Senior Public Defender (5 year term). It is proposed that statutory offices such as the Director of Public Prosecutions (DPP), the Crown Prosecutors, Public Defenders and the Solicitor-General are treated in the same way.
5. Schedule 1 makes amendments to the *Director of Public Prosecutions Act 1986*. The Act currently provides the DPP, the Deputy DPP and the Solicitor for Public Prosecutions with life appointments. The appointment ends only when the office holder dies, resigns or is removed from office by the Governor. The statutory grounds for removal are limited to circumstances such as incapacity, bankruptcy or a conviction for an offence carrying a penalty of imprisonment of 12 months or more.
6. NSW is the only Australian jurisdiction to give the DPP life tenure. All other Australian jurisdictions either specify a term or allow for fixed terms. The maximum terms of appointment are from 5 years in Western Australia through to 20 years in Victoria. Tasmania, the Northern Territory and the ACT have a compulsory retirement age for the DPP.
7. Clauses 4 and 5 of Schedule 1 of the Bill provide a non-renewable fixed term appointment of 10 years for the office of DPP, with a compulsory retirement age of 72. This retirement age mirrors the retirement ages for judges. The clauses also provide the offices of Deputy DPP and Solicitor for Public Prosecutions with a renewable fixed term appointment of 7 years with compulsory retirement at the age of 65. The renewable terms are said to provide an incentive for performance improvement and some continuity in these offices.
8. Clause 2 of Schedule 1 provides that these amendments will not apply retrospectively to a person holding the office of DPP, Deputy DPP or Solicitor for Public Prosecutions at the time of the Bill's assent.
9. Schedule 2 makes amendments to the *Crown Prosecutors Act 1986*. Currently, Crown Prosecutors are appointed for life. The statutory grounds for removal are the same as those that apply to statutory offices under the Director of Public Prosecutions Act. The Commonwealth and Victoria are the only other Australian jurisdictions to have a statutory office of Crown Prosecutor or equivalent. In the Commonwealth, Special Prosecutors are appointed for fixed (renewable) terms of up to 5 years. In Victoria, the Chief Crown Prosecutor and the Senior Crown Prosecutor may be appointed for a fixed (renewable) term of between 10 and 20 years; Crown Prosecutors for up to 10 years (renewable); Associate Crown Prosecutors for up to 5 years (renewable). This Bill (Clause 4 of Schedule 2) provides that Crown Prosecutors may be appointed for a term of 7 years, renewable at the end of the term.
10. Clause 5 (Schedule 2) provides a statutory basis for the appointment of a Senior Crown Prosecutor and Deputy Senior Crown Prosecutors, for renewable fixed terms

of 7 years. Crown Prosecutors, Deputy Senior Crown Prosecutors and the Senior Crown Prosecutor will be subject to compulsory retirement at 65.

11. Similar provisions are provided for Public Defender, Senior Public Defender, Deputy Senior Public Defender in Schedule 3.
12. Schedule 4 amends *the Solicitor General Act 1969* to provide that the Solicitor General with a renewable fixed term appointment of 10 years, with compulsory retirement at 72.
13. Schedule 5 of this Bill makes an amendment to the Anti-Discrimination Act to give effect to the compulsory retirement provisions. It exempts each of the offices from the prohibition on compulsory retirement in the Anti-Discrimination Act.
14. The Bill also inserts a provision in each of the relevant Acts with regard to the Attorney General issuing guidelines on the appointment and reappointment of the statutory offices. The guidelines are not mandatory and failure to comply with them does not affect the validity of an appointment. The proposed guidelines aim to make the appointment and reappointment process fairer, more transparent and objective.

The Bill

15. The object of this Bill is to amend the *Director of Public Prosecutions Act 1986* and various other Acts to make the following changes to the terms of appointment to certain statutory legal offices:
 - (a) The Director of Public Prosecutions is to be appointed for a fixed and non-renewable term of 10 years with compulsory retirement at age 72 (with allowance for a shorter term of appointment for persons appointed with a shorter period to retirement age). The Director's current appointment is for life.
 - (b) A Deputy Director of Public Prosecutions and the Solicitor for Public Prosecutions are to be appointed for a fixed but renewable term of 7 years with compulsory retirement at age 65 (with allowance for a shorter term of appointment for persons appointed with a shorter period to retirement age). Current appointments to these offices are for life.
 - (c) Crown Prosecutors, the Senior Crown Prosecutor and Deputy Senior Crown Prosecutors are to be appointed for a fixed but renewable term of 7 years with compulsory retirement at age 65 (with allowance for a shorter term of appointment for persons appointed with a shorter period to retirement age). Current appointments to these offices are for life.
 - (d) Public Defenders, the Senior Public Defender and Deputy Senior Public Defenders are to be appointed for a fixed but renewable term of 7 years with compulsory retirement at age 65 (with allowance for a shorter term of appointment for persons appointed with a shorter period to retirement age). Current appointments to these offices are for life for Public Defenders, 7 years (renewable) for the Senior Public Defender and 5 years (renewable) for a Deputy Senior Public Defender.
 - (e) The Solicitor General is to be appointed for a fixed but renewable term of 10 years with compulsory retirement at age 72 (with allowance for a shorter term of appointment for persons appointed with a shorter period to retirement age). The Solicitor General's current appointment is for life. Existing holders of these offices will not be subject to the amendments and will continue to hold office under the current arrangements. In addition, existing Crown Prosecutors and Public Defenders will be

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entitled to reappointment as Crown Prosecutor or Public Defender on resignation from or at the end of a term of office in another Crown law office to which they may subsequently be appointed.

The Bill also makes the following amendments:

- (a) a statutory basis will be provided for the appointment of the Senior Crown Prosecutor and Deputy Senior Crown Prosecutors,
- (b) the existing right of return to previous public sector employment of the Director of Public Prosecutions, Deputy Directors of Public Prosecutions, the Solicitor for Public Prosecutions and Crown Prosecutors (including the Senior and Deputy Senior Crown Prosecutors) which is currently exercisable on resignation will also be exercisable on the expiry of a term of appointment,
- (c) a right of return to previous public sector employment will be extended to Public Defenders, the Senior Public Defender and Deputy Senior Public Defenders and be exercisable on resignation or expiry of a term of appointment,
- (d) entitlement to carry over accrued public sector entitlements, together with a right of return to previous public sector employment (exercisable on resignation or expiry of a term of appointment), will be extended to the Solicitor General,
- (e) a consequential amendment to the *Anti-Discrimination Act 1977* will exempt the offices dealt with by the Bill from provisions that prevent the imposition of a compulsory retirement age,
- (f) provision is made for the Attorney General to issue guidelines as to the process for the selection of a person to be proposed for appointment to any of the offices dealt with by the Bill.

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

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

Clause 3 is a formal provision that gives effect to the amendments to the *Director of Public Prosecutions Act 1986* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Crown Prosecutors Act 1986* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the *Public Defenders Act 1995* set out in Schedule 3.

Clause 6 is a formal provision that gives effect to the amendments to the *Solicitor General Act 1969* set out in Schedule 4.

Clause 7 is a formal provision that gives effect to the amendment to the *Anti-Discrimination Act 1977* set out in Schedule 5.

Clause 8 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of *Director of Public Prosecutions Act 1986*

Schedule 1 amends the *Director of Public Prosecutions Act 1986* to make the amendments referred to in the Overview in relation to the Director of Public Prosecutions, a Deputy Director of Public Prosecutions and the Solicitor for Public Prosecutions.

Schedule 2 Amendment of *Crown Prosecutors Act 1986*

Schedule 2 amends the *Crown Prosecutors Act 1986* to make the amendments referred to in the Overview in relation to Crown Prosecutors, the Senior Crown Prosecutor and Deputy Senior Crown Prosecutors.

Schedule 3 Amendment of *Public Defenders Act 1995*

Schedule 3 amends the *Public Defenders Act 1995* to make the amendments referred to in the Overview in relation to the Senior Public Defender, Deputy Senior Public Defenders and Public Defenders.

Schedule 4 Amendment of *Solicitor General Act 1969*

Schedule 4 amends the *Solicitor General Act 1969* to make the amendments referred to in the Overview in relation to the Solicitor General.

Schedule 5 Amendment of *Anti-Discrimination Act 1977*

Schedule 5 makes the consequential amendment to the *Anti-Discrimination Act 1977* referred to in the Overview.

Issues Considered by the Committee

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| <p>16. The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</i></p> |
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The Committee makes no further comment on this Bill.

7. EVIDENCE AMENDMENT BILL 2007

Date Introduced:	17 October 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell MP
Portfolio:	Minister for Police

Purpose and Description

1. The purpose of the Bill is to amend the *Evidence Act 1995* so as to implement the model uniform evidence bill endorsed by the Standing Committee of Attorneys-General in July 2007.

Background

2. Uniform evidence legislation was adopted by the Commonwealth and in NSW in 1995 following passage of the *Evidence Act 1995 (Cth)* and *Evidence Act 1995 (NSW)*.
3. In 2004, the Australian, NSW and Victorian Law Reform Commissions received a joint reference to review the operation of the NSW and Commonwealth Evidence Acts.
4. Submissions were received from 130 individuals and organisations and consultations were held in every State and Territory in Australia. The Law Reform Commissions published the report *Uniform Evidence Law* in 2005. The Commissions found that the uniform Evidence Acts were generally working well with no major structural or policy problems. 63 recommendations for reform were made.
5. A model bill was developed in response to the recommendations of the report, and was endorsed as national model evidence legislation by the Standing Committee of Attorneys-General on 26 July 2007.
6. The *Evidence Amendment Bill 2007* seeks to implement the Model Uniform Evidence Bill, with some minor exceptions. The majority of the recommendations made in the Law Reform Commissions' report are implemented.

The Bill

7. The Bill makes a number of amendments to the *Evidence Act 1995*. Key changes are made to the following areas:
 - **the hearsay rule**—to provide further guidance on the definition of hearsay evidence (for example, when an assertion is intended) and to clarify the operation of the exception in section 60 of the *Evidence Act 1995* for evidence relevant for a non-hearsay purpose,

- **the admissibility of expert evidence**—to enable a court to use expert opinion to inform itself about the competence of a witness and to provide a new exception to the credibility rule where a person has specialised knowledge based on the person’s training, study or experience,
 - **admissions in criminal proceedings**—to ensure that evidence of such admissions that is not first-hand is excluded from the ambit of section 60 of the *Evidence Act 1995* and that the reliability of an admission made by a defendant is tested where the admission is made to, or in the presence of, an investigating official performing functions in connection with the investigation or as a result of an act of another person capable of influencing the decision whether to prosecute,
 - **coincidence evidence**—to reduce the threshold for admitting coincidence evidence to require consideration of similarities in events or circumstances, rather than the existing threshold that there are similarities in events and circumstances,
 - **credibility of witnesses**—to ensure that evidence which is relevant both to credibility and a fact in issue, but that is not admissible for the latter purpose, is subject to the same rules as other credibility evidence and to enable evidence to be adduced with the leave of the court to rebut denials and non-admissions in cross-examination,
 - **advance rulings on evidentiary issues**—to make it clear that the court has the power to make an advance ruling or make an advance finding in relation to an evidentiary issue,
 - **warnings and directions to the jury**—to make it clear that a trial judge is not to give a warning about the reliability of the evidence of a child solely on account of the age of the child, and to clarify the scope of information to be given to the jury about the forensic disadvantage a defendant may have suffered because of the consequences of delay, and the circumstances in which such information is to be given,
 - **manner and form of questioning witnesses**—to enable a court on its own motion to direct that a witness give evidence wholly or partly in narrative form and to make further provision with respect to the improper questioning of witnesses in cross-examination in civil and criminal proceedings.
8. The Bill also makes a number of other amendments. These include:
- (a) to clarify the application of the Act,
 - (b) to introduce a test of general competence to give sworn and unsworn evidence and restate the tests of competence to give sworn and unsworn evidence,
 - (c) to replace the definition of “de facto spouse” with a new definition of “de facto partner”,
 - (d) to make further provision with respect to the proof of voluminous or complex documents,

- (e) to facilitate proof of electronic communications,
- (f) to provide exceptions to the hearsay rule for evidence relevant to Aboriginal and Torres Strait Islander traditional laws and customs and for an exception to the opinion rule for evidence of an opinion expressed by a member of an Aboriginal or Torres Strait Islander group about traditional laws and customs of the group,
- (g) to provide for the admission of expert opinion evidence on behaviour and development of children,
- (h) to make further provision with respect to evidence of admissions,
- (i) to clarify and amplify the meaning of references to “lawyer” in various provisions of the Principal Act,
- (j) to provide for loss of client legal privilege where a client or party has acted in a manner inconsistent with the assertion of the privilege,
- (k) to make amendments that are consequential on the enactment by the Commonwealth of provisions relating to professional confidential relationship privilege,
- (l) to make further provision with respect to the assertion of, and effect of asserting, the privilege against self-incrimination,
- (m) to make provision with respect to the ability to assert the privilege against self-incrimination in respect of disclosure of information in connection with search and freezing orders in civil proceedings,
- (n) to apply Division 3 of Part 3.10 of the *Evidence Act 1995* (evidence excluded in the public interest) to preliminary proceedings,
- (o) to make various other minor or consequential amendments.

Issues Considered by the Committee

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

Commencement by proclamation: Clause 2

9. Clause 2 of the Bill specifies that it is to commence on proclamation. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence that Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
10. The Committee notes that the rationale for commencing the Bill on proclamation was identified in the Agreement in Principle speech.⁶ The need to provide lawyers and police prosecutors with time to familiarise themselves with the amendments was

⁶ B J Collier MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 17 October 2007.

stressed. It was also noted that the Bill would most likely commence at least six months after assent, with the date of commencement to be determined by consultation with the courts, the Minister for Police and other stakeholders.

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| <p>11. The Committee will usually be concerned if a Bill is to commence on proclamation rather than on assent. However, given the need to provide the legal profession with time to understand the amendments and the expressed intention to determine the commencement date in consultation with relevant parties, the Committee believes that providing for the Bill to commence on proclamation is an appropriate delegation of legislative power.</p> |
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The Committee makes no further comment on this Bill.

8. FOOD AMENDMENT BILL 2007

Date Introduced:	17 October 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Mr Steve Whan MP
Portfolio:	Parliamentary Secretary

Purpose and Description

1. This Bill amends the *Food Act 2003* to make further provision with regard to enforcement agencies and to establish a Food Regulation Forum, and for other related purposes.

Background

2. This Bill aims to clarify and enhance the roles of the NSW Food Authority and NSW local councils in their shared work on ensuring the safety of food for sale. The Bill relates back to 2002 when a review of the NSW food regulatory system, the Kerin Review, made a series of recommendations. The key recommendation was that the Government should establish a through-chain food regulatory agency. In 2004, the NSW Food Authority was established.
3. Another recommendation from the Kerin Review related to the role of local government, for a model that defined the responsibility of local government in food regulation and also, appropriately resourced their work. The model needs to meet the following criteria: commensurate with the skills, expertise and range of responsibilities of local government environmental health officers; involve activities for which cost recover would be appropriate; be funded by a mechanism for cost recovery such as an annual administration charge; be assisted by a NSW food authority with tools and training; coordinated by the NSW food agency. In order to implement this recommendation, this Bill is a result of a food regulation partnership that was formed between relevant government departments, local government and environmental health professionals to develop a model for local government food regulation.
4. This Bill makes 3 major areas of reform. The first area is to enable the Food Authority to separately appoint, after consultation, each local council to exercise certain functions as an enforcement agency under the Food Act. The functions will vary from each council and be subject to the relevant resources and skills available to the council. These functions will be coordinated and supported by the Food Authority. The second area is the creation of a secure funding base for this program. This includes an obligation on a food business proprietor to pay a prescribed fee for the issuing of an improvement notice on the business and a new regulation-making power for imposing an administration charge on food businesses that are not required to be licensed with the Food Authority but are inspected by councils or the Food Authority. The third area is the establishment of a statutory body to be called the Food Regulation Forum. This will consist of representatives from the State and

local government and will evaluate and assist the Food Authority in its coordinator role.

5. At present, all local councils, the Director-General of the Department of Environment and Climate Change in relation to the Kosciuszko National Park and the Lord Howe Island Board in relation to Lord Howe Island are prescribed as enforcement agencies. This enables them to carry out any or all of the functions attributed to them under the Food Act, such as inspection, compliance and enforcement relating to any food business (whether primary production, manufacturing or retail). The Food Authority is also prescribed as an enforcement agency to carry out the same functions. This current blurring of roles between the State and local government creates a duplication of effort and inefficient use of resources. In other areas, there can be gaps. It creates uncertainty as to which agency will take action. It is confusing for the agencies and the food businesses.
6. The Bill aims to overcome these problems. Within 18 months, by removing local councils and the Director-General of the Department of Environment and Climate Change as prescribed enforcement agencies and to allow the Food Authority to individually appoint each one in relation to specified set of functions. The Bill sets out the mechanism for appointment. No appointment is made without the Food Authority undertaking consultation with the council. The Food Authority will need to consider the resources and skills of a particular council before making an appointment but it will also consider the willingness of other councils to perform specified enforcement functions in that council's area.

The Bill

7. The object of this Bill is to amend the *Food Act 2003 (the Principal Act)*:
 - (a) to provide a scheme for the appointment of local councils and the Director-General of the Department of Environment and Climate Change (in relation to Kosciuszko National Park) as enforcement agencies under that Act (currently they are prescribed by the regulations as enforcement agencies without the requirement for prior consultation), and
 - (b) to include consultation requirements in that scheme to enable local councils and the Director-General of the Department of Environment and Climate Change to make submissions on the types of functions under that Act that they have adequate resources to exercise, and
 - (c) to establish a Food Regulation Forum to provide advice to the Food Authority primarily in relation to matters affecting other enforcement agencies, and
 - (d) to enable the imposition of fees for the issuing of improvement notices under that Act to food businesses, and
 - (e) to make further provision in relation to the imposition and setting of fees and **administration charges for functions carried out by enforcement agencies under that Act, and**
 - (f) to enable the transfer of information between enforcement agencies and certain government agencies carrying out functions in respect of public health.
8. The Bill also makes other amendments to the *Food Act 2003* of a minor or consequential nature or by way of statute law revision.

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

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

Clause 3 is a formal provision that gives effect to the amendments to the *Food Act 2003* 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.

9. Schedule 1 Amendments

Appointment of enforcement agencies

The Principal Act contains various functions to be carried out by enforcement agencies, such as the inspection of food businesses, the issue of improvement notices for food businesses and the issue of prohibition orders preventing the carrying on of a food business in certain circumstances. Currently, an *enforcement agency* is defined in the Principal Act as the Food Authority and persons or bodies prescribed by the regulations. The regulations prescribe all local councils, the Director-General of the Department of Environment and Climate Change in respect of Kosciuszko National Park and the Lord Howe Island Board in respect of Lord Howe Island.

Schedule 1 [1] amends the definition of *enforcement agency* in section 4 of the Principal Act so that it will be defined as the Food Authority, a relevant body appointed as an enforcement agency under the proposed new sections of the Principal Act referred to below or any other body that is prescribed by the regulations.

Schedule 1 [11] omits sections 110 and 111 of the Principal Act relating to the functions of enforcement agencies and inserts instead the following proposed sections:

Proposed section 110 defines certain terms used in the proposed new sections, including *relevant body* which is defined as a local council, or the Director-General of the Department of Environment and Climate Change (but only in respect of Kosciuszko National Park).

Proposed section 111 enables the Food Authority to appoint a relevant body as an enforcement agency for the purposes of the Principal Act. The Food Authority must first consult with the relevant body and consider representations made by the relevant body and the resources and skills that will be available to the relevant body to carry out the functions of an enforcement agency that are proposed to be conferred or imposed on it. If the relevant body concerned is a local council, the Food Authority is also to consider whether another local council would be prepared to exercise functions in the area concerned and that other local council's available resources and skills.

Proposed section 111A enables the Food Authority to vary or revoke the appointment of a relevant body as an enforcement agency.

Proposed section 111B enables the Food Authority to impose conditions or limitations on the exercise of functions by any enforcement agency (including an enforcement agency that is not a relevant body). The proposed section is similar to existing section 111.

Proposed section 111C enables the Food Authority to issue guidelines in relation to various matters relevant to enforcement agencies, including the different categories of functions that may be exercised by enforcement agencies and the making of representations to the Food Authority by a relevant body as to its proposed appointment as an enforcement agency.

Proposed section 111D makes it clear that it is the duty of an enforcement agency to exercise the functions conferred or imposed on it, or delegated to it, under the Principal Act.

10. Food Regulation Forum

Schedule 1 [15] inserts proposed Division 3A of Part 9 into the Principal Act consisting of proposed sections 115A and 115B.

Proposed section 115A establishes the Food Regulation Forum which consists of the Director-General of the Food Authority (or a nominee of the Director-General), 2 members of staff of the Food Authority and 9 other persons appointed by the Minister, on the nomination of or with the concurrence of specified persons or bodies.

Proposed section 115B specifies the functions of the Food Regulation Forum which include providing advice to the Food Authority on certain matters relating to the carrying out of functions by other enforcement agencies.

11. Other amendments relating to the carrying out of functions by enforcement agencies other than the Food Authority

Schedule 1 [13] inserts proposed section 113A into the Principal Act which requires the Food Authority to keep a record of the appointment of enforcement agencies, any limitations or conditions relating to their appointment and any variation or revocation of their appointment and to publish those records on its website.

Schedule 1 [16] amends section 117A of the Principal Act to enable the Food Authority Fund to be used, in cases determined by the Food Authority, to fund the exercise of functions under that Act by another enforcement agency.

Schedule 1 [17] substitutes section 136A of the Principal Act. That section currently allows the exchange of information between the Food Authority and the Department of Health and public health organisations to enable the exercise of certain functions. The proposed section enables a similar exchange of information between those organisations and other enforcement agencies under the Principal Act as well. The exchange of information is limited to circumstances where it is necessary to enable those persons and bodies to carry out functions under the Principal Act or functions under the *Public Health Act 1991*. An example would be where there is an outbreak of foodborne illness reported to the Food Authority by the Department of Health and that Authority reports the details to a local enforcement agency to enable the tracking of the source of the illness.

12. Fees and charges

Schedule 1 [4] inserts proposed section 66AA into the Principal Act to require a person who is issued an improvement notice by an authorised officer of an enforcement agency to pay a fee prescribed by the regulations in relation to the issue of the notice. It will be an offence not to pay the fee required. Section 57 of the Principal Act currently allows an authorised officer to issue an improvement notice to the proprietor of a food business in specified circumstances, for example, where the officer has reasonable grounds to believe that the premises of the food business are unclean or otherwise unfit.

Schedule 1 [6] amends section 108 of the Principal Act to include as a function of the Food Authority the making of recommendations as to maximum fees to be charged by local councils for inspections of food businesses that are not required to be licensed under the Principal Act. Inspections of licensed food businesses are currently carried out by the Food Authority. Local councils have the power to charge fees under the *Local Government Act 1993*, including fees relating to functions that they carry out under other Acts.

Schedule 1 [21] amends section 139 of the Principal Act to enable regulations to be made with respect to annual administration charges for the exercise by all enforcement agencies, or any class of enforcement agency, of all or specified functions under the Principal Act in relation to food businesses that are not required to be licensed.

Issues Considered by the Committee

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

Issue: Privacy – Clause 17 of Schedule 1 – Proposed section 136A Certain information may be provided to and by Food Authority

13. Proposed amendment will be made to section 136A relating to the exchange of information between enforcement agencies and NSW Health. In the shared enforcement roles, the Food Authority and local councils need to be able to freely exchange information that relates to the activities of a food business. In cases of a food-borne illness outbreak, the agencies need to be able to work quickly and with various sectors of NSW Health to exchange relevant information.

14. **The Committee notes some of this information to be exchanged between the enforcement agencies and NSW Health in the proposed amending section, may include personal information such as the details of a food business from which the identify of a person can be ascertained or personal health information such as the symptoms and recent food consumption history of an affected individual. The amendment will enable councils, the Food Authority, the Department of Health and any public health organisation as defined in the *Health Services Act 1997* to lawfully exchange such information.**

15. **However, the Committee also notes that such an exchange of information is limited to the circumstances where the agency providing the information considers it as essential to exercise its functions under the Food Act and the *Public Health Act 1991*.**

16. **Therefore, the Committee considers this to be an appropriate balance between the need to protect the public from illness caused by contaminated food and the need to ensure the privacy of individuals, and is not an undue trespass to personal rights and liberties.**

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

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

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

18. **The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.**

The Committee makes no further comment on this Bill.

9. LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT BILL 2007

Date Introduced:	17 October 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell MP
Portfolio:	Minister for Police

Purpose and Description

The Bill amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to make further provision with respect to the powers of police officers and scene of crime officers, and with respect to warrants.

Background

1. According to the Agreement in Principle speech, the Bill is designed to ‘improve the efficiency of policing and to eliminate red tape experienced by police officers’.⁷ It also takes into account overseas experience which has apparently shown that the investigation of terrorism offences often involves particularly complex crime scenes and so tends to take weeks rather than days.

The Bill

2. The Bill makes a number of amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002*.
3. Schedule 1[2] empowers a police officer who suspects on reasonable grounds that a person is concealing something in his or her mouth or hair to request that the person open his or her mouth or shake or move his or her hair. It is an offence for a person to refuse or fail to comply with such a request without reasonable excuse.
4. Schedule 1[3] removes the requirement that the notice to the occupier of premises entered pursuant to warrant include the name of the authorised officer who issued the warrant.
5. Schedule 1[5] extends a crime scene warrant so it has effect for up to 720 hours (30 days) if the offence to which it is connected is a terrorism offence and the authorised officer who issued the warrant is satisfied that there are reasonable grounds for extending the warrant for a period beyond 144 hours.
6. The Bill proposes to enable a scene of crime officer (defined as a member of the NSW Police Force responsible for examining or maintaining crime scenes) to establish a crime scene in relation to a vehicle in a public place if the vehicle has been reported as stolen by the owner or an authorised user and the scene of crime officer suspects on reasonable grounds that the vehicle is that stolen vehicle:

⁷ D A Campbell MP, Legislative Assembly *Hansard*, 17 October 2007.

schedule 1[10]. The scene of crime officer may exercise investigatory powers regarding the vehicle without a warrant if reasonably necessary to preserve, search for and gather, evidence of the theft of the vehicle.

7. The provisions relating to the use of medical imaging to search for internally concealed drugs are repealed.
8. Schedule 1[12] empowers the Commissioner to authorise police officers to use tyre deflation devices to prevent the use of a vehicle by a person to escape lawful custody or to avoid arrest.

Issues Considered by the Committee

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

Commencement by proclamation: Clause 2

9. Clause 2 of the Bill specifies that it is to commence on proclamation. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence that Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.

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| <ol style="list-style-type: none">10. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power. |
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The Committee makes no further comment on this Bill.

10. ROADS AMENDMENT (LANE COVE TUNNEL FILTRATION) BILL 2007*

Date Introduced:	18 October 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Mr Anthony Roberts MP
Portfolio:	Member for Lane Cove

Purpose and Description

1. This Bill amends the *Roads Act 1993* to require pollution filtration equipment to be installed and maintained that will remove particulate matter and toxic gases from air in the Lane Cove Tunnel and air exiting the tunnel.

Background

2. The Bill aims to ensure that the Roads Traffic Authority (RTA) installs filtration equipment that removes particulate matter and toxic gases from the air in the Lane Cove Tunnel and air exiting the tunnel. It also ensures that the RTA must maintain the filtration equipment.
3. The Bill ensures that the concentration of particulate matter leaving the Lane Cove Tunnel (through the stacks or portals) does not exceed the average daily ambient background concentration of particulate matter for that area (as determined by the relevant air quality standards) except where air quality is affected by a bush fire.

The Bill

4. The object of this Bill is to require pollution filtration equipment to be installed and maintained that will remove particulate matter and toxic gases from air in the Lane Cove Tunnel and air exiting the tunnel.

5. Outline of provisions:

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

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

Clause 3 is a formal provision that gives effect to the amendment to the *Roads Act 1993* set out in Schedule 1.

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

Schedule 1 inserts proposed section 161A into the *Roads Act 1993* to give effect to the object of this Bill explained in the above overview.

Issues Considered by the Committee

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| <p>6. The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</i></p> |
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The Committee makes no further comment on this Bill.

11. ROAD TRANSPORT (GENERAL) AMENDMENT (WRITTEN-OFF VEHICLES) BILL 2007

Date Introduced:	17 October 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Graham West MP
Portfolio:	Minister for Gaming and Racing; Minister for Sport and Recreation

Purpose and Description

1. The Bill amends the *Road Transport (General) Act 2005* with respect to the notification, registration and management of written-off vehicles, so as to generally comply with the national system.

Background

2. There are more than 70,000 motor vehicle thefts in Australia each year, with an annual cost of approximately \$500 million.⁸
3. The Roads and Traffic Authority (RTA) is currently required to keep a register of written-off and wrecked motor vehicles. This information is subsequently transmitted to a national database of written-off vehicles. According to the Agreement in Principle speech:

The purpose of this bill is to strengthen the management of written-off vehicles in New South Wales to reduce professional vehicle theft. The bill offers additional protection for the community from the activities of car thieves, and will bring into effect a number of nationally agreed best practice principles for the management of written-off vehicles.⁹

The Bill

4. The Bill inserts a new Part 6.2 into the *Road Transport (General) Act 2005*. The objects of Part 6.2 are set out in proposed s 249:

The objects of this Part are to provide for the collection of information concerning written-off vehicles, and for the taking of other measures in relation to such vehicles, so as:

- (a) to assist in preventing the registration of stolen vehicles by preventing vehicle identifiers of written-off vehicles being used to register stolen vehicles (in a practice known as “rebirthing”), and
- (b) to assist in detecting vehicle theft, and
- (c) to require the provision of information about written-off vehicles to the Authority, and

⁸ G J West MP, Legislative Assembly *Hansard*, 17 October 2007.

⁹ G J West MP, Legislative Assembly *Hansard*, 17 October 2007.

Road Transport (General) Amendment (Written-off Vehicles) Bill 2007

- (d) to align the State with the other States and Territories in relation to the principles for the notification, registration and management of written-off vehicles and information about them, and
 - (e) to allow Austroads Incorporated to have access to information for the purposes of administering a national database of written-off vehicles and information about them (Austroads Incorporated will, in turn, allow driver licensing and vehicle registration authorities in the other States and Territories to have access to the information in the national database), and
 - (f) to make available to prospective purchasers information as to whether a particular vehicle has been written-off, and
 - (g) to achieve other objects connected with the administration and execution of this Act.
5. Proposed s 250 ensures that the terms and categories used in the *Road Transport (General) Act 2005* are consistent with those used in the laws of other jurisdictions in Australia.
 6. Proposed Division 2 of Part 6.2 establishes that the RTA is to keep a register of written-off vehicles and enables it to correct any errors or omissions relating to information contained on the register.
 7. Proposed Division 3 sets out the various requirements to provide the RTA with information about written-off, demolished or dismantled vehicles. These requirements apply to insurers, self-insurers, auto-dismantlers, and dealers.
 8. A number of restrictions on the registration of certain vehicles are specified in proposed s 262. The RTA must not register, renew or transfer the registration of any vehicle if its vehicle identifier is the same as a vehicle listed on the register or on an interstate register as a statutory write-off.
 9. Proposed Division 5 requires written-off warning labels to be attached to vehicles that are statutory write-offs.

Issues Considered by the Committee

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

Strict liability: Schedule 1[5] – Proposed sections 254, 256, 257, 258, 259, 264, 267, and 268

10. Schedule 1[5] of the Bill proposes to insert a new Part 6.2 into the *Road Transport (General) Act 2005*. Proposed sections 254, 256 to 259, 264, 267 and 268 contain various strict liability offences. These offences relate to the:
 - unauthorised access or interference with the register of written-off vehicles;
 - failure of insurers, self-insurers, and auto-dismantlers to provide written-off vehicle information to the Roads and Traffic Authority (RTA) within a set timeframe;
 - failure of dealers to provide information regarding total-loss vehicles to the RTA;

- failure to attach a written-off warning label to written-off or dismantled vehicles as required;
 - failure to remove the vehicle identifier on any part of a vehicle determined to be a total loss; and
 - unauthorised disclosure of certain information.
11. Imposing strict liability is often seen as contrary to the fundamental right to be presumed innocent until proven guilty as a person is presumed to have committed the offence irrespective of their intention. Article 14(2) of the *International Covenant on Civil and Political Rights* provides that ‘Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law’.
12. However, the imposition of strict liability will not always unduly trespass on personal rights and liberties. It may be relevant to consider: the impact of the offence on the community; the penalty that may be imposed; and the availability of any defences or safeguards.¹⁰
13. The objects of Part 6.2 are stated in proposed s 249. Amongst other things, these include preventing the registration of stolen vehicles by preventing vehicle identifiers of written-off vehicles being used to register stolen vehicles, and assisting the detection of vehicle theft. These objects serve the public interest and the imposition of strict liability may maximise compliance with the requirements of the Bill.
14. The Committee notes that the maximum penalty that may be imposed for each offence is 20 penalty units.
15. Safeguards are also provided in relation to some of the offences. Proposed sections 257(4), 258(3) and 259(4) provide that self-insurers, auto-dismantlers and dealers who fail to provide the RTA with information regarding written-off vehicles are not guilty of an offence if the person believed on reasonable grounds that another person had already provided the required information.
16. Proposed s 268(e) also provides an exception to the prohibition of disclosing information obtained in connection to Part 6.2 where the person had a reasonable excuse for disclosing the information.

17. The Committee stresses that the presumption of innocence is a fundamental right. It highlights that the imposition of strict liability removes the requirement that the prosecution prove the defendant intended to commit the offence.

18. However, the imposition of strict liability may be acceptable in circumstances where it is designed to protect the public interest and after consideration of any defences available and the type of penalties that may be imposed.

19. Given the public interest in ensuring compliance with proposed Part 6.2, the existence of some safeguards, and the maximum penalty that may be imposed is 20 penalty units, the Committee concludes that personal rights and liberties are not unduly trespassed by the inclusion of strict liability offences.

¹⁰ Legislation Review Committee, *Strict and Absolute Liability: Responses to the Discussion Paper*, Report No 6, 17 October 2006, p 4.

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

Commencement by proclamation: Clause 2

20. Clause 2 of the Bill specifies that it is to commence on proclamation. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence that Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.

21. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power.

The Committee makes no further comment on this Bill.

12. SUMMARY OFFENCES AMENDMENT (SPRAY PAINT CANS) BILL 2007

Date Introduced:	17 October 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Barbara Perry MP
Portfolio:	Juvenile Justice

Purpose and Description

1. This Bill aims to amend the *Summary Offences Act 1988* and the *Summary Offences Regulation 2005* to provide for the confiscation of spray paint cans from minors in public places.

Background

2. During the election campaign, the Premier promised to fight against graffiti by strengthening anti-graffiti laws to require young people found in possession of spray paint in public to establish the person has it for a lawful purpose and give the power to police to confiscate it from people under 18 years of age if the person does not have a lawful excuse.
3. In June 2006, the Government passed the *Summary Offences (Display of Spray Paint Cans) Act 2006*, which requires retailers of spray paint cans to keep their stocks in locked display cabinets. In 2006, there were strategies to address graffiti, which included the establishment of the Anti-Graffiti Action Team (AGAT) to reduce graffiti; increased the use of community service orders to make offenders repair the damage caused by graffiti; identified graffiti hotspots with enforcement and surveillance through closed-circuit TV; assisted councils with the development of graffiti management plans; and allowed local councils to accredit community groups and volunteers to remove graffiti.
4. Several sentencing options can be used by the courts to deter graffiti vandalism such as: community service orders, reparation orders requiring the offender to pay compensation, and place restrictions and non-association orders. This Bill aims to complement these existing provisions, and aims to prevent an offence by confiscating the 'tool of trade'.

The Bill

5. The object of this Bill is to amend the *Summary Offences Act 1988* to authorise a police officer to confiscate a spray paint can from a person in a public place who is under 18 years of age, unless the officer is satisfied that the person has possession of the spray paint can for a purpose that is not unlawful.
6. The Bill also amends the regulations under that Act to provide for police procedures in connection with the seizure of spray paint cans and procedures for the making of

application for the return of seized spray paint cans. Confiscated spray paint cans are forfeited to the Crown (subject to any provision of the regulations for their return).

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 *Summary Offences Act 1988* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Summary Offences Regulation 2005* set out in Schedule 2.

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

Schedule 1 Amendment of *Summary Offences Act 1988*

Schedule 1 [4] makes the amendments to the *Summary Offences Act 1988* referred to in the Overview.

Schedule 1 [1]–[3] make consequential amendments.

Schedule 2 Amendment of *Summary Offences Regulation 2005*

Schedule 2 makes the amendments to the *Summary Offences Regulation 2005*.

Issues Considered by the Committee

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

Issue: Strict Liability – Clause 4 of Schedule 1 – Proposed Section 10E Confiscation of spray paint cans from minors

7. A police officer may seize a spray paint can in the possession of a person in a public place if the officer suspects on reasonable grounds that the person is under the age of 18 years.
8. The Committee notes that the presumption of innocence is a fundamental right. The above clause imposes strict liability and removes the requirement on the prosecution to prove that the defendant (minor) intended to commit an offence. However, strict liability may be acceptable in circumstances where it is designed to protect the public interest and after consideration of any defences available and the type of penalties that may be imposed.
9. The Committee also notes that there is a defence for the minor to provide a purpose that is not unlawful for the possession of the spray paint can to satisfy the police officer. The regulations may make provision with respect to the procedure to be followed with the seizure of spray paint cans and the procedure to be followed after their seizure, as well as, the circumstances in which the cans seized are to be returned and the jurisdiction of a court to order their return.
10. Proposed section 10A in Schedule 2 sets out the reasons for seizure, where a police officer must give reasons for the seizure such as that the officer suspects the person is under the age of 18 years old and is not satisfied that the person has the spray paint can in his or her possession for a purpose that is not unlawful. Proposed

section 10C sets out the information the officer must inform the person from whom the spray paint can is seized, along with a receipt specifying details of the seized can. The seized spray paint can is to be kept at police station for at least 7 days. Proposed section 10F provides for an application to be made to the court for the return of the seized spray paint can, so long as at the time of seizure, possession was not unlawful and the officer was informed of the purpose at the time of its seizure.

- 11. The Committee concludes that personal rights and liberties are not unduly trespassed by the strict liability offence given the inclusion of the following, balanced with the public interest of preventing graffiti:**
- 12. - a defence of lawful excuse for the possession of a spray paint can;**
- 13. - inclusion of procedures to be followed with regard to the seizure of spray paint cans;**
- 14. - the procedure to be followed after their seizure, including if the spray paint can is not immediately disposed, it must then be kept for a period of 7 days to allow the person to make an application for its return;**
- 15. - police officers to give reasons for seizing a spray paint can;**
- 16. - police officers to inform persons from whom the spray paint can is seized with a receipt specifying details of the seized spray paint can and claim for the seized can; and**
- 17. - provision to make an application to court for the return of the seized spray paint can.**

The Committee makes no further comment on this Bill.

13. TOW TRUCK INDUSTRY AMENDMENT BILL 2007

Date Introduced:	17 October 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Phil Koperberg MP
Portfolio:	Climate Change, Environment and Water

Purpose and Description

1. This Bill amends the *Tow Truck Industry Act 1998* to abolish the Tow Truck Authority, to transfer its functions to the Roads and Traffic Authority, and to repeal provisions relating to the job allocation scheme, and for other purposes.

Background

2. The aim of this Bill is to improve the management and regulation of the tow truck industry. It will abolish the Tow Truck Authority and establish the Roads and Traffic Authority (RTA) as the tow truck industry regulator.
3. This arose from a statutory review of the Tow Truck Act, which was completed in 2005 by the Ministry of Transport. The review found that the Act's objectives are valid. It found that although de-regulation of the industry is an ideal future goal but government regulation is still needed to prevent unlawful industry behaviour. The review recommended that the Tow Truck Authority and its board be dissolved and that the RTA be the regulator. It also recommended that the Tow Truck Industry Advisory Council be abolished and the Job Allocation Scheme provisions be repealed.
4. Consultations have been undertaken with regard to the proposals in the Bill. It has the support of the Tow Truck Authority, the Tow Truck Authority Board, the NSW Police Force, the RTA and the Ministry of Transport.
5. The new arrangements are similar to those in other jurisdictions. Queensland and Victoria do not have a standalone authority to regulate their tow truck industry. The capacity and knowledge base of the RTA in NSW will improve services to the tow truck industry, including compliance and enforcement. The RTA has a statewide enforcement network as well as a dedicated Vehicle Identification Inspection Unit to combat fraudulent activities.

The Bill

6. The object of this Bill is to amend the *Tow Truck Industry Act 1998 (the Principal Act)* so as:

- (a) to abolish the Tow Truck Authority and transfer its tow truck industry regulatory functions to the Roads and Traffic Authority, and**
- (b) to abolish the job allocation scheme, and
- (c) to require towing authorisations to be obtained for the carrying out of accident towing work, and
- (d) to make other amendments of a minor or consequential nature.

The Bill also makes consequential amendments to various other Acts and Regulations.

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 by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Tow Truck Industry Act 1998* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the consequential amendments to the other legislation set out in Schedule 2.

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

7. Schedule 1 Amendment of Tow Truck Industry Act 1998

Amendments relating to abolition of TTA and transfer of functions to RTA

The Tow Truck Authority (*TTA*), its Board and the Tow Truck Industry Advisory Council are established under Part 2 of the Principal Act to manage and regulate the tow truck industry.

Schedule 1 [6] abolishes the TTA, its Board and the Advisory Council and transfers all of the tow truck industry regulatory functions of the TTA to the Roads and Traffic Authority (*RTA*).

Currently under the Principal Act there is established a fund known as the Tow Truck Industry Fund. This fund receives all money, and pays all expenditure for the purposes of the Principal Act. **Schedule 1 [16]–[20]** ensure that all money received by the RTA under the Principal Act is retained and paid out of the Tow Truck Industry Fund.

The Principal Act contains various miscellaneous provisions relating to the administration of the TTA (including its financial year, recovery of money, delegation of functions and protection from personal liability). The *Transport Administration Act 1988* contains similar administrative provisions that apply to the RTA. Accordingly, **Schedule 1 [21], [22], [24] and [29]** remove unnecessary sections from the Principal Act.

Schedule 1 [34] specifies the date on which the TTA is to be abolished and makes it clear that the assets, rights and liabilities of the TTA become those of the RTA. Also, anything done by the TTA is taken to have been done by the RTA. The financial year reporting requirements of the TTA are extended to include the period of time up to its abolition.

Schedule 1 [4] removes definitions that are no longer required as a result of the above amendments.

Schedule 1 [1], [2], [5], [13], [23], [25], [26] and [32] make minor consequential amendments as a result of the abolition of the TTA.

8. Amendments relating to abolition of job allocation scheme

Schedule 1 [8] abolishes the job allocation scheme by removing provisions relating to its establishment, administration and operation.

Schedule 1 [7], [10] and [30] make minor consequential amendments as a result of the abolition of the job allocation scheme.

9. Amendments relating to accident towing work

Schedule 1 [9] inserts proposed sections 49 and 49A into the Principal Act. Proposed section 49 provides that accident towing work must not be undertaken unless a towing authorisation has been obtained for the towing work. A towing authorisation is not required if a direction to tow is given by a police officer or authorised officer. Proposed section 49A makes it an offence for a person to obtain, or attempt to obtain, a towing authorisation in respect of towing work for which a towing authorization has already been given.

Schedule 1 [3] inserts the definitions of “accident”, “accident towing work” and “scene of an accident” (currently contained in the *Tow Truck Industry Regulation 1999*) into the Principal Act.

Schedule 1 [11], [14] and [15] make minor consequential amendments as a result of the amendments relating to accident towing work.

10. Other amendments

The Principal Act currently provides that the TTA may determine maximum charges that may be charged by tow truck operators.

Schedule 1 [12] provides that charges determined by the RTA must be published in the Gazette.

The Principal Act enables the TTA to serve documents on a person by personal delivery, delivery to the person’s place of residence or business or by post. **Schedule 1 [27]** provides that the RTA may, in addition to these methods of service, serve documents by facsimile transmission. The Principal Act also provides that a document may be served on the TTA at any of its offices.

Schedule 1 [28] also provides that a document may be served on the RTA at its Head Office or other offices as prescribed by the regulations.

Schedule 1 [33] amends Schedule 2 to the Principal Act to enable regulations containing savings or transitional provisions to be made as a consequence of the enactment of the proposed Act.

Uncommenced Schedule 3.1 to the Principal Act inserts proposed clause 9 of Part 4 of Schedule 2 to the *Administrative Decisions Tribunal Act 1997* so as to provide for the constitution of the Tow Truck Industry Disciplinary Panel.

Schedule 1 [35] repeals the uncommenced Schedule and **Schedule 1 [31]** is a consequential amendment.

11. Schedule 2 Consequential amendments of other legislation

As a result of the abolition of the TTA, **Schedule 2.1–2.6** make minor consequential amendments to the *Administrative Decisions Tribunal (General) Regulation 2004*, *Public Finance and Audit Act 1983*, *Road Transport (General) Act 2005*, *Road Transport (General) Regulation 2005*, *Road Transport (Safety and Traffic Management) Act 1999* and *Transport Administration Act 1988* respectively.

Issues Considered by the Committee

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

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

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

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| <ol style="list-style-type: none">13. The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power. |
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The Committee makes no further comment on this Bill.

Appendix 1: Index of Bills Reported on in 2007

	Digest Number
Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007*	2
Animals (Regulation of Sale) Bill 2007*	4
Anti-Discrimination Amendment (Breastfeeding) Bill 2007	3
Anti-Discrimination Amendment (Offender Compensation) Bill 2007	1
APEC Meeting (Police Powers) Bill 2007	1
Appropriation Bill 2007; Appropriation (Parliament) Bill 2007; Appropriation (Special Offices) Bill 2007; Payroll Tax Bill 2007; State Revenue and Other Legislation Amendment (Budget) Bill 2007	1
Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007	2
Bail Amendment Bill 2007	4
Biofuel (Ethanol Content) Bill 2007	2
Births, Deaths and Marriages Registration Amendment Bill 2007	1
Brothels Legislation Amendment Bill 2007	2
Channel 7 Former Epping Site Protection Bill 2007*	3
Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007	1
Children (Criminal Proceedings) Amendment (Publication of Names) Bill 2007	2
Christian Israelite Church Property Trust Bill 2007	3
Climate Futures Bill 2007*	2
Commission for Children and Young People Amendment (Parliamentary Joint Committee) Bill 2007	1
Constitution Amendment (Speaker) Bill 2007	2
Courts Legislation Amendment Bill 2007	4
Crimes (Administration of Sentences) Amendment (Assistance in Foreign Criminal Matters) Bill 2007	2
Crimes Amendment Bill 2007	3
Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007	1
Crimes (Sentencing Procedure) Amendment Bill 2007	4
Criminal Legislation Amendment Bill 2007	4
Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007	2
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	1
Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Bill 2007	4
Drug and Alcohol Treatment Bill 2007	1
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2007	1
Educational Support for Dyslexic Children Bill 2007*	2

	Digest Number
Electricity Supply Amendment (Offences) Bill 2007	2
Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007	2
Evidence Amendment Bill 2007	4
Fair Trading Amendment (Funeral Goods and Services) Bill 2007	1
Food Amendment Bill 2007	4
Government Publicity Control Bill 2007*	2
Government Schools (Infrastructure Register) Bill 2007*	2
Guardianship Amendment Bill 2007	1
Housing Amendment (Community Housing Providers) Bill 2007	3
Human Cloning and Other Prohibited Practices Amendment Bill 2007	1
Industrial and Other Legislation Amendment (APEC Public Holiday) Bill 2007	1
Judicial Officers Amendment Bill 2007	1
Law Enforcement (Powers and Responsibilities) Amendment Bill 2007	4
Liquor Amendment (Small Bars and Restaurants) Bill 2007*	3
Liquor Amendment (Special Events Hotel Trading) Bill 2007	3
Mental Health Bill 2007	1
Motor Dealers Amendment Bill	2
National Parks and Wildlife Amendment (Leasing and Licensing) Bill 2007	2
Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007*	2
Partnership Amendment (Venture Capital) Bill 2007	3
Police Superannuation Legislation Amendment Bill 2007	1
Private Health Facilities Bill 2007	1
Professional Standards Amendment (Mutual Recognition) Bill 2007	1
Protection of the Environment Operations Amendment (Waste) Bill 2007	2
Renewable Energy (New South Wales) Bill	2
Road Transport (General) Amendment (Written-off Vehicles) Bill 2007	4
Roads Amendment (Lane Cove Tunnel Filtration) Bill 2007*	4
Royal Rehabilitation Centre Sydney Site Protection Bill 2007*	2
Rural Communities Impacts Bill 2007*	1
Security Industry Amendment (Patron Protection) Bill 2007*	2
Senator's Elections Amendment Bill 2007	1
Standard Time Amendment (Daylight Saving) Bill 2007	2
Statute Law (Miscellaneous Provisions) Bill 2007	1

	Digest Number
Summary Offences Amendment (Spray Paint Cans) Bill 2007	4
Superannuation Legislation Amendment Bill 2007	2
Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill 2007	1
Tow Truck Industry Amendment Bill 2007	4
Trade Measurement Legislation Amendment Bill 2007	3
Transport Administration Amendment (Country Link Pensioner Booking Fee Abolition) Bill 2007*	4
Transport Administration Amendment (Portfolio Minister) Bill 2007	1
Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2007*	2
University of Technology (Kuring-gai Campus) Bill 2007*	2
War Memorial Legislation Amendment (Increased Penalties) Bill 2007	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2006	Digest 2007
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07			1
Children (Detention Centres) Bill 2006	Minister for Juvenile Justice	02/06/06	27/06/06	8, 9	
Commission for Children and Young People Amendment Bill 2005	Minister for Community Services	25/11/05	25/08/06	10	
Companion Animals Amendment Bill 2005	Minister for Local Government	25/11/05	15/12/05	1	
Confiscation of Proceeds of Crime Amendment Bill 2005	Attorney General	10/10/05	23/11/05	1	
Correctional Services Legislation Amendment Bill 2006	Minister for Justice	02/06/06		8	
Crimes Amendment (Road Accidents) Bill 2005	Attorney General	10/10/05	12/12/05	1	
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 & Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006	Premier	26/09/06	17/10/06	13,15	
Crimes Legislation Amendment (Gangs) Bill 2006	Minister for Police	05/09/06		10	
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05	19/04/06	5	
Crimes (Serious Sex Offenders) Bill 2006	Minister for Justice	28/04/06		5	
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			1
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	Attorney General	02/06/06	02/08/06	8,9	
Education Legislation Amendment Bill 2006	Minister for Education and Training	10/11/06		16	
Education Legislation Amendment (Staff) Bill 2006	Minister for Education and Training	09/05/06	23/05/06	6,8	
Fair Trading Amendment Bill 2006	Minister for Fair Trading	02/06/06	07/06/06	8,12	
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07			1
Local Government Amendment (Waste Removal Orders) Bill 2006	Minister for Local Government		09/06/06	8,9	

Bill	Minister/Member	Letter sent	Reply received	Digest 2006	Digest 2007
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07			1
Motor Accidents Compensation Amendment Bill 2006 and Motor Accidents (Lifetime Care and Support) Bill 2006	Minister for Commerce	24/03/06	26/04/06	3,5	
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/05	12/01/06	2	
State Revenue Legislation Amendment Bill 2005	Treasurer	20/06/05	03/01/05	1	
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07		1,2
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005	Attorney General	25/11/05	16/05/06	7	
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07			1
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006	Minister for Gaming and Racing	09/05/06	24/05/06	6,8	
Transport Administration Amendment (Public Transport Ticketing Corporation) Bill 2005	Minister for Transport	25/11/05 28/04/06	05/04/06	5	
Vocational Education and Training Bill 2005	Minister for Education and Training	04/11/05	28/11/05	1	
Water Management Amendment Bill 2005	Minister for Natural Resources	25/11/05	05/09/06	11	

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2007

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentar y scrutiny
Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007*	N, R				
Anti-Discrimination Amendment (Offender Compensation) Bill 2007	N, R				
APEC Meeting (Police Powers) Bill 2007	N, R, C		N, R		
Bail Amendment Bill 2007	N, R			N, R	
Biofuel (Ethanol Content) Bill 2007	N, R			N, R	
Brothels Legislation Amendment Bill 2007	N, R		N, R	N, R	
Channel 7 Former Epping Site Protection Bill 2007*	N, R				
Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007	N				
Climate Futures Bill 2007*	N, R				
Crimes Amendment Bill 2007				N, R	
Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007	N, R				
Crimes (Sentencing Procedure) Amendment Bill 2007	N			N, R	
Criminal Legislation Amendment Bill 2007	N, R			N, R	
Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007	N			N, R	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	N			N, C	
Drug and Alcohol Treatment Bill 2007	R, N, C			N, R	
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2007			N		

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentar y scrutiny
Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007				N	
Evidence Amendment Bill 2007				N	
Food Amendment Bill 2007	N			C	
Guardianship Amendment Bill 2007	N, C, R		N	N, C	
Housing Amendment (Community Housing Providers) Bill 2007				N, R	
Human Cloning and Other Prohibited Practices Amendment Bill 2007	N, R				
Law Enforcement (Powers and Responsibilities) Amendment Bill 2007				N, R	
Mental Health Bill	N, R, C	N, C	N, C	N, R	
Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007*	N				
Renewable Energy (New South Wales) Bill	N			N	
Road Transport (General) Amendment (Written-off Vehicles) Bill 2007	N			N, R	
Security Industry Amendment (Patron Protection) Bill 2007*	N				
Statute Law (Miscellaneous Provisions) Bill 2007	N			N, C	
Summary Offences Amendment (Spray Paint Cans) Bill 2007	N				
Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill 2007	N, R, C			N, C, R	
Tow Truck Industry Amendment Bill 2007				N, R	
University of Technology (Kuring-gai Campus) Bill 2007*	N, R			N, R	
War Memorial Legislation Amendment (Increased Penalties) Bill 2007	N, R				

Key

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

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

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2006
Environmental Planning and Assessment Amendment (Designated Development) Regulation 2007	Minister for Planning	03/07/07	10/09/07	2, 3