

PARLIAMENT OF NEW SOUTH WALES



# Legislation Review Committee

## LEGISLATION REVIEW DIGEST

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No 6 of 2008

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Chair: Mr Allan Shearan MP

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\* Denotes Private Member's Bill

## MEMBERSHIP & STAFF

Chair	Allan Shearan MP, Member for Londonderry
Deputy	Paul Pearce MP, Member for Coogee
Members	Amanda Fazio MLC Judy Hopwood MP, Member for Hornsby Lylea McMahon MP, Member for Shellharbour Robyn Parker MLC Roy Smith MLC Russell Turner MP, Member for Orange
Staff	Catherine Watson, Committee Manager Carrie Chan, Senior Committee Officer Jim Jefferis, Senior Committee Officer Amy Bauder, Committee Officer Keith Johnstone, Assistant Committee Officer
Panel of Legal Advisers The Committee retains a panel of legal advisers to provide advice on Bills as required.	
Contact Details	Legislation Review Committee Legislative Assembly Parliament House Macquarie Street Sydney NSW 2000
Telephone	02 9230 3308
Facsimile	02 9230 3052
Email	<a href="mailto:legislation.review@parliament.nsw.gov.au">legislation.review@parliament.nsw.gov.au</a>
URL	<a href="http://www.parliament.nsw.gov.au/lrc/digests">www.parliament.nsw.gov.au/lrc/digests</a>

## 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

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

## Appendix 1: Index of Bills Reported on in 2008

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

## Appendix 2: Index of Ministerial Correspondence on Bills for 2008

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

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

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

## Appendix 4: Index of correspondence on Regulations reported on in 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. Appropriation (Budget Variations) Bill 2008

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

#### 2. Crimes Amendment (Rock Throwing) Bill 2008

Issue: Strict liability – proposed section 49A(3)(a)

13. The Committee considers that, except in extraordinary circumstances, it is inappropriate for an absolute liability offence, particularly one that does not allow for a defence or reasonable excuse. The Committee, therefore, considers the proposed section 49A(3)(a) may amount to an undue trespass on individual rights and refers this to Parliament.

Issue: Excessive Punishment – proposed section 49A (3)(a)

15. The Committee considers a penalty of up to 5 years imprisonment for a strict liability offence such as rock throwing without any intent to harm may be regarded as excessive punishment which trespasses on personal rights and liberties and refers the matter to Parliament.

Issue: Commencement by proclamation – Proposed section 2 - provides the Executive with unfettered control over the commencement of an Act

17. Although there may be good reasons why such discretion is required, 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.

#### 3. Hemp Industry Bill 2008

Issue: Commencement by proclamation – Proposed section 2 - provides the Executive with unfettered control over the commencement of an Act

15. Although there may be good reasons why such discretion is required, such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about 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.



**Issue: Excludes judicial and merits review – Proposed sections 10(3), 14(5), 38**

21. The Committee notes that proposed sections 10(3) and 14(5) provide that, in certain circumstances, individuals are excluded from having decisions reviewed and draws attention to the fact that individual rights and liberties appear to be unduly dependent on non-reviewable decisions, and refers this to the Parliament.

**Issue: Does not require the Director-General to provide reasons for certain decisions – Proposed sections 10(2), 14(4)**

26. The Committee notes that proposed sections 10(2) and 14(4) provide that, in certain circumstances, reasons for decisions made do not need to be provided and draws the Parliament's attention to the fact that individual rights and liberties appear to be unduly dependent upon non-reviewable decisions.

27. The Committee also notes that a denial by a Government agency to provide an individual with access to a record containing his/her personal information may trespass unduly on the rights and liberties of that individual, and refers this to the Parliament.

**Issue: Provides for search and seizure without warrant – Proposed sections 25(1), 25(2), 27(2)(g)**

33. The Committee considers that the power to enter only non-residential premises without either consent of the occupier or under the authority of a search warrant, and the power to subsequently seize items from the premises, is balanced and justified in the circumstances and does not trespass unduly on personal rights and liberties.

**Issue: Self-incrimination – Proposed sections 31(1), 34(2), 34(3)**

39. While the Committee generally expresses caution in circumstances where an individual is required to provide information that might incriminate that individual, the Committee notes that additional provisions are proposed which would disallow information or answers that self-incriminate the individual from being admitted into evidence. The Committee concludes that the proposed section, which disables an individual from relying on self-incrimination as an excuse for not furnishing information or giving an answer to a question, does not unduly trespass on individual rights and liberties.

**4. Medical Practice Amendment Bill 2008****Issue: Fair Trial and the Presumption of Innocence – Schedule 1 [23], [25], [26]**

18. The presumption of innocence is a fundamental right of the accused under Australian law. The admission of all previous complaints and findings against a practitioner whether these were relevant to the current complaint or not or whether these were dismissed or not has the ability to compromise a practitioner's right to a fair trial. The Committee refers the matter to Parliament.

**Issue: Absolute Liability – Schedule 1 [5], [6], [8],**

21. The Committee considers that, except in extraordinary circumstances, it is inappropriate for an absolute liability offence, which does not allow a defence or reasonable excuse. The Committee therefore considers that the proposed Section 64 (1A) may unduly trespass on personal rights and liberties, and refers it to Parliament.

**5. Miscellaneous Acts Amendment (Same Sex Relationships) Bill 2008**

**Issue: Retrospectivity - Proposed Schedule 2, Item [8], to insert Part 3, section 7 - Parentage presumption to apply in relation to fertilisation procedures occurring before commencement:**

22. The Committee notes the above safeguards provided in the proposed subsection (2) that those presumptions do not apply so as to affect: the previous operation of this or any other Act or law, or any will executed before the commencement of section 14 (1A), or the vesting in possession or in interest of any property before the commencement of section 14 (1A).
23. Therefore, the Committee is satisfied that the retrospectivity of the proposed amendment of Schedule 2 [8] to insert provisions as a consequence of the enactment of the proposed Act, does not unduly trespass on individual rights.

**Issue: Retrospectivity - Proposed Schedule 3, Item [5], to insert Part 4, section 17 – Application to alter register as consequence of amendment of *Status of Children Act 1996*.**

27. Therefore, the Committee concludes that the retrospectivity of the proposed amendment of Schedule 3 [5] to insert provisions as a consequence of the enactment of the proposed Act, does not unduly trespass on individual rights.

**Issue: Retrospectivity - Proposed Schedule 3, Item [10], to insert Schedule 4, Part 9, section 48 – Provisions consequent on enactment of *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008*.**

34. Accordingly, the Committee is satisfied that the retrospectivity of the proposed amendment of Schedule 3 [10] to insert provisions as a consequence of the enactment of the proposed Act, does not unduly trespass on individual rights.

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

36. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about 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.

**6. Peak Oil Response Plan Bill 2008\***

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

**7. Snowy Mountains Cloud Seeding Trial Amendment (Extension) Bill 2008**

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

**8. Sporting Venues Authorities Bill 2008**

**Issue: Right to Property – Dealings with land – Part 4 Clause 29: Compulsory acquisition of land by the State Sporting Venues Authority**

15. Compulsory acquisition of land is always a concern for the Committee. However, the Committee is satisfied that, as any acquisition will be done in accordance with the Land Acquisition (Just Terms Compensation) Act 1991, the rights of landholders are adequately protected.

**9. Summary Offences and Law Enforcement Legislation Amendment (Laser Pointers) Bill 2008**

**Issue: Commencement by proclamation – Proposed section 2 - provides the Executive with unfettered control over the commencement of an Act**

9. Although there may be good reasons why such discretion is required, 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.

**Issue: Excessive punishment – Schedule 2[2]11FA(1)**

13. The Committee considers that imprisonment for mere possession of a laser pointer could be regarded as excessive and disproportionate to the offence committed and draws attention to the fact that it may trespass unduly on the rights and liberties of the affected person, and refers this to the Parliament.



# Part One – Bills

## SECTION A: COMMENT ON BILLS

# 1. APPROPRIATION (BUDGET VARIATIONS) BILL 2008

Date Introduced:	7 May 2008
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Frank Sartor MP
Portfolio:	Minister for Planning

### Purpose and Description

1. This Bill aims to appropriate additional amounts out of the Consolidated Fund for the year 2007–2008 for the purpose of giving effect to certain Budget variations required by the exigencies of Government.
2. The Bill has three main features. Firstly, it provides an account to Parliament on how the Treasurer's Advance has been applied for recurrent and capital expenditure. Secondly, it seeks an adjustment of the 2007-08 advance prior to the end of the current financial year. Thirdly, it seeks appropriation for payments that are intended to be made in the current financial year where no provision was made in the annual appropriation bill.

### Background

3. According to the Agreement in Principle speech:

The Appropriation (Budget Variations) Bill 2008 is a key part of the annual budget process. The 2007-08 budget was delivered before the start of this financial year. Throughout the year, the Government becomes aware of the requirement to cater for unforeseen and urgent expenditures that were not forecast at budget time. This Appropriation (Budget Variations) Bill 2008 ensures that variations to the 2007-08 budget are appropriated by Parliament. The bill ensures that there is a transparent process for examining this expenditure. So, the practice of seeking approval for supplementary funding to cover expenditure not provided for in the annual Appropriation Act now has become an important part of the annual budget process. This is a process that has been endorsed by the Auditor-General as well as the Legislative Council's General Purpose Standing Committee No. 1 in its report on appropriation processes.

The Parliament is aware that it is not always possible to seek Parliament's authority in advance for unforeseen and urgent expenditure, and has previously established provisions for such situations. This includes the Treasurer's Advance. The Treasurer's Advance is an amount made available to the Treasurer in the annual Appropriation Act to be used for unforeseen and urgent expenditure. This amount is available for both recurrent services, and capital works and services.

4. In respect of the 2007-08 financial year, this Bill seeks appropriations of \$190 million in adjustment of the advance to the Treasurer and additional appropriation of \$218 million for recurrent services. Schedule 1 to the bill has an account of how the Treasurer's Advance has been applied this year.

## The Bill

5. The object of this Bill is to appropriate additional amounts from the Consolidated Fund for recurrent services and capital works and services for the year 2007–2008 for the purpose of giving effect to certain Budget variations required by the exigencies of Government. The additional amounts appropriated for the 2007–2008 year are:
  - (a) \$190,367,000 in adjustment of the vote “Advance to the Treasurer”, and
  - (b) \$218,584,000 for additional recurrent services.

6. **Outline of provisions**

### Part 1 Preliminary

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

**Clause 2** provides that the proposed Act commences on the date of assent.

### Part 2 Budget variations 2007–2008

**Clause 3** appropriates the additional amount in adjustment of the vote “Advance to the Treasurer”, 2007–2008, the details of which are set out in Column 1 of Schedule 1.

**Clause 4** appropriates the additional amounts for recurrent services, the details of which are set out in Column 2 of Schedule 1.

### Part 3 General

**Clause 5** makes it clear that the sums appropriated by the proposed Act are in addition to any other sums appropriated in respect of the year.

**Clause 6** contains miscellaneous provisions concerning the operation of the proposed Act. Subclause (1) provides that the proposed Act is to be construed as part of the annual Appropriation Act or Acts. (This emphasises that the appropriations are part of the budgetary process for the year 2007–2008, and ensures that terms are construed consistently.) Subclause (2) is consequential on subclause (1) and makes it clear that the appropriations are not limited to meeting shortfalls from other appropriations. Subclause (3) validates any payment of the appropriated sums before the date of assent to the proposed Act. Subclause (3) also provides that the proposed subsection applies whether or not the proposed Act is assented to during or after the year 2007–2008. (This removes an argument, based on section 23 of the *Public Finance and Audit Act 1983*, that the appropriation lapses at the close of the financial year.)

**Clause 7** validates, to the extent (if any) to which it may be necessary to do so, the expenditure, before the date of assent to the proposed Act, of any sum to which the proposed Act applies and the approval of that expenditure.

**Clause 8** makes it clear that a reference to an agency specified in Schedule 1 includes any predecessor of the agency that was responsible for the recurrent services, or capital works and services, specified in relation to the agency in Schedule 1 in the financial year concerned. This provision is included because names of Departments and other agencies may have changed during the financial year concerned because of administrative changes.

## Issues Considered by the Committee

- |   |
|---|
| 7. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|---|

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

## 2. CRIMES AMENDMENT (ROCK THROWING) BILL 2008

Date Introduced:	7 May 2008
House Introduced:	Legislative Council
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Attorney-General, and Minister for Justice

### Purpose and Description

1. This Bill amends the *Crimes Act 1900* with respect to the throwing of rocks and other objects at vehicles and vessels; and to make consequential amendments to the *Criminal Procedure Act 1986*.

### Background

2. There has been ongoing and increasing community concern about the practice of rock throwing that has caused damage to property and injured many people.
3. In order to address these concerns, the Bill proposes a new, stand-alone offence for throwing rocks at vehicles or vessels. This will be achieved by inserting a new section (proposed section 49A) into the Crimes Act to create a new category of offence titled 'throwing rocks and other objects at vehicles and vessels'.
4. Although there is an existing range of offences that apply to rock throwing which results in serious damage or injury (for example, attempted murder or recklessly inflicting grievous bodily harm) the new offence also provides police with an additional charge to lay against offenders of rock throwing, in certain circumstances.
5. The new offence criminalises situations where an individual throws or drops a rock on a vehicle or vessel, whether stationary or moving, and also applies in circumstances where the individual failed to cause damage to the property or cause injury to any other individual, and also in circumstances where the rock failed to make contact with the vehicle or vessel.
6. The new offence also applies in circumstances where the accused was not aware that his or her conduct risked the safety of any individual.
7. The maximum penalty for a breach of this proposed provision is five years imprisonment.

### The Bill

#### 8. Outline of Provisions

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



**Clause 2** provides for the commencement of the proposed Act on a date to be proclaimed.

**Clause 3** is a formal provision that gives effect to the amendment to the *Crimes Act 1900* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the consequential amendments to the *Criminal Procedure Act 1986* 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 Crimes Act 1900**

**Schedule 1** amends the *Crimes Act 1900* to provide for a new offence of intentionally throwing an object at, or dropping an object on or towards, a vehicle or vessel on any road (or road related area), railway or navigable waters. It will be necessary for the prosecution to prove that there was a person in the vehicle or vessel and that the conduct of the accused risked the safety of a person. However, it will not be necessary to prove that the accused was aware that his or her conduct risked the safety of a person or that the object concerned actually made contact with the vehicle or vessel. The new offence will apply not only to motor vehicles but also to trains and trams, bicycles, and certain other road users. The maximum penalty for the new offence is 5 years imprisonment.

### **Schedule 2 Consequential amendment of Criminal Procedure Act 1986**

**Schedule 2** amends the *Criminal Procedure Act 1986* so that the new offence is triable summarily, unless the prosecutor elects to have the matter prosecuted on indictment. It also provides for the maximum penalty for the offence when dealt with summarily.

## **Issues Considered by the Committee**

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

#### **Issue: Strict liability – proposed section 49A(3)(a)**

9. Proposed section 49A(3)(a) reads:

In the prosecution of an offence under this section, it is not necessary to prove that the accused was aware that his or her conduct risked the safety of any person.

10. The Committee notes that the abovementioned offence, which can attract a penalty of up to 5 years imprisonment, is a strict liability offence. Under Australian law, offences are generally considered to have two aspects: a physical aspect (the guilty act) and a mental aspect (the intent to commit the offence). In strict liability offences, the prosecution does not need to prove that the accused had the mental aspect (the intent to commit the offence) when seeking a conviction.

11. Strict liability causes concern as it effectively displaces the common law requirement that the prosecution prove beyond reasonable doubt that the offender intended to commit the offence, and is thus contrary to the fundamental right to a presumption of innocence.
12. While there may be significant community concern in preventing rock throwing from occurring and a risk to public safety caused by this offence, rock throwing may also be fairly harmless in terms of public safety, particularly if the rock happens to hit a stationary vehicle. The Committee does not consider that the offence is such that it requires the displacement of intent in every case.

**13. The Committee considers that, except in extraordinary circumstances, it is inappropriate for an absolute liability offence, particularly one that does not allow for a defence or reasonable excuse. The Committee, therefore, considers the proposed section 49A(3)(a) may amount to an undue trespass on individual rights and refers this to Parliament.**

**Issue: Excessive Punishment – proposed section 49A (3)(a)**

14. Proposed section 49A(1)(c) provides for imprisonment up to 5 years as part of the maximum penalty. In this regard, the Committee considers that 5 years imprisonment may be excessive punishment and disproportionate to the offence committed, in the absence of intent, given that there are other existing offences of the crimes legislation to deal with serious bodily and property harm.

**15. The Committee considers a penalty of up to 5 years imprisonment for a strict liability offence such as rock throwing without any intent to harm may be regarded as excessive punishment which trespasses on personal rights and liberties and refers the matter to Parliament.**

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

**Issue: Commencement by proclamation – Proposed section 2 - provides the Executive with unfettered control over the commencement of an Act**

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

**17. Although there may be good reasons why such discretion is required, 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.***

### 3. HEMP INDUSTRY BILL 2008

Date Introduced:	7 May 2008
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Ian MacDonald MLC
Portfolio:	Minister for Primary Industries

#### Purpose and Description

1. To enable low-THC hemp (defined as cannabis with a concentration of tetrahydrocannabinol of no more than 1%) to be cultivated and supplied for commercial production and other legitimate purposes in accordance with a licensing scheme to be administered by the Director-General of the Department of Primary Industries.
2. Provides that possession, cultivation or supply of low-THC hemp in accordance with the proposed licensing scheme is exempted as an offence under the *Drug misuse and Trafficking Act 1985*.

#### Background

3. The establishment of a licensing scheme for the commercial production of industrial hemp as proposed by this Bill would bring New South Wales into line with other jurisdictions in Australia, such as Queensland and Victoria. This will allow the cultivation of this crop by farmers of 'good repute'. Industrial hemp is a crop which provides many benefits for farmers as an 'environmentally friendly' crop with low water requirements and many applications.
4. Extensive consultation between the Department of Primary Industries, the Attorney General's Department, New South Wales Police and New South Wales Health was undertaken in the development of this Bill.
5. Currently the cultivation or supply of industrial hemp is prohibited under the *Drug Misuse and Trafficking Act 1985*, but small-scale cultivation for research or scientific purposes has been permitted in New South Wales since 1996.
6. According to the Agreement in Principle speech:

It is now time to remove the prohibition on the commercial production of industrial hemp in this State. There is strong, and growing interest from mainstream farmers in the development of this crop on a broadacre scale.
7. This Bill attempts to provide a regulatory framework for the cultivation and supply of industrial hemp that makes sure drug law enforcement in NSW is not compromised. Industrial hemp plants are visually indistinguishable from the marijuana plants used to produce the illicit drug. The Agreement in Principle speech states:

Let me emphasise now that there is no comparison between the end use of industrial hemp and marijuana. Industrial hemp is an agricultural crop grown to extract fibre and oil and has no value as a drug. Marijuana is a prohibited drug and growing marijuana is a criminal offence in this State.

8. Cannabis which is not captured by the definition of low-THC hemp explicated in the Bill will continue to be dealt with under the Drug Misuse and Trafficking Act 1985.
9. Under the Bill licenses for the cultivation or supply of low-THC hemp will be granted for purposes such as: use in a manufacturing process; scientific research, instruction, analysis or study; or any other purpose prescribed by the regulations.
10. Licenses will be granted under processes established in the Bill. The Agreement in Principle speech states that:

Licence applications will be made to the Director General of the Department of Primary Industries. A person must be of good repute to qualify for a licence under the scheme. The applicant's character, honesty and integrity will be taken into account in determining a licence application. The bill goes further, giving the director general the power to refuse to grant a licence if a close business associate of the applicant is not of good repute. This will ensure that a shady character is not able to hide behind the veil of his or her associates. In addition, licences cannot be granted to applicants who have been found guilty of serious drug-related offences. The same applies if a close business associate of an applicant has been found guilty of a serious drug-related offence.

11. The Bill empowers the Director-General with investigative powers to aid in the determination of license applications, including a mandatory criminal record check on the applicant and any close business associates. The Bill also provides for investigation and enforcement powers once a licence has been granted. According to the Agreement in Principle speech

Police officers and inspectors appointed under the new legislation will have a range of powers to ensure that they can act quickly and decisively in response to breaches. The community will be reassured to know that police officers will automatically have the power to exercise the functions of inspectors under the new legislation. The Director-General or an inspector will have the power to require a person to produce information or records in connection with any matter under the Act.

## The Bill

### 12. Outline of Provisions

#### Part 1 Preliminary

Part 1 (**clauses 1-4**) contains provisions relating to the name and commencement of the proposed Act and its interpretation.

#### Part 2 Licensing scheme

Part 2 (**clauses 5-16**) contains provisions for the licensing scheme for cultivating or supplying low-THC hemp. The licensing scheme will operate essentially as an exemption from the *Drug Misuse and Trafficking Act 1985* as that Act would otherwise prohibit the cultivation or supply of low-THC hemp. The proposed Act makes it an offence if the licensee

cultivates or supplies low-THC hemp otherwise than for the purpose for which the licence was granted or if the licensee contravenes the conditions for the licence.

An application for a licence must be accompanied by a fee approved by the Director-General and the information and particulars required by the regulations. The Director-General will have the power to investigate an application and will be required to conduct a criminal record check of the applicant and the applicant's close associates. The Director-General must be satisfied that the applicant and each close associate is a suitable person to be concerned in (or associated with) the cultivation or supply of low-THC hemp. A licence must not be granted if the applicant or a close associate has been found guilty of a drug related offence. The Director-General may also refuse to grant a licence on certain other grounds.

The Director-General's decision in relation to a licence application is final and not subject to review. If a licence is issued, it continues in force for 5 years (although a shorter period may be specified in the licence). Conditions may be imposed by the Director-General on a licence (in addition to any condition imposed by the proposed Act or by the regulations). Licence may, on application, be renewed or transferred and these applications will be treated as if they were initial licence applications. The Part also contains provisions relating to the suspension or revocation of licences.

### **Part 3 Investigation and enforcement powers**

Part 3 (**clauses 17-34**) contains provisions relating to the powers of inspectors (who are appointed by the Director-General) and police officers to carry out investigations, and to enter and search premises for such purposes as determining whether there has been a contravention of the proposed Act or whether a licensee is cultivating or supplying any cannabis that is not low-THC hemp. The Part contains standard provisions relating to the identification of inspectors and the issuing of search warrants. Inspectors and police officers will have the power to require the giving of information or records, and may give directions, regardless of whether they are exercising their powers of entry under the proposed Act.

### **Part 4 Miscellaneous**

Part 4 (**clauses 35-50**) contains miscellaneous provisions that are mainly of an administrative nature (including the general regulation-making power and providing for a review of the Act in 5 years). Provision is also included for the forfeiture to the Crown of low-THC hemp that is connected with an offence under the proposed Act. The Director-General will be able to order the destruction of any forfeited low-THC hemp, but may also authorise any person to continue to cultivate or supply any forfeited hemp.

The Director-General will be able to enter into arrangements with other agencies for the supply of information to assist in the administration of the proposed Act. Provision is also made for certain decisions of the Director-General to be renewable by the Administrative Decisions Tribunal. The Director-General will also be able to delegate his or her functions under the proposed Act.

**Schedule 1** contains savings and transitional provisions consequent on the enactment of the proposed Act. In particular, existing authorities granted by the Director-General of the Department of Health under the *Drug Misuse and Trafficking Act 1985* in relation to the cultivation or supply of industrial hemp will be carried over as licences under the proposed Act.

**Schedule 2** amends the Acts specified in the Schedule. In particular, the *Drug Misuse and Trafficking Act 1985* is amended so that it will not be an offence under that Act to possess, cultivate, manufacture, produce or supply low-THC hemp under the authority conferred by the proposed Act.

## Issues Considered by the Committee

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

#### **Issue: Commencement by proclamation – Proposed section 2 - provides the Executive with unfettered control over the commencement of an Act**

13. The Committee notes that the proposed Act is to commence on the day or days to be appointed by proclamation. This may delegate the power to the Government to commence the Act on whatever day it chooses or not at all. While there may be good reason why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.
14. The Committee also notes that proposed section 3 (regarding definitions) and proposed Schedules 1 and 2.1[1] and [3] are to commence on the date of assent, rather than on the day or days to be appointed by proclamation. The Committee expresses concerns about the possible difference in the date the Act (without the Schedules) comes into effect and the date the schedules come into effect.

<p>15. <b>Although there may be good reasons why such discretion is required, such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about 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.</b></p>
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### **Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions [s 8A(1)(b)(ii) LRA]**

#### **Issue: Excludes judicial and merits review – Proposed sections 10(3), 14(5), 38**

16. The Committee notes that in some instances policy considerations may determine that an appeal or review is not necessary. However, the Committee will be concerned when legislation seeks to exclude review of a decision, even to exclude review of a failure or refusal to make a decision, unless there is a strong public interest in doing so.
17. Proposed sections 10(3) and 14(5) respectively provide that decisions made in relation to licence applications and decisions made in relation to applications for the transfer of a licence, are final and not subject to review.
18. By way of comparison, proposed section 38 expressly allows for the right for individuals to apply to the Administrative Decisions Tribunal for a review of decisions made in instances where conditions have been imposed on a licence, where there is a refusal to renew a license, or where a license has been suspended or revoked.

19. The Committee notes that the differential application of review rights insofar that the proposed Act allows for some decisions to be reviewed in one section, while expressly not allowing other decisions to be reviewed in other sections.
20. The Committee is not aware of any policy grounds that explain the differential application of review rights. In the absence of clear policy reasons why some decisions are expressly non-reviewable, the Committee draws attention to the fact that, in certain circumstances, individual rights and liberties appear to be unduly dependent on non-reviewable decisions.
21. **The Committee notes that proposed sections 10(3) and 14(5) provide that, in certain circumstances, individuals are excluded from having decisions reviewed and draws attention to the fact that individual rights and liberties appear to be unduly dependent on non-reviewable decisions, and refers this to the Parliament.**

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

**Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions [s 8A(1)(b)(ii) LRA]**

**Issue: Does not require the Director-General to provide reasons for certain decisions – Proposed sections 10(2), 14(4)**

22. The Committee notes that in some instances, policy considerations may determine that the reasons why administrative decisions are made do not necessarily need to be provided or, in other instances, should deliberately be withheld. However, the Committee will be concerned when legislation expressly provides that the reasons why an administrative decision is made do not need to be provided unless there is a strong public interest in withholding the reasons.
23. Proposed sections 10(2) and 14(4) respectively provide that, for decisions made in relation to licence applications and for decisions made in relation to applications for the transfer of a licence, reasons for the decision do not need to be provided.
24. The Committee is not aware of any policy grounds on which reasons should be withheld in the circumstances outlined by the proposed sections. In the absence of clear policy reasons, the Committee draws attention to the fact that, through the operation of proposed sections 10(2) and 14(4), the individual affected by the decision will not be granted a right of reply for adverse decisions and therefore may be denied procedural fairness. Further, if reasons for a decision are withheld, then the individual affected will be denied the ability to seek a review of the decision (as discussed above).
25. The Committee also notes that a denial by a Government agency to provide an individual with access to a record containing his/her personal information, such as a record that includes the reasons why an individual was denied a licence, may trespass unduly on the rights and liberties of that individual.

26. **The Committee notes that proposed sections 10(2) and 14(4) provide that, in certain circumstances, reasons for decisions made do not need to be provided and draws the Parliament's attention to the fact that individual rights and liberties appear to be unduly dependent upon non-reviewable decisions.**
27. **The Committee also notes that a denial by a Government agency to provide an individual with access to a record containing his/her personal information may trespass unduly on the rights and liberties of that individual, and refers this to the Parliament.**

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

**Issue: Provides for search and seizure without warrant – Proposed sections 25(1), 25(2), 27(2)(g)**

28. Proposed section 25(1) provides that an inspector may enter any premises at any time for various investigatory purposes. The Committee notes that this provision does not require the inspector to obtain the consent of the occupier of the premises before entering, nor does it require that the inspector obtain a search warrant before entering.
29. However, this proposed section is tempered by proposed section 26 which requires that, before entering residential premises, an inspector must either obtain consent from the occupier or obtain a search warrant.
30. Generally, the Committee would express concern when powers are afforded to enter premises without either the consent of the occupier or under the authority of a search warrant. However, the Committee notes that given the context, in which licences are being granted to individuals for the cultivation and production of Hemp, there is a requirement and societal expectation for the industry to be strictly regulated and inspections to occur regularly, without prior notice being granted to the relevant licence-holders. The Committee is also assured by the restriction of such searches to non-residential premises.
31. Proposed section 25(2) affords the inspector with the power to enter the premises with 'such assistance' as the inspector considers necessary and with the use of 'reasonable force'. The Committee notes that neither the phrase 'such assistance' nor 'reasonable force' has been defined in proposed section 3 (which relate to definitions).
32. The Committee notes that proposed section 27(2)(g) provides that an inspector who lawfully enters a premises may take and remove samples of any plant or thing for analysis. As proposed section 25(1) provides that an inspector does not require either consent from the occupier or a search warrant to enter premises lawfully, subsequently, an inspector would not need consent from the occupier or a search warrant to seize items from the same premises lawfully. Ordinarily, the Committee would express concerns similar to those raised about the power to search without consent from the occupier or without a search warrant. However, given that the power to seize items is also limited to non-residential premises, and given the circumstances of the industry, the Committee considers these powers balance and justified.



33. **The Committee considers that the power to enter only non-residential premises without either consent of the occupier or under the authority of a search warrant, and the power to subsequently seize items from the premises, is balanced and justified in the circumstances and does not trespass unduly on personal rights and liberties.**

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

**Issue: Self-incrimination – Proposed sections 31(1), 34(2), 34(3)**

34. In proposed section 31(1), an inspector may require that certain individuals answer questions in relation to the investigation of a matter.
35. Further, in proposed sections 34(2), a person is not excused from furnishing information or answering a question asked by an inspector on the ground that the information or answer might incriminate that person or the person may be liable to a penalty as a result of the information or answer.
36. Generally, the Committee would express reservations about proposed legislation that compels an individual to provide self-incriminating evidence.
37. However, proposed section 34(2) is tempered by proposed section 34(3) which provides that any information furnished or answer given by a person is not admissible in evidence against the person in criminal proceedings in certain circumstances. These circumstances are where:
- 34(3)(a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- 34(3)(b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
38. The Committee recognises that the proposed legislation does not compel an individual to provide admissible, self-incriminating evidence.

39. **While the Committee generally expresses caution in circumstances where an individual is required to provide information that might incriminate that individual, the Committee notes that additional provisions are proposed which would disallow information or answers that self-incriminate the individual from being admitted into evidence. The Committee concludes that the proposed section, which disables an individual from relying on self-incrimination as an excuse for not furnishing information or giving an answer to a question, does not unduly trespass on individual rights and liberties.**

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

## 4. MEDICAL PRACTICE AMENDMENT BILL 2008

Date Introduced: 7 May 2008  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Reba Meagher MP  
Portfolio: Minister for Health

### Purpose and Description

1. The Bill is intended to improve public protection within the health system by providing the NSW Health Care complaints Commission and the NSW Medical Board (the Board) with improved powers to deal quickly and effectively with complaints about medical practitioners. The Bill also is intended to improve the transparency and accountability of investigative and disciplinary processes and places mandatory reporting requirements on the medical profession to report medical practitioner colleagues whose conduct may be harming or abusing patients.
2. The amendments proposed by the Bill cover four main areas: the powers of the Board to take urgent action to protect the public under Section 66 of the Medical Practice Act 1992; the ability of relevant authorities in dealing with a complaint against a medical practitioner to have regard to the full picture of any previous complaints and previous adverse findings against that practitioner; improving the accountability and transparency of disciplinary processes in respect of medical practitioners; and imposing mandatory reporting requirements on the medical profession, requiring a medical practitioner to report to the Board a fellow medical practitioner whom he or she believes has engaged in sexual misconduct, is intoxicated by drugs or alcohol at work, or has flagrantly departed from accepted standards of practice.
3. The Board's powers by virtue of Section 66 of the Medical Practice Act 1992 are to be amended in five main ways. Firstly, Item 8 in Schedule 1 to the Bill clarifies that actions taken under Section 66 must be guided by protection of the public interest. The Board is no longer required to limit itself to the least restrictive option but instead should look to the outcome that best addresses the statutory purpose of the protection of the public or is in the public interest.
4. Item 17 in Schedule 1 amends the Act to provide the Board with a new statutory power to require any person to provide it with information, documents or evidence for the purpose of exercising these powers. Item 8 in Schedule 1 also amends the Act to require the Board to include at least one non-medical practitioner on Section 66 inquiries. Item 5 in Schedule 1 will permit Professional Standards Committees and the Medical Tribunal to designate certain orders as critical compliance orders or conditions which, if breached, will lead to automatic suspension and deregistration.
5. Item 20 in Schedule 1 amends the process for appeal or review in Section 66 of the Medical Practice Act 1992 decisions. Medical practitioners must now exhaust a new

- appeal step to the Chairperson of the Medical Tribunal before seeking a judicial review in the NSW Supreme Court.
6. The Board will now also have the power to order a medical practitioner to undergo a performance assessment following a Section 66 inquiry under part 5A of the Medical Practice Act 1992. The Board will also be required to make an audio recording of Section 66 inquiries and to provide the Health Care Complaints Commission with any associated information or documents.
  7. The Bill also proposes new ways of dealing with medical practitioners who have had multiple complaints or previous adverse findings made against them. Item 23 in Schedule 1 requires that when the Board is dealing with a complaint or exercising its public protection functions it must, to the extent that they are relevant, have regard to the following matters about a practitioner: any other complaint against the practitioner; any previous finding or determination of a Professional Standards Committee or Tribunal constituted under a health registration Act; and the outcome of any performance assessment in relation to the practitioner. Item 19 in Schedule 1 requires that such complaints must also be considered if the practitioner applies to be re-registered in NSW.
  8. Professional Standards Committees will now also have to take into account a practitioner's past conduct. Item 26 in Schedule 1 clarifies that where multiple complaints in relation to the same practitioner are prosecuted concurrently before the Medical Tribunal or a Professional Standards Committee, that body may have regard to the cumulative effective of all the material relating to all complaints when it makes factual findings and determines whether the conduct should be characterised as unsatisfactory professional conduct or professional misconduct. Item 25 in Schedule 1 permits the Medical Tribunal and Professional Standards Committees to take into account previous decisions and findings by a disciplinary body in relation to the same practitioner. If these previous decisions and findings are found to be similar in nature they may be relied on in two ways: in making a finding that a practitioner is guilty of unsatisfactory professional misconduct or professional misconduct and in exercising any of these powers of sanction under the Act.
  9. Item 3 in Schedule 1 amends the definition of professional misconduct to clarify that a practitioner can be found to have engaged in professional misconduct based on a series or pattern of less serious instances of conduct. Item 5 in Schedule 2 amends the Health Care Complaints Act 1993 to clarify that the HCCC must have regard to any previous complaints against the practitioner.
  10. Item 28 in Schedule 1 will now make Professional Standards Committees open to the public unless the Committee directs otherwise. Item 29 in Schedule 1 further requires that Professional Standards Committee decisions should be publicly available.
  11. Item 26 in Schedule 1 of the Bill proposes adding a fourth member who is legally qualified to Professional Standards Committees.
  12. Item 18 in Schedule 1 requires medical practitioners to make a report to the board when the practitioner believes, or ought reasonably to believe, that another medical practitioner has committed sexual misconduct, is practising while intoxicated by drugs

or alcohol, or has flagrantly departed from accepted standards of professional practice or competence and risks harm to a patient.

## Background

13. The Minister in her Agreement in Principle speech said that the amendments have been proposed following the cases of Dr Suman Sood and Dr Graham Reeves. Both of these practitioners were able to keep practising for a considerable period of time before their matters came before the Medical Tribunal despite a series of complaints and concerns raised against them.
14. Following the case of Dr Sood, the former Minister for Health ordered a review of the existing medical regulation system by an independent team of experts. The review team comprised former Federal Court judge Deidre O'Connor, Professor Peter Castaldi and Mr Vernon Dalton. Further review was undertaken by this team following the revelations about Dr Reeves earlier this year. The Bill represents the team's recommended changes to the existing legislation.

## The Bill

15. The object of the Bill is to amend the Medical Practice Act 1992 and the Health Care Complaints Act 1993 so as:
  - a) to provide that the protection of the health and safety of the public is to be the paramount consideration in the administration of each Act, and
  - b) to make provision with respect to contraventions of the *Medical Practice Act 1992* or the regulations under that Act that constitute unsatisfactory professional conduct, and
  - c) to make provision with respect to: the circumstances in which the New South Wales Medical Board (***the Board***) may exercise its powers under section 66 of the *Medical Practice Act 1992*, and action that may be taken in the exercise of those powers and the subsequent termination or variation of the effects of such action, and
  - d) to require registered medical practitioners to furnish reports to the Board in relation to misconduct by other registered medical practitioners, and
  - e) to confer certain immunities on complainants under Part 4 of the *Medical Practice Act 1992* and on other persons who have provided complainants with information or otherwise been concerned in the making of complaints, and
  - f) to enable a Professional Standards Committee (***a Committee***) or the Medical Tribunal (***the Tribunal***), when imposing an order or condition of registration on a medical practitioner, to provide that a contravention of the order or condition is to result in deregistration of the practitioner, and
  - g) to require that a review of the suspension, deregistration or placing of conditions on registration of a medical practitioner must consider any complaints made about the person (whether before or after the order being reviewed was made), and
  - h) to require the audio recording of certain meetings of the Board and, and the Board, and
  - i) to authorise the Board to require any person to provide it with certain information, records or evidence, and to require a registered medical practitioner to provide details of the practitioner's employment, and to provide information obtained in connection with its functions to the Health Care Complaints Commission (***the Commission***), and to notify any person or body the Board considers it appropriate to notify of certain disciplinary action taken by the Board, and

- j) to provide a registered medical practitioner affected by certain disciplinary action taken by the Board with a right:
  - (i) to have the decision to take the action reconsidered, and
  - (ii) to appeal to the Tribunal on a point of law, and
- k) to enable the Board to have regard to other relevant complaints against a practitioner in the exercise of its disciplinary and complaint-related functions, and
- l) to enable a Committee or the Tribunal to take into account the judgment or findings of a professional standards committee or tribunal constituted under a health registration Act when making certain findings relating to the conduct of a registered medical practitioner, and to have regard to the totality of the evidence before it when dealing simultaneously with more than one complaint about a practitioner, and
- m) to enable the Commission to take into account associated complaints about a health practitioner or health organisation, or other relevant findings, decisions, reports or recommendations relating to a health practitioner when assessing a complaint, and
- n) to provide that consultation between the Commission and a registration authority or the Registrar on dealing with a complaint is to include consultation on any relevant associated complaint, and to allow a discontinued or terminated associated complaint to be reopened as a result of the consultation, and
- o) to make provision with respect to the concurrent investigation and prosecution of associated complaints, and
- p) to require a Committee or the Tribunal to list as soon as practicable an inquiry or appeal relating to action taken by the Board under section 66 of the *Medical Practice Act 1992*, and the Commission to deal as quickly as practicable with matters referred to it following such action, or action taken by another health registration board under equivalent powers under a health registration Act, and
- q) to require that proceedings of a Committee are to be open to the public unless the Committee otherwise directs in the public interest, and
- r) to provide for the Board to make a decision of a Committee publicly available unless the Committee otherwise orders, and
- s) to provide for the appointment of an additional member of a Committee who is to be legally qualified and is to be appointed as chairperson of the Committee, and
- t) to make minor miscellaneous and consequential amendments.

**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 *Medical Practice Act 1992* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Health Care Complaints Act 1993* 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 [1]** gives effect to the object set out in paragraph (a) of the Overview.

**Schedule 2 [1]** gives effect to the object set out in paragraph (a) of the Overview.

## Issues Considered by the Committee

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

#### Issue: Fair Trial and the Presumption of Innocence – Schedule 1 [23], [25], [26]

16. While the Committee recognises that this is only a quasi-judicial jurisdiction, which has previously not been bound by the laws of evidence, decisions of both the Professional Standards Committee and the Medical Tribunal can have a significant impact upon a medical practitioner's reputation, livelihood and future earning capacity. Further, these bodies are not subject to merits review.
17. The admission of all previous complaints and findings against a practitioner whether these are relevant or not or dismissed or not has the ability to compromise a practitioner's right to a fair trial.

18. **The presumption of innocence is a fundamental right of the accused under Australian law. The admission of all previous complaints and findings against a practitioner whether these were relevant to the current complaint or not or whether these were dismissed or not has the ability to compromise a practitioner's right to a fair trial. The Committee refers the matter to Parliament.**

#### Issue: Absolute Liability – Schedule 1 [5], [6], [8],

19. The issuing of critical compliance orders and conditions and the requirement that the Board must suspend and the Medical Tribunal must deregister a medical practitioner if an order or condition is breached does not afford the practitioner to provide a reasonable excuse for the breach.
20. There is a common law presumption that offences must be intentional to attract a penalty.

21. **The Committee considers that, except in extraordinary circumstances, it is inappropriate for an absolute liability offence, which does not allow a defence or reasonable excuse. The Committee therefore considers that the proposed Section 64 (1A) may unduly trespass on personal rights and liberties, and refers it to Parliament.**

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

## 5. MISCELLANEOUS ACTS AMENDMENT (SAME SEX RELATIONSHIPS) BILL 2008

Date Introduced:	7 May 2008
House Introduced:	Legislative Council
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Attorney General and Justice

### Purpose and Description

1. This Bill amends various Acts and instruments to make further provision in relation to same sex and other de facto relationships.
2. This Bill amends the law concerning parenting presumptions in the *Status of Children Act 1996* that arise as the result of a fertilisation procedure. The amendments will mean that where a woman who is in a de facto relationship with another woman within the meaning of the *Property (Relationships) Act 1984*, and has undergone a fertilisation procedure as a result of which she becomes pregnant, the woman who becomes pregnant is presumed to be the mother of any child born as a result of the pregnancy, even if she did not provide the ovum used in the procedure, and the other woman is presumed to be a parent of any child born as a result of the pregnancy, including where she provided the ovum used in the fertilisation procedure, provided she consented to the procedure.
3. It also makes consequential amendments to the *Births, Deaths and Marriages Registration Act 1995* to ensure that both parents can be noted on the child's birth certificate. This will enable both parents of a child conceived as a result of a fertilisation procedure provided to those in a lesbian same sex de facto relationship to hold themselves out as the child's parents in circumstances where evidence of the parent-child relationship is demanded.
4. The amendment to the Births, Deaths and Marriages Registration Act provides that an application can be made to the Registrar of Births, Deaths and Marriages for the addition of registrable information about the identity of a woman who is presumed to be a parent under the new parenting presumptions in the Status of Children Act, even if the child was born before the commencement of the new provisions.
5. The Bill also makes amendments to the *Industrial Relations Act 1996* so that the parental leave entitlements available to male employees in connection with the birth of his child or a child of his spouse or de facto partner are extended to female employees in connection with the birth of her child or a child of her de facto partner following the pregnancy of her de facto partner. The female employee's child is presumed to be hers by virtue of the amendments to the parenting presumptions in the Status of Children Act. To accommodate the expansion of this type of parental leave, the term "paternity leave" is renamed "partner leave".

6. The expansion of these entitlements will have effect immediately when the provisions are commenced, the expanded parental leave entitlements that arise as a result of these amendments will be available to a female employee where the birth of the child of the employee or of the employee's de facto partner has taken place before such commencement. To qualify for such leave the newly entitled female employee will be required to provide an employer with written notice of intention to take specified leave, a medical certificate evidencing the birth of the child and a statutory declaration detailing particulars of any maternity leave taken by her partner and that the leave is sought in order to become the child's primary care giver.
7. The Bill makes a further amendment to the law in order to ensure the equal treatment of all same sex couples in our community by amending the *Anti-Discrimination Act 1977* to rename the "marital status" ground of discrimination to "marital and domestic status".
8. This amendment to the Anti-Discrimination Act will ensure that people cannot be discriminated against on the basis of their de facto relationship, which is defined by reference to the Property (Relationships) Act. It includes people in same sex de facto relationships in the areas of public life concerning work, education, provision of goods and services, accommodation and registered clubs. The definitions of "relative" and "near relative" in the Anti-Discrimination Act will be amended to include de facto partners as defined by reference to de facto relationship within the meaning of the Property (Relationships) Act.

## Background

9. With regard to the Bill amending the law concerning parenting presumptions in the *Status of Children Act 1996* that arise as the result of a fertilisation procedure, the Second Reading Speech explains that:

This presumption is generally retrospective, so that the new presumption extends to a fertilisation procedure undertaken, and a consent given before the commencement of the amendments. There are, however, some sensible limitations to the retrospective application of the new presumptions so that they will not affect the previous operation of any Act or other law, any will executed before the commencement of the provisions, or the vesting in possession or in interest of any property before the commencement. These limitations will generally provide certainty as to the legal effect of acts that occurred before the commencement of these new parenting presumptions. However, as the presumptions do not extend to wills made before their commencement, it would be prudent for parents to whom the new parenting presumptions apply to consider whether their wills adequately reflect their intentions with respect to any children of their relationship.

I note that these reforms to the parenting presumptions in the Status of Children Act reflect the commitment of the Government to ensuring that the law treats children in same sex relationships as having the same rights and entitlements as children of other relationships. These reforms are especially important because they will ensure that the laws of intestacy will apply equally to the children of same sex parents, where the parents die without making a will.

10. The new parenting presumptions also aims to ensure that lesbian same sex parents can take parental responsibility for their children with respect to their health, education and general wellbeing in the same way as expected of all other parents.



11. The Second Reading Speech outlines that:

In order to reflect the Government's policy that a child should only have two legal parents, the amendments to the Births, Deaths and Marriages Registration Act include transitional provisions addressing the addition of information about a second parent in circumstances where the child's birth certificate already details the existence of two parents, the birth mother and a person who was represented to the registrar as being the father of the child. In such circumstances the registrar will only be able to add the registrable information arising out of the new parenting presumptions in the Status of Children Act if the already registered father consents to the removal of his details from the birth certificate, if the court authorises the removal, or in certain other circumstances provided for by regulation.

The Government emphasises here that these provisions, regarding the removal of a male's name from the birth certificate, only apply where the child was conceived through artificial fertilisation and the man is not entitled to be recognised as the parent. In some circumstances a man's name may have been put on the birth certificate as the father without him having parentage entitlements to justify this. For instance, if the man was the sperm donor and had no relationship with the birth mother, or the man was merely a friend of the birth mother who did not father the child but was named on the birth certificate for symbolic purposes. In these circumstances the provisions allowing his name to be removed can apply. They cannot apply where the child was conceived through sexual intercourse with the man named on the birth certificate. They cannot apply where the sperm donor was also the de facto partner or husband of the woman in the period around the birth, because there is a presumption under section 14 (1) (a) of the *Status of Children Act 1996* that he would be the father.

The circumstances provided for in the regulation will be similar to those in section 18 (b) of the *Births, Deaths and Marriages Registration Act 1995*. Section 18 provides:

The Registrar must not include registrable information about the identity of a child's parent in the Register unless:

- (b) one parent of the child makes an application for the inclusion of the information and the other parent cannot join in the application because he or she is dead or cannot be found, or for some other reason.

12. This Bill implements a number of recommendations in the recently released Law Reform Commission report entitled "Relationships" which relate to the recognition of the functional parent-child relationships. The reform gives effect to the intent of recommendations of the New South Wales Law Reform Commission review of the *Anti-Discrimination Act 1977* and accords with amendments that were made to the *Anti-Discrimination Act* in 2000. It also addresses the intent of recommendations made by the Legislative Council's Standing Committee on Social Issues in its 1999 report on "Domestic Relationships: Issues for Reform."

## The Bill

13. The object of this Bill is to amend certain Acts, Regulations and other instruments to make further provision in relation to their application to de facto relationships within the meaning of the *Property (Relationships) Act 1984* (**the PR Act**). In particular, this Bill:

- (a) amends the *Anti-Discrimination Act 1977* to rename the “marital status” ground of discrimination as “marital or domestic status” and extend that ground to include the status or condition of being in a de facto relationship, within the meaning of the PR Act, between same sex partners, and
  - (b) amends the *Status of Children Act 1996* to extend to same sex partners of birth mothers the parenting presumptions applying under that Act in relation to children born as a result of a pregnancy achieved by a fertilisation procedure, and
  - (c) amends various Acts and instruments as a consequence of the amendments to the *Status of Children Act 1996*, including the *Births, Deaths and Marriages Registration Act 1995*, the *Industrial Relations Act 1996* and the PR Act, and
  - (d) extends to de facto relationships, within the meaning of the PR Act, provisions in Acts, Regulations and other instruments that currently apply in relation to spouses, and
  - (e) clarifies that existing references in Acts, Regulations and other instruments to de facto relationships are references to de facto relationships within the meaning of the PR Act, and
  - (f) clarifies that references to the partner of a person in a number of instruments are references to the partner of the person, whether of the same or the opposite sex.
14. For the purposes of the PR Act, a de facto relationship is a relationship between two adult persons:
- (a) who live together as a couple, and
  - (b) who are not married to one another or related by family.
15. A de facto relationship can be an opposite or a same sex relationship. In determining whether two persons are in a de facto relationship, all the circumstances of the relationship are to be taken into account, including certain matters specified in section 4 (2) of the PR Act.

### **Schedule 1 Amendment of Anti-Discrimination Act 1977 No 48**

The amendments to this Act are explained in detail in the explanatory note set out in Schedule 1.

### **Schedule 2 Amendment of Status of Children Act 1996 No 76**

The amendments to this Act are explained in detail in the explanatory note set out in Schedule 2.

### **Schedule 3 Amendment of other Acts and instruments**

Schedule 3 makes amendments to the following Acts and instruments:

*Aboriginal Land Rights Act 1983*  
*Agricultural Industry Services Act 1998*  
*Apprenticeship and Traineeship Act 2001*  
*Bail Regulation 1999*  
*Births, Deaths and Marriages Registration Act 1995*  
*Births, Deaths and Marriages Registration Regulation 2006*  
*Central Coast Water Corporation Act 2006*  
*Charles Sturt University Act 1989*  
*Charles Sturt University By-law 2005*  
*Commercial Agents and Private Inquiry Agents Act 2004*  
*Commercial Agents and Private Inquiry Agents Regulation 2006*  
*Constitution (Disclosures by Members) Regulation 1983*  
*Contaminated Land Management Act 1997*

*Co-operative Housing and Starr-Bowkett Societies Act 1998*  
*Co-operative Housing and Starr-Bowkett Societies Regulation 2005*  
*Crimes (Administration of Sentences) Regulation 2001*  
*Criminal Procedure Regulation 2005*  
*Day Procedure Centres Regulation 1996*  
*Drug and Alcohol Treatment Act 2007*  
*Farm Produce Act 1983*  
*Fire Brigades Regulation 2003*  
*Greyhound and Harness Racing Administration Act 2004*  
*Greyhound Racing Act 2002*  
*Growth Centres (Development Corporations) Act 1974*  
*Harness Racing Act 2002*  
*Home Building Act 1989*  
*Industrial Relations Act 1996*  
*Irrigation Areas (Reduction of Rents) Act 1974*  
*Liquor Act 1982*  
*Local Government Act 1993*  
*Local Government (General) Regulation 2005*  
*Lotteries and Art Unions Regulation 2007*  
*Macquarie University Act 1989*  
*Pre-Trial Diversion of Offenders Act 1985*  
*Privacy and Personal Information Protection Act 1998*  
*Private Hospitals Regulation 1996*  
*Property (Relationships) Act 1984*  
*Property, Stock and Business Agents Act 2002*  
*Public Sector Employment and Management Act 2002*  
*Road Transport (General) Act 2005*  
*Rural Lands Protection Act 1998*  
*Southern Cross University Act 1993*  
*State Owned Corporations Act 1989*  
*Supreme Court Act 1970*  
*Sydney Cricket and Sports Ground Act 1978*  
*Sydney Cricket Ground and Sydney Football Stadium By-law 2004*  
*Thoroughbred Racing Act 1996*  
*University of New England Act 1993*  
*University of New South Wales Act 1989*  
*University of Newcastle Act 1989*  
*University of Sydney Act 1989*  
*University of Technology, Sydney, Act 1989*  
*University of Western Sydney Act 1997*  
*University of Wollongong Act 1989*  
*Water Industry Competition Act 2006*

## Issues Considered by the Committee

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

**Issue: Retrospectivity - Proposed Schedule 2, Item [8], to insert Part 3, section 7 - Parentage presumption to apply in relation to fertilisation procedures occurring before commencement:**

16. The Committee will always be concerned with any retrospective effect of legislation which impacts on personal rights. The presumptions arising under section 14 (1A) in relation to a child born as the result of a fertilisation procedure, as inserted by the proposed Bill, extend to a procedure undertaken, and a consent given, **before** the commencement of that subsection. This subclause applies even though at the time the consent was given the presumptions did not apply.

17. Section 14 of the *Status of Children Act 1996* set out a number of irrebuttable presumptions as to the parentage of a child born as a result of a fertilisation procedure. One of those presumptions is that a man who consents to his wife or de facto partner undergoing a fertilisation procedure, even if the procedure involves the use of another man's sperm, is presumed to be the father of any child born as a result of any pregnancy arising from the procedure (see section 14 (1) (a) and (6)).
18. Another of the presumptions is that a woman who is married to, or in a de facto relationship with, a man and becomes pregnant as a result of the use of another woman's ovum is presumed to be the mother of any child born as a result of the pregnancy (see section 14 (1) (b) and (6)).
19. Item [1] of the proposed amendments to the Act provides for the extension of both of those irrebuttable presumptions to a child born in the context of a de facto relationship involving 2 women. Firstly, it provides that a woman who consents to her female de facto partner undergoing a fertilisation procedure is presumed to be a parent of any child born as a result of any pregnancy arising from the procedure.
20. Secondly, it provides that a woman who is in a de facto relationship with a woman and becomes pregnant as a result of the use of an ovum other than her own is presumed to be the mother of any child born as a result of the pregnancy.
21. Item [8] of the proposed amendments provides for the proposed parentage presumptions set out in item [1] to extend to a fertilisation procedure undertaken, and a consent given, before the commencement of the proposed amendments, but not so as to affect:
  - (a) the previous operation of any Act or other law, or
  - (b) any will executed before that commencement, or
  - (c) the vesting in possession or in interest of any property before that commencement.

22. **The Committee notes the above safeguards provided in the proposed subsection (2) that those presumptions do not apply so as to affect: the previous operation of this or any other Act or law, or any will executed before the commencement of section 14 (1A), or the vesting in possession or in interest of any property before the commencement of section 14 (1A).**

23. **Therefore, the Committee is satisfied that the retrospectivity of the proposed amendment of Schedule 2 [8] to insert provisions as a consequence of the enactment of the proposed Act, does not unduly trespass on individual rights.**

**Issue: Retrospectivity - Proposed Schedule 3, Item [5], to insert Part 4, section 17 – Application to alter register as consequence of amendment of *Status of Children Act 1996*.**

24. The Committee will always be concerned with any retrospective effect of legislation which may impact adversely on personal rights. Proposed section 17 (2) reads: *An application may be made to the Registrar for the addition of registrable information, about the identity of a woman who is presumed to be a parent of the child under the relevant provisions, in the birth registration of a child born **before** the commencement of those provisions.*

25. Items [1]–[3] of the proposed amendments to the *Births, Deaths and Marriages Registration Act 1995* are consequential on the amendments made to the parentage presumptions under the *Status of Children Act 1996 (the SOC Act)* that are set out in Schedule 2. Item [5] of the proposed amendments is a transitional provision that is consequent on the enactment of the amendments to the SOC Act that are set out in Schedule 2. The provision enables the Registrar of Births, Deaths and Marriages to amend the information relating to parentage of a child, born before the commencement of relevant amendments to the SOC Act, on the child's birth registration. In particular, the Registrar may:
- (a) add information to the child's birth registration about the identity of a woman who is presumed to be a parent, in the circumstances set out in those amendments to the SOC Act, as the de facto partner of the birth mother of the child, and
  - (b) where relevant, remove information that purports to identify a person as the father of the child.
26. However, the Committee notes the safeguards proposed in section 17 (4) where the Registrar must not add registrable information in the child's birth registration about the identity of the woman as a parent of the child unless the following is satisfied:
- (a) the application is made jointly by that woman and the birth mother, and
  - (b) information that purports to identify a person as the father of the child:
    - (i) that person has given his consent to the removal of the particulars from the birth registration that identify him as the father of the child (or a court or the regulations authorise their removal because the person is not the father by operation of law or otherwise), and
    - (ii) the Registrar removes those particulars from the birth registration, and
    - (iii) if the Registrar requires verification of the information contained in the application—the application is accompanied by a statutory declaration verifying the information contained in the application and any other evidence that the Registrar may require.

**27. Therefore, the Committee concludes that the retrospectivity of the proposed amendment of Schedule 3 [5] to insert provisions as a consequence of the enactment of the proposed Act, does not unduly trespass on individual rights.**

**Issue: Retrospectivity - Proposed Schedule 3, Item [10], to insert Schedule 4, Part 9, section 48 – Provisions consequent on enactment of *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008*.**

28. The Committee will be concerned with any retrospective effect of legislation that may adversely impact on personal rights. Proposed section 48 (1) reads: *The amendments made to Part 4 of Chapter 2 of this Act by the Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008 extend to the taking of extended partner leave by a female employee where the birth of a child of the employee or of the employee's female de facto partner has taken place **before** the commencement of the amendments.*

29. Section 5 (4) of the *Industrial Relations Act 1996 (the Act)* provides that a person who is employed by his or her spouse or parent is not an employee for the purposes of the Act. Item [1] of the proposed amendments to the Act extends this exclusion to a person who is engaged or employed by his or her de facto partner.
30. Item [4] of the proposed amendments recasts section 55 (3) to replace the term *paternity leave* with the term *partner leave* and extend this form of leave to certain female employees in connection with the birth of a child.
31. Currently, paternity leave is available to a male employee in connection with the birth of his child or a child of his spouse or de facto partner. To ensure the similar treatment of female employees, partner leave will be available to a female employee in connection with the birth of her child or a child of her de facto partner following the pregnancy of her de facto partner. The child of the female employee referred to in this context is a child born as a result of the pregnancy of another woman following a fertilisation procedure to which the employee consented, as a de facto partner, and of whom the employee is presumed to be a parent under the proposed amendments to the *Status of Children Act 1996* set out in Schedule 2.
32. The Committee notes that Item [10] of the amendments provides for the proposed entitlement for certain female employees to take partner leave to extend to the taking of partner leave by such employees where the birth concerned has taken place **before** the commencement of the amendments. The entitlement is to cease at the expiration of 1 year following the birth of the child. This is consistent with section 54 of the Act, which provides that parental leave is not to extend beyond 1 year after the birth of the child concerned.
33. The Committee, however, also notes the safeguards proposed in the following proposed provisions to apply in place of section 58 (2) in relation to that extended partner leave:
- (a) the employee must, at least 4 weeks before proceeding on leave, give written notice of the dates on which she proposes to start and end the period of leave,
  - (b) the employee must, before the start of leave, provide a certificate from a medical practitioner stating that the child was born and the date of birth,
  - (c) the employee must, before the start of leave, provide a statutory declaration by the employee stating:
    - (i) if applicable, the period of any maternity leave sought or taken by her de facto partner, and
    - (ii) that the employee is seeking the period of leave to become the primary care-giver of the child.

<p>34. <b>Accordingly, the Committee is satisfied that the retrospectivity of the proposed amendment of Schedule 3 [10] to insert provisions as a consequence of the enactment of the proposed Act, does not unduly trespass on individual rights.</b></p>
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**Delegation of legislative powers [s 8A(1)(b)(iv) LRA]**

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

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

36. **Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about 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.***

## 6. PEAK OIL RESPONSE PLAN BILL 2008\*

Date Introduced:	8 May 2008
House Introduced:	Legislative Council
Minister Responsible:	Ms Lee Rhiannon, MLC
Portfolio:	Private Member – The Greens

### Purpose and Description

1. The object of this Bill is to provide for the establishment of a Peak Oil Taskforce to inquire into and report on the best strategies to mitigate the impacts of peak oil.

### Background

2. Peak oil is defined in the Bill as ‘the point in time when the maximum rate of global petroleum production is reached, after which the rate of production will decline, with anticipated negative impacts on the global economy’.

3. According to the Agreement in Principle speech:

The term "peak oil" describes the phenomenon whereby global conventional oil production will reach a peak and then start an irreversible decline. The rising price of petrol and other oil products and the decline in these energy supplies will increasingly dominate the work of all levels of government in the coming months and years. We need a plan to respond and manage the peak and decline of oil.

4. The Bill proposes a taskforce to investigate mitigation strategies for the impact of peak oil on New South Wales. The investigation will assess the impact of peak oil through an analysis of the oil-based fuel requirements of the New South Wales Government and population until 2020. According to the Agreement in Principle speech:

This work will be undertaken for different fuel types and economic sectors. It will determine the effect of peak oil on critical local facilities in New South Wales, including hospitals, schools and emergency services, and the provision of food and water supplies. Determining the impact of peak oil on the New South Wales economy and employment trends will be critical to the work of the task force. It will assess where retraining and redeployment of employees will be needed. Specific attention will be paid to the Australian motor vehicle industry and the mining industry.

5. The proposed taskforce would pay specific attention to analysing the effect of peak oil on disadvantaged, rural and regional communities where, according to the Agreement in Principle speech, a disproportionate effect will be felt. The Agreement in Principle speech argued that:

The agriculture industry—through the use of machinery, fertilizers and pesticides—is highly dependent on the petroleum industry. This will be assessed by the task force with regard to food affordability and availability, and the impact of alternative fuels on agricultural practices.



6. According to the Agreement in Principle speech:

Petroleum products comprise 50 per cent of energy end use, and three-quarters is directly consumed by the transport sector, in the main in road and air transport. Australia is the third highest per capita consumer of gasoline in the world after the United States and Canada. The Australian Geological Survey Organisation estimates that Australia's self-sufficiency in oil and condensate is expected to decline from 85 percent in 1999 to 42 per cent in 2010. In the transport sector most of these petroleum products are used by private cars and commercial trucks for inter and intra freight movements.

As such, the taskforce will be required to apply a particular focus on the impact of peak oil on transport and agriculture in New South Wales.

7. Under the proposed Bill the Taskforce will undertake extensive consideration of options for the expansion of public transport as an alternative to transport systems that are car-dependent and therefore oil dependent.

## The Bill

### 8. Outline of provisions

#### Part 1 Preliminary

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

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

**Clause 3** defines certain words and expressions used in the proposed Act. More specifically, the clause defines *peak oil* to mean the moment in time at which the maximum rate of global petroleum production is reached.

#### Part 2 Peak Oil Taskforce

**Clause 4** provides that the Premier is to establish a Peak Oil Taskforce (the *Taskforce*). The Taskforce is to consist of not less than 5 persons appointed by the Premier.

**Clause 5** provides that the Taskforce is:

- (a) to inquire into and assess the likely negative impacts of peak oil on the State and people of New South Wales, and
- (b) to report to the Premier on best strategies to mitigate those impacts.

**Clause 6** provides that, in conducting its inquiry, the Taskforce is:

- (a) to hold public meetings, and
- (b) to invite submissions from the public and consider those submissions,

**Clause 7** required that, before preparing its report, the Taskforce is to consider (and, where possible, quantify) the following:

- (a) the oil based fuel requirements of the State and people of New South Wales up to the year 2020 (differentiated by fuel types and economic sectors),
- (b) the impact of peak oil on the Australian motor vehicle industry (including any anticipated changes to the importation of vehicles and any resulting technological developments),
- (c) the impact of peak oil on the economy and employment and whether strategies for retraining and redeployment of employees will be needed,
- (d) the effect of peak oil on
  - (i) critical local facilities in New South Wales (such as hospitals, schools and emergency services), and
  - (ii) the provision of food and water supplies to the people of New South Wales,
- (e) the effect of peak oil on disadvantaged, regional and rural communities,
- (f) any disruption to road transport (including disruption to freight transport) caused by peak oil,
- (g) the effect of peak oil on mining in New South Wales,
- (h) whether alternative energy production and alternative fuels that can be used in substitution for petroleum and other oil based products can ameliorate the impacts of peak oil,
- (i) the effect of peak oil on food affordability and availability,
- (j) the need for public education, awareness and preparedness in anticipation of peak oil,
- (k) whether a system of fuel rationing will need to be established,
- (l) whether new public transport infrastructure and other transport infrastructure will be needed,
- (m) the likelihood of sudden fuel emergencies (similar to the 1973 and 1979 oil crises),
- (n) any other matter prescribed by the regulations under the proposed Act.

**Clause 8** required the Taskforce's report to contain:

- (a) a detailed risk management strategy to mitigate the short, medium and long term impacts of peak oil, and
- (b) strategies on how governments, business, community groups and members of the public may achieve reductions in their use of petroleum and other oil based fuels, and
- (c) a list of priority uses of petroleum and other oil based fuels after peak oil, and
- (d) a strategy to deal with sudden fuel emergencies (similar to the 1971 and 1979 oil crises).

**Clause 9** provides that the Taskforce's report is to be completed provided to the Premier within 12 months after the commencement of the proposed Act.

**Clause 10** requires the Taskforce's report to be tabled by the Premier in each House of Parliament as soon as practicable after it is received by the Premier.

### **Part 3 Miscellaneous**

**Clause 11** enables the Governor to make regulations for the purposes of the proposed Act.

## **Issues Considered by the Committee**

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

## 7. SNOWY MOUNTAINS CLOUD SEEDING TRIAL AMENDMENT (EXTENSION) BILL 2008

Date Introduced: 7 May 2008  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Nathan Rees MP  
Portfolio: Minister for Water

### Purpose and Description

1. This Bill amends the *Snowy Mountains Cloud Seeding Trial Act 2004* to extend the duration of the cloud seeding trial from 6 years (ending 8 April 2010) to 11 years (ending 8 April 2015), and to extend the area which is primarily targeted for precipitation under the trial.

### Background

2. This Bill will double the area of the current cloud seeding trial area as well as extend the time period for the trial to 11 years. According to the Agreement in Principle speech this expansion of the current trial is necessary to increase the statistical strength of findings about whether cloud seeding results in increased snowfall. The increase in geographic size to cover the main catchments of the Snowy Mountains Scheme increases the public and environmental benefit of the trial.
3. The Agreement in Principle speech argues that there are significant economic and environmental benefits stemming from the current trial to increase snowfall in the Snowy region. Economic benefits are derived from the impact that increased snowfall has on the ski tourism industry, while environmental benefits from increased snowfall run on to threatened alpine plant species, other species and ecological systems in the Snowy alpine region as well as the relief for freshwater environments of the Snowy and Murray rivers increase flows bring. The increased water flows also enable an increase in the production of electricity by the Snowy Hydro scheme which offsetting carbon dioxide emissions.
4. According to the Agreement in Principle speech the Snowy Mountains community and Murray River communities support the extension of the program and the Snowy Mountains community have indicated they are satisfied with the operational procedures for environmental risk management that have been put into place.
5. The Bill provides for the termination or suspension of the cloud seeding trial by the Minister for Planning or the Minister for Climate Change in one of several circumstances, including if the cloud seeding operations are having, or will have, a significant adverse environmental impact, or Snowy Hydro has not complied with any requirements with respect to the cloud seeding operations that have been imposed by the Ministers to minimise environmental impact. The Ministers may also suspend or terminate the research project if Snowy Hydro fails to provide information concerning the environmental impact of the cloud seeding activities. The Act also

provides that the Natural Resources Commission supervise the cloud seeding operations and report on environmental impact to the relevant Ministers. According to the Agreement in Principle speech:

In approving the extension and expansion of the trial, Snowy Hydro will be required to prepare a revised environmental management plan, which will include additional environmental protections to ensure that no damage is done to the environment. Snowy Hydro has committed \$20 million over the life of the trial and is responsible for extensive monitoring and reporting requirements based on trial design and risk assessment advice from Monash University.

## The Bill

### 6. Outline of provisions

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

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

**Clause 3** is a formal provision that gives effect to the amendments to the *snowy Mountains Cloud Seeding Trial Act 2004* set out in Schedule 1.

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

### Schedule 1 Amendments

**Schedule 1 [1]** gives effect to the extension of the cloud seeding trial from 6 years to 11 years (ending on 8 April 2015)

**Schedule 1 [2]** gives effect to the extension of the area primarily targeted for increased participation under the cloud seeding trial.

## Issues Considered by the Committee

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

## 8. SPORTING VENUES AUTHORITIES BILL 2008

Date Introduced: 6 May 2008  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Graham West MP  
Portfolio: Minister for Sport

### Purpose and Description

1. The objects of this Bill are:
  - (a) to dissolve the Newcastle International Sports Centre Trust and the Newcastle Showground and Exhibition Centre Trust;
  - (b) to repeal the *Sporting Venues Management Act 2002* and to continue the corporation sole constituted under that Act as the State Sporting Venues Authority as a corporation and New South Wales government agency managed by the Minister for Sport and Recreation;
  - (c) to establish a new Hunter Region Sporting Venues Authority and to transfer the land held by the former Trusts to this new Authority;
  - (d) to enable the establishment of other regional sporting venues authorities under the proposed Act, and
  - (e) to enable the State Venues Authority to arrange for the management and improvement of its land by a regional sporting venues authority.
2. This Bill also consequentially amends various Acts and repeals the *Newcastle Agricultural, Horticultural, and Industrial Association Act of 1905*, and the *Newcastle International Sports Centre Act 1967*.

### Background

3. The Bill provides for the establishment of the State Sporting Venues Authority with key functions including the establishment and management of sporting grounds, sporting facilities and recreational facilities. This Authority has a broader range of functions than are currently undertaken by the Minister under the *Sporting Venues Management Act 2002*. These functions are adequate for continued management of contractual obligations put in place at the conclusion of the Sydney 2000 Olympics.
4. Ownership of all land listed in the *Sporting Venues Management Act 2002* will remain the responsibility of the Minister for Sport and Recreation and shall be managed in accordance with the functions outlined in the new Act. The *Sporting Venues Management Act 2002* included the Sydney International Shooting Centre on land, which has now been transferred to the Western Sydney Parkland Trust. Care, control and management of the shooting centre and the Sydney International Equestrian

Centre remains with New South Wales Sport and Recreation and is unaffected by the new Act.

5. The Bill also constitutes as bodies corporate the regional sporting venues authorities, of which only one is named in the Bill: the Hunter Region Sporting Venues Authority.
6. The Bill provides mechanisms for the merging of Crown Lands Trusts, such as the Newcastle International Sports Centre Trust and the Newcastle Showground and Exhibition Centre Trust. The Bill provides for the dissolution of these Trusts and the transfer of their assets, rights and liabilities to the Hunter Region Sporting Venues Authority. According to the Agreement in Principle speech:

This bill proposes to consolidate the administration of the Newcastle Showground and Entertainment Centre and the Hunter International Sports Centre through the establishment of a Hunter Region Sporting Venues Authority. Currently these two trusts are very much focused on day-to-day management of their existing sites. Under the bill these trusts will be dissolved and a new, consolidated, precinct-wide entity will be established. It will focus on strategic development initiatives with a 20-year to 30-year vision in recognition of the anticipated growth of Newcastle city and the broader Hunter region. This new authority will pave the way for a better, more streamlined and functional approach to meeting the recreational and sporting needs of the people of Newcastle and the Hunter for decades to come.

7. Under the Bill individual Regional Sporting Venues Authorities will be able to enter into arrangements with the State Sporting Venues Authority to manage any land vested in its control, and undertake any of the functions the State Sporting Venues Authority has in relation to that land.
8. The Bill also enables easier transfer of land from a government agency to a relevant sporting venues authority or for parties to gift land to an authority as a bequest or gift. Whether or not an authority owns the land they may develop or manage sporting or recreational facilities with the consent of the Minister. According to the Agreement in Principle Speech:

A sporting venues authority may manage, develop and deal with land despite the terms of any grant, reservation or dedication to which the land is subject. There are also extensive obligations for regional sporting authorities to prepare and make publicly available management plans. The Minister also may direct an authority to review a plan of management.

9. The Bill also covers the appointment of rangers to enforce regulations for the care, control and management of land under the control of sporting venues authorities, and offences for which penalties may be issued.
10. The Bill provides for the continuing use of the Newcastle Showground by the Newcastle Agricultural, Horticultural, and Industrial Society for the purposes of the Newcastle Show.

## The Bill

11. The objects of this Bill are:

- a) to dissolve the Newcastle International Sports Centre Trust and the Newcastle Showground and Exhibition Centre Trust (*the former Trusts*) and
- b) to repeal the *Sporting Venues Management Act 2002* and to continue the corporation sole constituted under that Act with the name “minister administering the *Sporting Venues Management Act 2002*” as the State Sporting Venues Authority, and
- c) to establish a new Hunter Region Sporting Venues Authority and to transfer the land held by the former Trusts to the new Hunter Region Sporting Venues Authority, and
- d) to enable other regional sporting venues authorities to be established under the proposed Act, and
- e) to enable the State Sporting Venues Authority to arrange for the management and improvement of its land by a regional sporting venues authority.

## **Part 2 State Sporting Venues Authority**

**Clause 4** provides for the constitution of the State Sporting Venues Authority as a corporation.

**Clause 5** states that the State Sporting Venues Authority is a NSW Government agency.

**Clause 6** provides for the Minister to manage the State Sporting Venues Authority.

**Clause 7** enables the State Sporting Venues Authority to delegate its functions to certain persons.

**Clause 8** enables the State Sporting Venues Authority to establish advisory committees.

**Clause 9** sets out the principal functions of the State Sporting Venues Authority, which include establishing and managing sporting grounds, sporting facilities and recreational facilities. The clause also enables the State Sporting Venues Authority to enter into an arrangement with a regional sporting venues authority to manage any land vested in the State Sporting Venues Authority and to perform any function that the State Sporting Venues Authority has in relation to that land.

**Clause 10** enables the State Sporting Venues Authority to exercise its functions through subsidiaries, or in a partnership, joint venture or other association with other persons or bodies.

**Clause 11** enables the State Sporting Venues Authority to form or acquire interests in certain private corporations.

**Clause 12** constitutes as bodies corporate the regional sporting venues authorities specified in proposed Schedule 1.

**Clause 13** states that each regional sporting venues authority is a NSW Government agency.

**Clause 14** provides for each regional sporting venues authority to have a board of management consisting of not more than 7 members appointed by the Governor on the recommendation of the Minister.

**Clause 15** provides that a board of management of a regional sporting venues authority is subject to the direction and control of the Minister.

**Clause 16** enables the Governor, by order published in the Gazette, to amend proposed Schedule 1 or substitute a new Schedule for that Schedule.

**Clause 17** enables the Governor, by order published in the Gazette, to dissolve, amalgamate or change the name of any regional sporting venues authority.

**Clause 18** ensures that proposed Schedule 3 has effect with respect to orders made under the proposed Part. Proposed Schedule 3 contains provisions relating to the transfer, dissolution, amalgamation and change of name of regional sporting venues authorities.



**Clause 19** enables a regional sporting venues authority to delegate its functions to certain persons.

**Clause 20** enables a regional sporting venues authority to establish advisory committees.

**Clause 21** sets out the principal functions of a regional sporting venues authority, which include establishing and managing sporting grounds, sporting facilities and recreational facilities. The clause also enables a regional sporting venues authority to enter into an arrangement with the State Sporting Venues Authority to manage land vested in the State Sporting Venues Authority and to perform any of the functions that the State Sporting Venues Authority has in relation to that land.

#### **Part 4 Provisions relating to vesting of and dealings with land and other property**

**Clause 22** contains definitions used in the proposed Division.

**Clause 23** provides for the transfer to a sporting venues authority of the land described in proposed Schedule 4. The land is transferred subject to any existing trusts, interests, conditions and other restrictions. On transfer, the rights and liabilities of the previous owner of the property become the rights and liabilities of the sporting venues authority to which the land is transferred.

**Clause 24** enables the Governor, by order published in the Gazette, to insert the description of any land of a government agency in proposed Schedule 4 with the consent of the agency. The effect of such an order is to transfer the land to the relevant sporting venues authority.

**Clause 25** sets out the effect of a transfer of land under the proposed Division, including, for example, that it does not constitute a breach of contract.

**Clause 26** enables the State Sporting Venues Authority to deal with land vested in it and enables a regional sporting venues authority, with the consent of the Minister, to deal with land vested in it.

**Clause 27** enables a sporting venues authority to acquire property by gift, devise or bequest.

**Clause 28** controls the dealings a sporting venues authority may have with property acquired by gift, devise or bequest.

**Clause 29** enables the State Sporting Venues Authority to acquire land by agreement or by compulsory process and enables a regional sporting venues authority to acquire land by agreement.

**Clause 30** provides that a sporting venues authority may manage, develop and deal with land in accordance with the proposed Act despite the terms of any grant, reservation or dedication to which the land is or was subject.

**Clause 31** requires a regional sporting venues authority to prepare a plan of management for land vested in or managed by it.

**Clause 32** sets out the procedures for the Minister to adopt a plan of management and requires the Minister to make plans of management publicly available.

**Clause 33** requires a regional sporting venues authority to review a plan of management at the direction of the Minister.

**Clause 34** requires the Hunter Region Sporting Venues Authority to allow the Newcastle Agricultural, Horticultural, and Industrial Association to use a specified part of the Authority's land for the Association's annual show and provides for the way in which the terms and conditions applying to that use are to be determined.

## Issues Considered by the Committee

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

#### Issue: Right to Property – Dealings with land – Part 4 Clause 29: Compulsory acquisition of land by the State Sporting Venues Authority

12. Clause 29 enables the State Sporting Venues Authority to acquire land by compulsory process. Compulsory acquisition of land may constitute a trespass on personal rights and liberties.
  13. The Committee notes that the acquisition will be done under the terms of the *Land Acquisition (Just Terms Compensation) Act 1991*. This Act provides for minimum periods of notice to be given, rights of review to the Land and Environment Court and methods for determining just compensation. The Committee therefore considers that there are adequate protections in place for landowners.
  14. The Committee also notes Part 4 (30) which allows a sporting venues authority to manage, develop and otherwise deal with the authority's land in accordance with the Act despite the terms of any grant, reservation or dedication to which the land is or was subject under Act or law. The Committee notes that this may allow the Minister to contravene any restrictions placed on land use by the benefactor but recognises in this instance the potential need for changes in usage of land for the public benefit.
15. **Compulsory acquisition of land is always a concern for the Committee. However, the Committee is satisfied that, as any acquisition will be done in accordance with the Land Acquisition (Just Terms Compensation) Act 1991, the rights of landholders are adequately protected.**

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

## 9. SUMMARY OFFENCES AND LAW ENFORCEMENT LEGISLATION AMENDMENT (LASER POINTERS) BILL 2008

Date Introduced:	7 May 2008
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell
Portfolio:	Minister for Police

### Purpose and Description

1. The Bill amends the *Summary Offences Act 1988* to make it an offence to possess or use a laser pointer in a public place, to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to include a laser pointer as a dangerous implement within the meaning of that Act; and for other purposes.

### Background

2. There has been ongoing and increasing community concern about the use of individuals shining laser pointers into the cabins and cockpits of passing aircraft.
3. Although there are measures that exist under the *Crimes Act 1900* for police to take action against offenders, police are limited in taking action if intent cannot be proven or harm does not result.
4. In order to address these concerns, the Bill provides for an amendment to the *Summary Offences Act 1988* to make it an offence for possession of any kind of laser pointer without a reasonable excuse. A reasonable excuse would be those that relate to the individual's hobby, occupation, education, training or specified need.
5. The maximum penalty for a breach of this proposed provision is two years imprisonment or a fine of up to \$5,500.
6. The Bill also amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to list laser pointers under the definition of a 'dangerous implement'. This has the effect of enabling police officers to frisk individuals who they suspect on reasonable grounds that the person has a laser in his or her custody. The amendment also enables police offers to seize laser pointers found on individuals.

### The Bill

#### 7. Outline of Provisions

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

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

**Clause 3** is a formal provision that gives effect to the amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Summary Offences Act 1988* 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.

### **Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002**

**Schedule 1 [3]** provides that a *laser pointer* has the same meaning under the *Law Enforcement (Powers and Responsibilities) Act 2002* (*the Principal Act*) as it has under proposed section 11FA of the *Summary Offences Act 1988*.

**Schedule 1 [2]** amends the definition of *dangerous implement* in the Principal Act to include a laser pointer. Under the Principal Act, a police officer has the power to request a person who is in a public place or school to submit to a frisk search if the police officer suspects on reasonable grounds that the person has a dangerous implement in his or her custody and a police officer also has the power to confiscate a dangerous implement.

**Schedule 1 [4]** provides that certain references in the Principal Act to a dangerous implement do not extend to a laser pointer. These include the power to require a person to submit to a frisk search and the power to search premises for a dangerous implement if a police officer suspects the dangerous implement is being, or was, or may have been or may be used to commit a domestic violence offence.

**Schedule 1 [5]** includes a new power for a police officer to request a person who is in a public place to submit to a frisk search if the police officer suspects on reasonable grounds that the person has a laser pointer in his or her custody. This power does not extend to a person in a school as is the case with other dangerous implements. However, the power in the Principal Act to confiscate a dangerous implement does extend to a laser pointer.

**Schedule 1 [1]** makes a consequential amendment.

**Schedule 1 [6]** enables the regulations to make provision for matters of a savings and transitional nature consequent on the enactment of the proposed Act.

### **Schedule 2 Amendment of Summary Offences Act 1988**

**Schedule 2 [2]** inserts proposed section 11FA into the *Summary Offences Act 1988* which makes it an offence (maximum penalty \$5,500 or imprisonment for 2 years, or both) for a person, without reasonable excuse, to have in his or her custody a laser pointer in a public place or use a laser pointer in a public place. It is a reasonable excuse for a person to have custody of, or use, a laser pointer if the custody or use is reasonably necessary in all the circumstances for the lawful pursuit of the person's occupation, education, training or hobby. It is also a reasonable excuse for a person to have custody of a laser pointer during travel to or from or incidental to that occupation, education, training or hobby.

**Schedule 2 [1]** makes a consequential amendment.

## **Issues Considered by the Committee**

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

**Issue: Commencement by proclamation – Proposed section 2 - provides the Executive with unfettered control over the commencement of an Act**

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

9. **Although there may be good reasons why such discretion is required, 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.**

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

**Issue: Excessive punishment – Schedule 2[2]11FA(1)**

10. Schedule 2[2]11FA(1) provides that if a person is found to be in custody of a laser pointer in a public place without a reasonable excuse, that person may be liable to imprisonment for 2 years.

11. The Committee notes that the proposed section does not require, in the prosecution of the offence, for it to be demonstrated that the accused used, or intended to use the laser pointer for any illegitimate or inappropriate purpose such as aiming at an aircraft. As such, this provision will apply to any individual who merely possesses a laser pointer, and although not having any intent to commit any wrongdoing with it, does not have a reasonable excuse for possession.

12. Although shining laser pointers into aircraft presents a serious concern in relation to public safety, merely having a laser pointer in custody does not meet the same degree of seriousness. To this end, the committee considers that up to two years imprisonment for mere possession of a laser pointer could be regarded as an excessive punishment, disproportionate to the offence committed.

13. **The Committee considers that imprisonment for mere possession of a laser pointer could be regarded as excessive and disproportionate to the offence committed and draws attention to the fact that it may trespass unduly on the rights and liberties of the affected person, and refers this to the Parliament.**

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

## Part Two – Regulations

### SECTION A: REGULATIONS FOR THE SPECIAL ATTENTION OF PARLIAMENT UNDER S 9(1)(B) OF THE *LEGISLATION REVIEW ACT 1987*

#### Outline of the Regulation/Issues

Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008

#### Recommendation

##### That the Committee:

- 1) for the purposes of s 9(1A) of the *Legislation Review Act 1987*, resolve to review and report to Parliament on the Regulation; and
- 2) write to the Minister for her response to certain of the matters raised in the submission on the proposed Regulation by the Australian Institute of Petroleum (AIP).

#### Grounds for comment

Personal rights/liberties	
Business impact	The Regulatory Impact Statement estimates the total costs of the Regulation to be within the range of \$30 million to \$40 over the five-year life of the Regulation. This relates to industry costs and is based on estimates of the number of service stations that do not currently have equipment that would comply with the Regulation.
Objects/spirit of Act	
Alternatives/effectiveness	<b>Site classification:</b> The submission by AIP dated 20 November 2006 argues that the site classification model adopted in the 2002 AIP Code of Practice on the Design, Installation and Operation of Underground Petroleum Storage Systems (CP4) and used by other jurisdictions is a more selective and less arbitrary approach to determining environmental sensitivity than adopted in the draft Regulation. AIP argues further, that the deviation by NSW from this site classification model undermines the achievement of a

	nationally consistent approach to UPSS requirements, a goal that AIP member companies have been working hard to achieve. It states that the method for site sensitivity characterisation used in the Regulation is based on criteria not supported by sound scientific data.
Duplicates/overlaps/conflicts	
Needs elucidation	<p><b>Groundwater monitoring wells:</b> AIP in its submission states that agreement had previously been reached in the stakeholder discussions of 16 October 2006 that groundwater monitoring wells would not be required in the case of service stations where drilling to 10 metres detects no groundwater. However Clause 16 of the regulation appears to require monitoring wells in all cases.</p> <p><b>Record keeping:</b> AIP also argues that the record keeping provisions of the proposed Regulation are at odds with established practice for the storage of records and imposes monitoring requirements, which in terms of their frequency are unnecessarily onerous.</p>
SLA, ss 4,5,6, Sched 1, 2	The Regulatory Impact statement estimates the benefits to industry and the wider community at \$410 million. The benefits arise by decreasing the potential for soil and groundwater contamination.
Other	<p><b>Relationship between EPA and other Authorities:</b> The submission by HLA-Envirosciences Pty Ltd states that whilst the regulatory authority is clear there is no mention of the relationship between this authority and other Government Agencies that may be involved in Underground Petroleum Storage Systems. This may need consideration in any guidelines relating to the operation of the Regulation.</p>
Persons contacted	Gillian Graham – Crowe, Office of the Hon. Verity Firth, MP

## Explanatory Note

The object of this Regulation is to regulate the storage of petroleum in underground storage systems so as to minimise the risk of the discharge of substances that cause significant damage to the environment. For the first four years the appropriate regulatory authority for

matters arising under this Regulation will be the EPA after which it will be the relevant local authority.

## **Comment**

14. The Committee would welcome the Minister's response in respect of the issues identified in this report. That information will assist the Committee in assessing compliance by the responsible Minister with section 5(2)(c) of the Subordinate Legislation Act 1989 which requires all comments and submissions received to be appropriately considered.
15. AIP states its comments represent the views of BP Australia Pty Ltd, Caltex Australia Ltd, Mobil Oil Australia Pty Ltd and the Shell Company of Australia Ltd and that its associate member, Woolworths Limited, also supports its views.



# Appendix 1: Index of Bills Reported on in 2008

	Digest Number
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Board of Adult and Community Education Repeal Bill 2008	5
Clean Coal Administration Bill 2008	5
Consumer, Trader and Tenancy Tribunal Amendment Bill 2008	5
Conveyancing Amendment (Mortgages) Bill 2007*	1
Crimes Amendment (Drink and Food Spiking) Bill 2008	2
Crimes Amendment (Rock Throwing) Bill 2008	6
Crimes (Administration of Sentences) Legislation Amendment Bill 2008	5
Criminal Case Conferencing Trial Bill 2008	4
Dividing Fences and Other Legislation Amendment Bill 2008	5
Education Amendment Bill 2008	4
Energy Services Corporations Ownership (Parliamentary Powers) Bill 2008*	2
Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008	4
Fair Trading Amendment (Mandatory Funeral Industry Code) Bill 2008*	5
Fines Amendment Bill 2008	4
Food Amendment (Public Information on Offences) Bill 2008	2
Gaming Machines Amendment (Temporary Freeze) Bill 2008	2
Gas Supply Amendment Bill 2008	4
Growth Centres (Development Corporations) Amendment Bill 2008	4
Hemp Industry Bill 2008	6
Higher Education Amendment Bill 2008	5
Housing Amendment (Tenant Fraud) Bill 2008	4
Justices of the Peace Amendment Bill 2008	5

	Digest Number
Local Government Amendment (Election Date) Bill 2008	2
Local Government Amendment (Elections) Bill 2008	4
Marine Parks Amendment Bill 2007	1
Medical Practice Amendment Bill 2008	6
Mining Amendment Bill 2008	3
Miscellaneous Acts Amendment Bill 2008	6
National Gas (New South Wales) Bill 2008	5
National Parks and Wildlife (Leacock Regional Park) Bill 2008	3
Occupational Health and Safety Amendment (Liability of Volunteers) Bill 2008*	3
Peak Oil Response Plan Bill 2008*	6
Port Macquarie-Hastings Council Election Bill 2008*	5
Public Sector Employment Management Amendment Bill 2008	4
Road Transport Legislation Amendment (Car Hoons) Bill 2008	2
Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2008*	3
Snowy Mountains Cloud Seeding Trial Amendment (Extension) Bill 2008	6
Sporting Venues Authorities Bill 2008	6
State Arms, Symbols and Emblems Amendment (Black Opal) Bill 2008	5
State Emergency and Rescue Management Amendment (Botany Emergency Works) Bill 2008	5
State Revenue Legislation Amendment Bill 2008	4
Summary Offences and Law Enforcement Legislation Amendment (Laser Pointers) Bill 2008	6
Superannuation Administration Amendment Bill 2008	4
TAFE (Freezing of Fees) Bill 2007*	1
Totalizator Amendment Bill 2008	2
Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008*	5

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	Digest Number
Workers Compensation Amendment Bill 2008	5

## Appendix 2: Index of Ministerial Correspondence on Bills

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

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

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Board of Adult and Community Education Repeal Bill 2008	N, R				
Consumer, Trader and Tenancy Tribunal Amendment Bill 2008	N, R			N	
Crimes Amendment (Drink and Food Spiking) Bill 2008				R	
Crimes Amendment (Rock Throwing) Bill 2008	N, R			N, R	
Crimes (Administration of Sentences) Legislation Amendment Bill 2008			N		
Criminal Case Conferencing Trial Bill 2008	N, R				
Dividing Fences and Other Legislation Amendment Bill 2008				N, R	
Education Amendment Bill 2008	N, R				
Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008	N, R	N, R			
Food Amendment (Public Information on Offences) Bill 2008				R	
Gaming Machines Amendment (Temporary Freeze) Bill 2008	N				
Hemp Industry Bill 2008	N, R		N, R	N, R	
Housing Amendment (Tenant Fraud) Bill 2008	N, R	R			
Medical Practice Amendment Bill 2008	N, R				
Mining Amendment Bill 2008	N				
Miscellaneous Act Amendment (Same Sex Relationships) Bill 2008	N			N, R	
National Gas (New South Wales) Bill 2008					N
Public Sector Employment and Management Amendment Bill 2008	R				
Road Transport Legislation Amendment (Car Hoons) Bill 2008	R		R	R	
Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2008*	N, R				
Sporting Venues Authorities Bill 2008	N				

Legislation Review Committee

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
State Emergency and Rescue Management Amendment (Botany Emergency Works Bill 2008	N				
State Revenue Legislation Amendment Bill 2008	N, R				
Summary Offences and Law Enforcement Legislation Amendment (Laser Pointers) Bill 2008	N, R			N,R	
Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008*	N, R				
Workers Compensation Amendment Bill 2008	N, R				

Key

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

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

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