

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

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No 13 of 2010

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* Denotes Private Member's Bill

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations:

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

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

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

Section B: Ministerial correspondence – Bills previously considered

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

Part Two – Regulations

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

Appendix 1: Index of Bills Reported on in 2010

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

Appendix 2: Index of Ministerial Correspondence on Bills

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

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

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

Appendix 4: Index of correspondence on Regulations reported on

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

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Central Coast Water Corporation Amendment Bill 2010

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

13. Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power.

2. Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Issue: Procedural Fairness – Proposed Section 55L (6) – Schedule 1 [22] – Amendment of *Coastal Protection Act 1979* – Breach of coastal zone management plan – restraint:

29. As reported in *Digest 9 of 2010*, the Committee remains concerned with regard to the proposed section 55L (6) of Schedule 1, and refers this to Parliament for consideration as to whether it may be an undue trespass on the right to procedural fairness by removing the current right existing under section 55L (1) to bring proceedings in the Land and Environment Court to seek an order to remedy or restrain a breach of a coastal zone management plan which has been made by the State or a NSW Government agency.

Issue: Ill And Wide Defined Powers – Proposed Section 55ZG (1) – Resolution of disputes under Part 4C and this Part (Part D) – - Schedule 1 [26] - Amendment of *Coastal Protection Act 1979*:

32. As already reported in *Digest 9 of 2010*, the Committee still holds concerns that if a dispute arises between a council and a Coastal Authority that is a Minister in relation to any function under the proposed Part 4C or Part 4D, the Minister may hold broad powers to direct the council as to the exercise of the function under these Parts. Therefore, the Committee still refers the proposed section 55ZG (1) of the new Part 4D of Schedule 1 [26] to Parliament for consideration as to whether it may make rights and obligations unduly dependent upon insufficiently defined administrative powers in the context of a dispute arising between a council and a Coastal Authority that is a Minister.

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

35. Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power.

3. Community Justice Centres Amendment Bill 2010

Issue: Privilege

15. Ordinarily, the Committee would regard privilege as instrumental to the administration of justice and recognises it as an important legal right that should be maintained in most circumstances. The Committee has generally raised its concerns with any attempt to abrogate privilege.

16. However, the Committee notes that the proposed provision goes to ensuring that there is recourse for a party to a matter to enforce an agreement in circumstances where the other party has breached the terms of the agreement. In other words, the amendment will enable agreements made through mediation to be legally binding. In this respect, the provision merely places agreements made under the auspices of a mediator pursuant to the *Community Justice Centres Act* on the same footing as common-law contracts, where a right to privilege is generally not conferred on the contract itself.

17. The Committee regards the ability of an aggrieved party to tender into evidence information that demonstrates that an enforceable agreement has been made, and the substance of that agreement, as fair and reasonable in the circumstances set out by the proposed amendment.

4. Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010

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

5. Motor Accidents Compensation Amendment Bill 2010

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

6. Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010

Issue: Excessive Punishment

16. The Committee recognises the seriousness of action taken against an individual that is substantially in reprisal for making disclosures deemed to be in the public interest and appreciates the need for tough penalties. The Committee also recognises a desirability to achieve broad nationwide consistency in whistleblower legislation and maintain a strong deterrent effect.
17. However, the Committee considers the immediate doubling of the maximum penalty, without any evidence that the current penalty has not been effective, to be of concern. The Committee refers the matter to Parliament for its consideration.

Issue: Commencement by Proclamation

20. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation. The Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

7. Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010

Issue: Commencement by Proclamation

8. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation. The Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

8. Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010

Issue: Commencement by Proclamation

15. The Committee understands that regulations need to be finalised before the Bill can commence operation and that, assuming the regulations are ready for gazetting, the intended commencement date is 31 October 2010. Given these considerations, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

9. Veterinary Practice Amendment Bill 2010

Issue: Limiting avenues of appeal

- 13. Although it is incumbent on the Committee to identify provisions that appear to limit avenues of appeal, it appears fair and reasonable in the circumstances that the Veterinary Board has the final authority on whether it is willing and able to hear complaints that are more than three years old.**

Issue: Self-incrimination

- 19. Historically, the common law has recognised a privilege against self-incrimination in which individuals have the right (within certain limitations) to not do or say anything that might be used as evidence against them in criminal proceedings. The Committee recognises that the right against self-incrimination as a fundamental, longstanding principle and would ordinarily raise its concern to any abrogation or variation of that right.**
- 20. In the Committee's view, the provision set out in proposed section 44A(1) erodes the privilege against self-incrimination insofar that it disallows a veterinary practitioner from refraining to produce documents that may incriminate himself or herself. Further, proposed section 44A(3) provides that any such document produced is 'not inadmissible' in criminal proceedings against the veterinary practitioner, further weakening any privilege against self-incrimination. The Committee refers this matter to Parliament for its further consideration.**

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CENTRAL COAST WATER CORPORATION AMENDMENT BILL 2010

Date Introduced:	23 September 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Phillip Costa MP
Portfolio:	Water

Purpose and Description

1. This Bill amends the *Central Coast Water Corporation Act 2006* to facilitate the establishment of the Central Coast Water Corporation as a water supply authority; to amend the *Energy and Utilities Administration Act 1987* to provide for the Corporation to be made a contributor to the Climate Change Fund; and for other purposes.
2. The proposed amendments will enable Gosford and Wyong councils to control the transfer of water supply and sewerage related functions, staff, assets, rights and liabilities to the Central Coast Water Corporation; to determine the transfer timing, specifically when councils will cease to be recognised as water supply authorities under New South Wales water management legislation and to determine the value of councils' assets upon transfer, in agreement with the Central Coast Water Corporation.

Background

3. The Bill clears the way for Gosford and Wyong councils to establish the Central Coast Water Corporation to manage the region's water and sewerage services. The establishment of the corporation will have local water and sewerage services delivered by a single provider for the first time.
4. The region's water system is currently jointly managed by the Gosford/Wyong Councils' Water Supply Authority, with individual councils providing on-the-ground water and sewerage services. Bringing the services under the control of a single council-owned provider will aim to enable the councils to better manage the Central Coast's water system.
5. The Central Coast has the State's third largest water system and it currently services an urban population of 285,000 people. This is forecasted to increase to 350,000 by 2020.
6. In 2006, the New South Wales Government passed the *Central Coast Water Corporation Act* to provide a framework for the creation and operation of the Central

Coast Water Corporation. The Government has been working with Gosford and Wyong councils to develop a smooth transition to the new arrangements.

7. A memorandum of understanding has been signed between Gosford and Wyong councils and the New South Wales Government on the creation of the Central Coast Water Corporation.
8. The memorandum of understanding outlines a five-phase process for the transfer of functions, staff, assets, rights and liabilities to the corporation. Once established, the corporation will report on the status of the transferral process in its annual report and the Auditor-General will scrutinise the process.

The Bill

9. The objects of this Bill are:

(a) to amend the *Central Coast Water Corporation Act 2006*:

(i) to facilitate the establishment of the Central Coast Water Corporation (the Corporation) as a water supply authority and to enhance the role of the current water supply authorities, Gosford City Council and Wyong Shire Council (the constituent councils), in the process for that establishment and the transfer to the Corporation of the water supply, sewerage and drainage functions of the councils, and

(ii) to make amendments in the nature of statute law revision, and

(b) to amend the *Energy and Utilities Administration Act 1987* to provide for the Corporation to become a contributor to the Climate Change Fund instead of the constituent councils after the Corporation becomes a water supply authority and the councils cease to be such authorities.

10. Outline of provisions

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

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

Schedule 1 Amendment of *Central Coast Water Corporation Act 2006* No 105:

Making of proclamations to establish Corporation and relating to its water supply, sewerage and drainage functions

Schedule 1 [1] amends section 2 of the *Central Coast Water Corporation Act 2006* (the Act) to provide that the Minister may not recommend the making of the following proclamations to commence provisions of the Act unless requested to do so by the constituent councils:

(a) a proclamation to commence section 4 of the Act so as to constitute the Corporation,

(b) a proclamation to commence Schedule 7.2 [2] to the Act so as to remove the constituent councils as water supply authorities under the *Water Management Act 2000*,

(c) a proclamation to commence Schedule 7.2 [4] so as to establish the Corporation as a water supply authority under the *Water Management Act 2000*.

Schedule 1 [3] makes a consequential amendment to section 10 of the Act.

Transfer of assets, rights and liabilities of constituent councils to the Corporation

Schedule 1 [5] amends section 32 of the Act to provide for the constituent councils (rather than the Minister) to transfer their assets, rights and liabilities in connection with their water supply, sewerage and drainage functions to the Corporation.

Schedule 1 [7], [14] and [15] make consequential amendments to section 32 and Schedule 5 to the Act.

Schedule 1 [6] amends section 32 of the Act to provide that an order making such a transfer may not be made by a constituent council without the consent of the other constituent council.

Schedule 1 [8] amends section 32 of the Act to provide that any consideration for a transfer of any asset, right or liability of a constituent council to the Corporation is to be determined by agreement (based on a fair value) between the Corporation and both constituent councils or, failing such agreement, by an independent arbitrator.

Schedule 1 [13] amends clause 9 of Schedule 5 to the Act to provide that the making or operation of a transfer order does not give rise to civil liability.

Water supply, sewerage and drainage functions of the Corporation

Schedule 1 [4] inserts proposed section 28A in the Act to confirm that the Corporation is the owner of all water management works that it installs or that are transferred to it under the Act from the constituent councils regardless of whether or not it owns the land on or in which the works are situated. The proposed section also confirms that the Corporation has power to replace, repair, maintain and remove those works.

Schedule 1 [9] amends section 33 of the Act to provide that the Corporation will not be required to have an operating licence granted under the Act to carry out its functions until it becomes a water supply authority under the *Water Management Act 2000*.

Schedule 1 [10] amends section 34 of the Act to enable the Governor to make regulations for or with respect to when certain mandatory conditions will, or will not, be required to be included in an operating licence granted to the Corporation.

Directions of Minister to constituent councils

Section 293 of the *Water Management Act 2000* provides that water supply authorities (such as the constituent councils) are subject to the control and direction of the Minister in the exercise of their functions, except in relation to the contents of reports or recommendations made by them.

Schedule 1 [11] inserts proposed section 59A in the Act to limit the Minister's powers of control and direction over the constituent councils in connection with the exercise by the councils of any of the following functions:

(a) the making of transfer orders to transfer any of the staff, assets, rights or liabilities of a council to the Corporation,

(b) the making of a request by a council for the Minister to recommend the making of a proclamation to commence a provision to remove the constituent councils as water supply authorities under the *Water Management Act 2000* or to establish the Corporation as a water supply authority under that Act,

(c) the granting of consent by a council for the making of a transfer order by the other constituent council,

(d) the determination of the consideration (if any) for any assets, rights or liabilities of a council that are, or are proposed to be, transferred to the Corporation under the Act.

However, the constituent councils will remain subject to the control and direction of the Minister in relation to the exercise of these functions so as to enable the Minister to ensure that the councils comply with their undertakings under the Memorandum of Understanding entered into by the Minister and the councils on 9 August 2010.

Amendments in the nature of statute law revision

Schedule 1 [2] amends the definitions of **assets**, **liabilities** and **rights** in section 3 of the Act to reflect current drafting conventions concerning the defining of these terms in connection with transfers of assets, rights and liabilities. **Schedule 1 [12]** makes a related amendment to clause 9 of Schedule 5 to the Act.

Schedule 1 [17] amends clause 1 of Schedule 8 to the Act to replace a reference to the publication of regulations in the Gazette (which was formerly the practice) with a reference to the publication of regulations on the NSW legislation website (which is the current practice).

Savings and transitional provisions

Schedule 1 [16] amends clause 1 of Schedule 8 to the Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of *Energy and Utilities Administration Act 1987* No 103:

Schedule 2 [1] amends the definition of **State water agency** in section 3 of the *Energy and Utilities Administration Act 1987* to enable the Corporation to be prescribed by the regulations under that Act as a State water agency for the purpose of making contributions to the Climate Change Fund once the Corporation acquires clients in its capacity as a water supply authority.

Schedule 2 [2] amends Schedule 2 to the *Energy and Utilities Administration Act 1987* to make it clear that:

- (a) the Corporation cannot be prescribed to be a State water agency until the Corporation becomes a water supply authority under the *Water Management Act 2000* and the constituent councils cease to be water supply authorities, and
- (b) the constituent councils cease to be liable to make future contributions to Climate Change Fund once the Corporation becomes liable to make them.

Issues Considered by the Committee

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.

11. 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.
12. However, the Committee also notes that the Agreement in Principle speech indicated that the memorandum of understanding between the relevant councils and the Government outlines a five-phase process for the transfer of functions, staff, assets, rights and liabilities to the Central Coast Water Corporation.
13. **Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power.**

The Committee makes no further comment on this Bill.

2. COASTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2010 (NO 2)

Date Introduced:	22 September 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Frank Sartor MP
Portfolio:	Climate Change and the Environment

Purpose and Description

1. This Bill amends the *Coastal Protection Act 1979* and other legislation to deal with coastal erosion and projected sea level rise; and for other purposes.
2. It establishes the New South Wales Coastal Panel, which will be able to provide expert advice to councils, and the Minister, on significant coastal issues. It will determine development applications for coastal works where there is no certified coastal management plan, as will be provided by the proposed State Environmental Planning Policy on infrastructure amendments.
3. Councils currently have some powers under the *Coastal Protection Act* to order the removal of material dumped on a beach which is causing erosion. This Bill expands these order powers, including the ability to issue a stop-work order if a person is about to dump rocks on a beach illegally.
4. Councils will be able to require an administration fee to be issued when they issue an order. This fee is the same as the fee a council charges when issuing a pollution prevention notice under the *Protection of the Environment Operations Act*. The maximum penalty under the *Coastal Protection Act* is currently \$11,000. This Bill will increase the maximum penalties under the Act to nearly \$250,000 for an individual and nearly \$500,000 for a corporation to ensure compliance.
5. The *Local Government Act* currently provides councils with exemptions from liability for coastal management decisions if they act in "good faith". Councils asked for improvements to these arrangements in response to climate change impacts. This Bill responds to these concerns by expanding the exemptions from liability. This aims to ensure that councils acting in good faith are not caught up in unjustified court cases.
6. Landowners who want to build works to protect their property can currently lodge a development application for those works. This Bill provides an extra option for landowners, allowing them to place sand or sandbags as emergency works, under strict conditions.
7. The emergency works provisions allow landowners with properties at risk to place sandbags on a beach, provided that the works are certified by an authorised officer of a local council or of the Department of Environment, Climate Change and Water. The exposure Bill did not require a certificate from an authorised officer. This provision

has been added in response to evidence that without some form of quality control, inappropriate works and materials can be introduced into our beaches and waterfront areas.

8. The Bill includes controls on emergency works so that they do not cause erosion of neighbouring land, do not present a public safety risk or unreasonably impact on access to a beach. Orders can be issued by authorised officers to remove the works if these criteria are not met.
9. It will allow councils to levy a coastal protection service charge on landowners who have voluntarily contributed to building a new seawall or upgrading an existing seawall. This provision will not apply retrospectively.
10. Another part of the Bill will allow details of lands vulnerability to erosion and the expected council response to managing this erosion to be listed on section 149 certificates. This aims to help future purchasers to better understand the erosion problems associated with a particular parcel of land.
11. The emergency works provision is designed only as an interim measure to allow owners to seek approval for more permanent works.

Background

12. A coastal erosion reform package was announced last October to strengthening the management of erosion risks. The reforms made up an integrated package of legislation, including this Bill and supporting guidelines.
13. In March, an exposure Bill was released to begin the consultation process on this issue. Public consultation was undertaken with councils, the Local Government and Shires Associations, beachfront owners, environmental groups, the Opposition, the Greens and relevant government agencies. The Department of Environment, Climate Change and Water conducted 10 workshops. In July, the Department supported the Local Government and Shires Associations at a further series of workshops to explain and further discuss the Bill that was introduced in June. As a result, the Bill was refined to address concerns that were raised.
14. On 11 June, a previous version of this Bill was introduced. After the previous version of this Bill was introduced, some stakeholders raised further concerns. In response, consideration of the Bill was deferred until this session to allow additional consultation. During the winter recess, staff from the Department consulted with stakeholders.
15. This Bill aims to respond to the feedback received during the further consultations.
16. A new Bill is being introduced rather than a set of amendments to the previous Bill. Consequently, the previous Bill has been withdrawn.
17. Councils in coastal erosion hotspots will be asked to prepare coastal erosion emergency action sub-plans by the middle of next year. These councils will also need to finalise their coastal zone management plan by the end of next year or later if necessary.

18. The Minister will appoint the New South Wales Coastal Panel's chair with the concurrence of the Local Government and Shires Associations. Three of the seven panel members will be nominated by the Local Government and Shires Associations and three by State Government agencies.
19. Landowners will be able to place emergency works once for any parcel of land and may place them on adjacent private land, with that owner's agreement. The emergency works can be placed for up to 12 months. This provides the landowner with an opportunity to consider longer-term options for managing erosion risks, such as lodging a development application for longer-term coastal protection works. If a development application is lodged, the emergency works can remain until the development application is determined.
20. The Agreement in Principle speech explained that:

Lodging a development application remains the preferred pathway for landowners wanting to reduce erosion threats to their property. This process allows a thorough assessment of any proposed works and it also allows for appeals to the Land and Environment Court. The emergency works arrangements in this Bill strike the right balance—they allow landowners to place works temporarily while they go through a proper development application process for longer-term works. This Bill will be accompanied by complementary amendments to the State Environmental Planning Policy on Infrastructure.
21. This Bill and proposed amendments to the State Environmental Planning Policy on Infrastructure aim to improve the arrangements for landowners wanting to build long-term works such as a seawall. The proposed State Environmental Planning Policy on Infrastructure amendments will allow landowners to apply for consent to build seawalls. They will be required to satisfy the consent authority that there will be suitable arrangements in place to ensure any seawall will be adequately maintained and any beach erosion impacts managed.
22. It will allow councils to levy a coastal protection service charge on landowners who have voluntarily contributed to building a new seawall or upgrading an existing seawall. This will not apply to existing seawalls. Landowners will be able to request an independent review of the costs of the charge every three years. According to the Agreement in Principle speech, the councils will normally be able to charge a fee to cover their reasonable cost of providing this review. However, the fee will not apply in the first year the charge is levied or if the charge increases above the rate-pegging increase. This is in addition to the ability for the Minister to direct a council to undertake an independent review.
23. The Agreement in Principle speech further emphasised that:

...these emergency works provisions are in addition to the ability of a landowner to lodge a development application for emergency or longer-term works. If landowners consider that the emergency works requirements in this Bill are not suitable, they should consider lodging a development application for their preferred works. If they are refused, they can exercise their appeal rights just as for any normal development application. One claim that I have heard frequently is that the Bill takes away landowners property rights. This is not true. Landowners currently have the right to apply for development consent to construct a seawall to protect their property. The Bill does not change that. The Bill actually expands landowners' abilities to protect their property. The emergency works provisions in the Bill provide new streamlined arrangements for landowners to place sandbags to reduce immediate erosion threats to

their houses. This is intended as an interim measure while the normal approval processes are pursued—an avenue not previously available to owners.

24. There are reports that the requirement for a house to be within 10 metres of an erosion escarpment before emergency works can be placed is too restrictive. That 10-metre distance is contained in draft Minister's requirements which are available on the website of the Department of Environment, Climate Change and Water. Accordingly, the Agreement in Principle speech stated that:

In response to these concerns I have asked the department to review this trigger distance and to advise me whether a greater distance is appropriate, particularly if the works are to be placed entirely on the landowner's property.

25. The reason for the once-only provision is to prevent the 12-month limit on emergency works being artificially extended by new works prior to the expiration of the 12-month period. The Bill does not prevent an owner responsible for emergency works from repairing those works, but this cannot restart the clock and trigger a new 12-month period.

The Bill

26. The object of this Bill is to make amendments to the *Coastal Protection Act 1979* (the Principal Act) and other legislation to deal with coastal erosion and projected sea level rise, including amendments relating to the following:

(a) the improvement of the operation and enforcement of the Principal Act,

(b) enabling landowners to place certain emergency coastal protection works (such as sandbags) on beaches and sand dunes to mitigate erosion in specified circumstances without obtaining development consent or other specified permissions,

(c) enabling local councils to make and levy an annual charge for the provision of coastal protection services (such as services to maintain coastal protection works or to manage the impacts of such works) on rateable land that benefits from such services.

Issues Considered by the Committee

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

Issue: Procedural Fairness – Proposed Section 55L (6) – Schedule 1 [22] – Amendment of *Coastal Protection Act 1979* – Breach of coastal zone management plan – restraint:

27. The Committee notes that *Digest 9 of 2010* commented on this issue with regard to the former Bill. The Committee also notes that under the current section 55L (1) of the *Coastal Protection Act 1979*, the Minister or a council may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a coastal zone management plan.

28. This Bill still proposes to insert section 55L (6): Despite subsection (1), a council may not bring proceedings under this section to remedy or restrain a breach of a coastal zone management plan by the State or a NSW Government agency.

29. **As reported in *Digest 9 of 2010*, the Committee remains concerned with regard to the proposed section 55L (6) of Schedule 1, and refers this to Parliament for consideration as to whether it may be an undue trespass on the right to procedural fairness by removing the current right existing under section 55L (1) to bring proceedings in the Land and Environment Court to seek an order to remedy or restrain a breach of a coastal zone management plan which has been made by the State or a NSW Government agency.**

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

Issue: III And Wide Defined Powers – Proposed Section 55ZG (1) – Resolution of disputes under Part 4C and this Part (Part D) – - Schedule 1 [26] - Amendment of *Coastal Protection Act 1979*:

30. Proposed section 55ZG (1) reads: If a dispute arises between a council and a Coastal Authority that is a Minister in relation to the exercise of a function under Part 4C or this Part, the Minister may direct the council as to the exercise of the function.

31. Proposed Part C (proposed sections 55O - 55Z) deals with emergency coastal protection works (in general, emergency sand and sandbags placed on a beach or a sand dune to mitigate erosion). Proposed Part 4D (proposed sections 55ZA – 55ZH) deals with powers with respect to material and structures on beaches. This includes orders to remove certain materials and structures unlawfully placed on beaches; stop work orders relating to emergency coastal protection works; failure to comply with orders; resolution of disputes under Part 4C and Part 4D; successors in title and emergency coastal protection works; and fees.

32. **As already reported in *Digest 9 of 2010*, the Committee still holds concerns that if a dispute arises between a council and a Coastal Authority that is a Minister in relation to any function under the proposed Part 4C or Part 4D, the Minister may hold broad powers to direct the council as to the exercise of the function under these Parts. Therefore, the Committee still refers the proposed section 55ZG (1) of the new Part 4D of Schedule 1 [26] to Parliament for consideration as to whether it may make rights and obligations unduly dependent upon insufficiently defined administrative powers in the context of a dispute arising between a council and a Coastal Authority that is a Minister.**

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.

33. 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.

34. However, the Committee also notes that the background and Agreement in Principle speech indicated that ministerial requirements for emergency works will be available

Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

after the Bill has been passed and that there will be amendments to the Infrastructure State Environmental Planning Policy, along with guidelines in relation to the preparation of the draft coastal zone management plans.

35. **Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power.**

The Committee makes no further comment on this Bill.

3. COMMUNITY JUSTICE CENTRES AMENDMENT BILL 2010

Date Introduced:	23 September 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Attorney General

Purpose and Description

1. The object of this Bill is to amend the *Community Justice Centres Act 1983* (the principal Act) to provide for the appointment of mediators for Community Justice Centres and the terms and conditions of appointment of those mediators, as well as some of the processes that are to take place during mediation.
2. The Bill also provides that the privilege given with respect to evidence given at, or documents prepared for, a mediation session does not extend to evidence in relation to agreement that the parties have agreed will be enforceable. The Bill also removes the secrecy requirements applying to such evidence or documents in certain circumstances.
3. Lastly the Bill makes certain minor and consequential amendments to the principal Act.

Background

4. Community Justice Centres mediate a wide range of civil disputes, including disputes between neighbours, small business matters, small claims, some industrial disputes and disputes between community organisations.
5. Community Justice Centres have been in operation for over 25 years and provide a dispute resolution service to the community. These centres are wholly funded by Government and provide free mediation and conflict management services to assist citizen disputes without resorting to court.
6. The mediation process is generally one in which a trained mediator impartially assists those in dispute to resolve issues between private citizens, without any advisory or determinative role.
7. In 2009 – 2010, New South Wales community justice centres commenced files in relation to almost 5,000 disputes. In the same year, the centres conducted a total of 1,725 mediations.
8. In 2009, the Department of Justice and Attorney General established an Alternative Dispute Resolution Directorate. The role of this Directorate is to encourage the greater use of alternative dispute resolution in New South Wales.

The Bill

9. Outline of provisions

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

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

Clause 3 repeals the *Community Justice Centres Amendment Act 2007*.

Schedule 1 Amendment of *Community Justice Centres Act 1983 No 127*

Schedule 1 [2] amends the definition of *mediation* so that it applies not only to mediation undertaken at the request of one of the parties to the dispute or the Director of Community Justice Centres but also mediation carried out in compliance with an order of a court or tribunal.

Schedule 1 [5] provides for the appointment of mediators for Community Justice Centres. Mediators are to be appointed by the Director-General of the Department of Justice and Attorney General. As mediators are not appointed under the *Public Sector Employment and Management Act 2002* they are not members of the Government Service or Public Service. A mediator holds office for a term of not more than 3 years and is paid the remuneration and allowances decided by the Director-General. Proposed section 8 sets out the circumstances in which a mediator vacates his or her office and provides for the removal of a mediator from office by the Director-General. **Schedule 1 [1], [3], [8] and [9]** make consequential amendments by defining the terms *Director-General* and *mediator* and updating references to mediators. **Schedule 1 [24]** makes a consequential amendment to repeal

Schedule 1 [6] provides that the Director of Community Justice Centres and the staff of the Centres are employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* and therefore are members of the Government Service.

Schedule 1 [7] removes the requirement that Community Justice Centres, and the principal offices of Community Justice Centres, be established by order of the Governor.

Schedule 1 [10] amends section 20A of the principal Act so that matters relating to the provision of mandatory mediation services apply to any dispute referred by a court or tribunal to Community Justice Centres for mediation. It is no longer relevant whether the parties to the dispute have consented to the referral or not.

Schedule 1 [11] provides that, unless otherwise provided by the regulations, the provisions of the principal Act (other than section 23 (1) and (3)) apply to a mandatory mediation (that is, a mediation referred by a court or tribunal) in the same way that the provisions apply to a mediation voluntarily undertaken by the parties. Section 23 (1) provides that attendance at and participation in mediation sessions are voluntary and section 23 (3) provides that an agreement reached at or drawn up pursuant to a mediation session is not enforceable unless agreed by the parties.

Schedule 1 [13] makes a consequential amendment.

Schedule 1 [12] provides that a party to a mediation session may be accompanied by or represented by another person. However, the Director of Community Justice Centres or the mediator conducting the mediation session may exclude a person (other than a party to the session) from attending, or continuing to attend, the session if, in the Director's or mediator's opinion, the person's presence may frustrate the mediation session. **Schedule 1 [15]** is a consequential amendment.

Schedule 1 [14] provides that an agreement reached at, or drawn up pursuant to, a mediation session is not enforceable in a court, tribunal or other body unless the parties agree in writing that the agreement is to be enforceable.

Schedule 1 [16] provides that if a mediator is obliged to make a report under section 29A of the principal Act that the mediator believes a child is at risk of significant harm evidence of anything said in a mediation session, or a document prepared in relation to the session, is admissible in proceedings instituted in connection with the report.

Schedule 1 [17] provides that evidence may be given in proceedings before a court, tribunal or other body in relation to an agreement reached at, or drawn up pursuant to, a mediation session if the parties have agreed the agreement is to be enforceable.

Schedule 1 [18] similarly provides the obligation of secrecy imposed on a person exercising functions under the principal Act does not apply in relation to giving evidence about such an agreement.

Schedule 1 [19] amends section 29A of the principal Act. That section imposes an obligation on a mediator to make a report under the *Children and Young Persons (Care and Protection) Act 1998* if the mediator has reasonable grounds to suspect a child is at risk of harm. The amendment will impose the obligation only if the mediator suspects a child is at risk of significant harm.

Schedule 1 [20] repeals a redundant provision.

Schedule 1 [21] and [22] amend the mediator's oath of secrecy and the mediator's affirmation of secrecy so that a mediator will be able to make records of matters disclosed during or incidentally to a mediation session.

Schedule 1 [23] provides that regulations made under the principal Act may contain provisions of a savings and transitional nature consequent on the enactment of the *Community Justice Centres Amendment Act 2010*.

Issues Considered by the Committee

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

Issue: Privilege

10. Presently, section 28(6) of the *Community Justice Centres Act* provides that evidence of anything said, or any admission made, or any document prepared, pursuant to a mediation session, is not admissible in any court, tribunal or body. There are some

exceptions to this prohibition, namely where parties in attendance during mediation have consented to the admission of the evidence or document.

11. Proposed amendment 28(6)(c) seeks to extend the scope of exceptions, namely by providing that the privilege given with respect to evidence given at, or documents prepared for, a mediation session will no longer extend to evidence in relation to agreements that the parties have agreed will be enforceable.
12. Ordinarily, the Committee would regard privilege as instrumental to the administration of justice and recognises it as an important legal right that should be maintained in most circumstances. To this end, the Committee has generally raised its concerns with any attempt to abrogate existing privilege rights.
13. However, the Committee notes that the proposed provision goes to ensuring that there is recourse for a party to a matter to enforce an agreement in circumstances where the other party has breached the terms of the agreement. In other words, the amendment will enable agreements made through mediation to be legally binding. In this respect, the provision merely places agreements made pursuant to the *Community Justice Centres Act* on the same footing as common-law contracts, where a right to privilege is generally not conferred on the contract itself.
14. The Committee regards the ability of an aggrieved party to tender into evidence information that demonstrates that an enforceable agreement has been made, and the substance of that agreement, as fair and reasonable in the circumstances set out by the proposed amendment.

15. **Ordinarily, the Committee would regard privilege as instrumental to the administration of justice and recognises it as an important legal right that should be maintained in most circumstances. The Committee has generally raised its concerns with any attempt to abrogate privilege.**
16. **However, the Committee notes that the proposed provision goes to ensuring that there is recourse for a party to a matter to enforce an agreement in circumstances where the other party has breached the terms of the agreement. In other words, the amendment will enable agreements made through mediation to be legally binding. In this respect, the provision merely places agreements made under the auspices of a mediator pursuant to the *Community Justice Centres Act* on the same footing as common-law contracts, where a right to privilege is generally not conferred on the contract itself.**
17. **The Committee regards the ability of an aggrieved party to tender into evidence information that demonstrates that an enforceable agreement has been made, and the substance of that agreement, as fair and reasonable in the circumstances set out by the proposed amendment.**

The Committee makes no further comment on this Bill.

4. DRUG MISUSE AND TRAFFICKING AMENDMENT (MEDICALLY SUPERVISED INJECTING CENTRE) BILL 2010

Date Introduced: 23 September 2010
House Introduced: Legislative Assembly
Minister Responsible: The Hon. Carmel Tebbutt MP
Portfolio: Health

Purpose and Description

1. The object of this Bill is to amend the *Drug Misuse and Trafficking Act 1985* to enable the medically supervised injecting centre in Kings Cross to operate on an ongoing basis. At present, the centre is operating for a trial period that began on 1 May 2001 and is due to expire on 31 October 2011.
2. The Bill also repeals the *Drug Summit Legislative Response Act 1999*, which only contains spent provisions relating to the Drug Offensive Council, Foundation and Fund.

Background

3. At the 1999 New South Wales Drug Summit, recommendation 3.15 provided that 'the Government should not veto proposals from non-Government organisations for a tightly controlled trial of medically supervised injecting rooms in defined areas where there is a high prevalence of street dealing in illicit drugs...'.
4. In response, the Government established a medically supervised injecting centre in Kings Cross for a trial period, expiring in 2011, under the auspices of Uniting Care.
5. The key objectives of the injecting centre are to:
 - (i) reduce the morbidity and mortality associated with drug overdoses;
 - (ii) reduce the spread of blood-borne infections;
 - (iii) enhance access for people who inject drugs to drug treatment, health and social welfare services; and
 - (iv) reduce the 'public nuisance' aspects of public injecting, especially with respect to discarded syringes and other injecting paraphernalia.
6. In the 9 year period since the commencement of the trial, numerous evaluations have been undertaken by the National Drug and Alcohol Research Centre, the National Centre in HIV Epidemiology and Clinical Research based at the University of New South Wales, SAHA International, the New South Wales Bureau of Crime Statistics and Research and KPMG.

Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010

7. The research, which is publically available, has approximated findings about the injecting centre's impact on overdose rates, ambulance call-out rates, overall incidence of injecting in public, effect on the incidence of blood borne infections, as well as the centre's effect on the financial cost to the health system and crime rate in the immediate vicinity.

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 the date of assent to the proposed Act.

Clause 3 repeals the *Drug Summit Legislative Response Act 1999*.

Schedule 1 Amendment of *Drug Misuse and Trafficking Act 1985 No 226*

Schedule 1 [1]–[3], [5], [6] and [8] remove references in various provisions to the trial period due to end on 31 October 2011, which has the effect of enabling the licensed injecting centre to operate on an ongoing basis.

Schedule 1 [4] sets out the objects of Part 2A (Medically supervised injecting centres) of the *Drug Misuse and Trafficking Act 1985* and requires the Minister to review the operation of that Part after 5 years from the commencement of the proposed Act. A report of the outcome of the review is to be tabled in Parliament.

Schedule 1 [7] authorises the responsible authorities (the Commissioner of Police and the Director-General of the Department of Health) to revoke a licence in certain circumstances.

Schedule 1 [9] inserts a savings provision to ensure that the existing licence continues without the need to be re-issued at the end of the trial period.

Issues Considered by the Committee

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

5. MOTOR ACCIDENTS COMPENSATION AMENDMENT BILL 2010

Date Introduced:	24 September 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Michael Daley MP
Portfolio:	Finance

Purpose and Description

1. This Bill amends the *Motor Accidents Compensation Act 1999* in a number of ways. Firstly it extends the compulsory third party insurance scheme to include coverage of incidents and accidents that occur as a result of a dangerous situation caused by the driving of a motor vehicle, a collision, action taken to avoid a collision or any vehicle running out of control, in addition to incidents and accidents that occur during such events.
2. Secondly, it allows for people who are not members of the Government Service (that is, contractors) to be appointed as claims assessors.
3. Thirdly, it provides for an additional ex officio member to be appointed to both the Board of Directors of the Motor Accidents Authority and the Motor Accidents Council and provides for additional members to be appointed to the Motor Accidents Council.
4. Finally, the Bill amends the *Motor Accidents (Lifetime Care and Support) Act 2006* to provide for an additional ex officio member to be appointed to both the Board of Directors of the Lifetime Care and Support Authority and Lifetime Care and Support Advisory Council.

Background

5. In 2009 the Parliament enacted the Public Sector (Miscellaneous Amendments) Act 2009 which, among other things, amalgamated the administrative functions of a number of agencies concerned with the administration of compensation schemes for personal injury. These agencies were brought together under the Compensation Authorities Staff Division, led by one chief executive officer. The Motor Accidents Authority and Lifetime Care and Support Authority are two of those agencies, together with the WorkCover Authority of New South Wales, the Dust Diseases Board and the Long Service Payments Corporation.
6. Prior to the creation of the Compensation Authorities Staff Division, the General Manager of the Motor Accidents Authority and Executive Director of the Lifetime Care and Support Authority had been a member of their respective board and advisory council. The Bill makes minor amendments to the respective governing legislation of each authority to ensure that the chief administrative officer with the day-to-day management responsibility for each agency and who has extensive knowledge on operational issues will be in a position to contribute directly to decisions of the

agency's board and advisory council. The Government recently agreed to the appointment of a representative of the Motorcycle Council of New South Wales to the Motor Accidents Council.

7. The Bill therefore proposes an amendment to the Motor Accidents Compensation Act to provide for the appointment of additional members to the Motor Accidents Council. The bill also provides for the appointment of suitably qualified persons as claims assessors in the Claims Assessment and Resolution Service. The Claims Assessment and Resolution Service is an alternative dispute resolution body established under the Motor Accidents Compensation Act.
8. The Claims Assessment and Resolution Service is designed to provide a non-adversarial forum for resolving motor accident claims outside the court system. The majority of persons appointed as claims assessors since the inception of the service are senior legal practitioners with an extensive knowledge of the assessment of compensation for motor accident claims. At present only a member of staff of the Compensation Authorities Staff Division can be appointed as a claims assessor.
9. According to the Agreement in Principle Speech, recent advice indicates that private legal practitioners who have been appointed as claims assessors may not be considered as members of staff. To remove any doubt about the status of the private legal practitioners previously appointed as claims assessors and the assessment decisions they have made, it is proposed to make amendments to the Motor Accidents Compensation Act. These amendments will enable the appointment of any suitably qualified person as a claims assessor and will validate appointments, acts or omissions of claims assessors who may not have been members of staff or officers of the Motor Accidents Authority when they were appointed.
10. Further amendments concern a 2009 decision of the Court of Appeal in *Zotti v Australian Associated Motor Insurers Limited*. The Zotti case involved a person who was injured when the bicycle he was riding slipped on an oil slick that was left on the road after an earlier motor vehicle accident. In that case the court was required to interpret the definition of "injury" in the Act as it existed at the date of Mr Zotti's accident in December 2005.
11. The Court of Appeal found that, because Mr Zotti's injury was not caused at the time of the motor accident crash, the compulsory third party insurer of the vehicle at fault in the earlier accident was not required to indemnify the vehicle driver for any damages to which Mr Zotti may later become entitled. This left open the possibility that Mr Zotti could seek to recover damages directly from the vehicle driver. The decision in the Zotti case results in two unsatisfactory outcomes. Firstly, the injured cyclist was not entitled to recover compensation from the compulsory third party scheme for his injuries. Secondly, the motor vehicle driver was not covered by his green slip insurance policy and could face the possibility of being personally liable to pay compensation. The Court of Appeal also thought that this was an unsatisfactory situation deserving of consideration by the Legislature. The Bill therefore proposes to amend the definition of "motor accident" in the Motor Accident Compensation Act to extend the cover provided by the compulsory third party policy explicitly to include coverage of incidents and accidents that occur as a result of a dangerous situation caused by the driving of a motor vehicle, a collision, action taken to avoid a collision

or any vehicle running out of control.

The Bill

12. Outline of provisions

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

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

Schedule 1 Amendment of *Motor Accidents Compensation Act 1999 No 41* Motor accidents covered by compulsory third-party insurance

Schedule 1 [2] extends the definition of *motor accident* in the *Motor Accidents Compensation Act 1999* to include not only incidents or accidents that occur during the driving of a motor vehicle, a collision or action taken to avoid a collision, or during a vehicle's running out of control, but also incidents and accidents that occur as a result of a dangerous situation caused by the driving of the vehicle, a collision or action taken to avoid a collision with the vehicle, or the vehicle's running out of control. The amendment is made as a response to a recent decision of the New South Wales Court of Appeal. That case concerned a person who was seriously injured when he lost control of the bicycle that he was riding and who claimed that an oil slick that remained on the road following a motor accident some hours earlier caused his accident. The Court held that the compulsory third-party insurance policy would not extend to indemnify the driver of the car in the earlier accident because the cyclist's injury did not occur during a collision but occurred some time later: see *Zotti v Australian Associated Motor Insurers Limited* [2009] NSWCA 323, which followed the High Court's decision in *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd* [2005] HCA 26.

Schedule 1 [3] makes a consequential amendment to a provision about the application of the Act and the third party policy under the Act.

Schedule 1 [18] extends the protection of the amendments made by Schedule 1 [2] and [3] to motor accidents that occurred on or after 1 October 2006 (which is the date of commencement of earlier amendments that limited the incidents and accidents to which the Act applies).

Appointment of claims assessors

Schedule 1 [6] provides for the appointment of any suitably qualified person as a claims assessor having functions under the *Motor Accidents Compensation Act 1999* (at present, only a member of staff of the Compensation Authorities Staff Division of the Government Service can be appointed).

Schedule 1 [18] validates the appointment of, and acts or omissions of, claims assessors who were not members of staff, or officers of the Motor Accidents Authority, when they were appointed (see proposed clause 39 of Schedule 5).

Schedule 1 [1] and [4] make consequential amendments.

Schedule 1 [7] transfers an existing provision about the Principal Claims Assessor (currently found in section 105 (3)) to a more appropriate provision.

Schedule 1 [8] provides for the Principal Claims Assessor to delegate functions to any claims assessor, not just a member of staff of the Compensation Authorities Staff Division of the Government Service.

Schedule 1 [9] inserts a standard provision attaching liability to the Crown in those circumstances where claims assessors (who are not necessarily public servants) are not personally liable.

Schedule 1 [10] restates an existing provision relating to the control and direction of claims assessors and extends its operation, as a consequence of the fact that claims assessors may not be public servants.

Membership of Board of Directors of the Motor Accidents Authority and Motor Accidents Council

Schedule 1 [11] provides for an additional member on the Board of Directors of the Motor Accidents Authority to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Motor Accidents Authority.

Schedule 1 [13] provides for an additional member of the Motor Accidents Council to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Motor Accidents Authority. In addition, if the Minister decides to appoint additional members, the amendment provides for up to 4 such additional members to be appointed to the Council.

Schedule 1 [12], [14], [15] and [16] make consequential amendments.

Other amendments

Schedule 1 [5] corrects a cross-reference.

Schedule 1 [17] empowers the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of *Motor Accidents (Lifetime Care and Support) Act 2006* No 16

Schedule 2 [1] provides for an additional member of the Board of Directors of the Lifetime Care and Support Authority to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Lifetime Care and Support Authority.

Schedule 2 [4] makes a consequential amendment.

Schedule 2 [2] and [3] provide for an additional ex officio member of the Lifetime Care and Support Advisory Council to be appointed as an ex officio member, being the holder of an office nominated by the Chief Executive Officer of the Lifetime Care and Support Authority.

Schedule 2 [5] makes a consequential amendment.

Schedule 2 [6] empowers the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Issues Considered by the Committee

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

6. PROTECTED DISCLOSURES AMENDMENT (PUBLIC INTEREST DISCLOSURES) BILL 2010

Date Introduced:	24 September 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Kristina Keneally MP
Portfolio:	Premier

Purpose and Description

1. The object of this bill is to amend the *Protected Disclosures Act 1994* (the principal Act) to implement recommendations of the report by the Joint Committee on the Independent Commission Against Corruption entitled *Protection of public sector whistleblower employees* published in November 2009.
2. Key features of the Bill include:
 - (a) to extend protections provided by the principal Act to persons engaged under contract to provide services to or on behalf of a public authority;
 - (b) to provide that a disclosure is protected if the person making the disclosure honestly believes, on reasonable grounds, that the disclosure shows or tends to show that a public official has engaged, is engaged or proposes to engage in corrupt conduct, maladministration, serious and substantial waste of public money or a contravention of government information laws;
 - (c) to increase the penalties for taking detrimental action in reprisal against a person who made a protected disclosure, to make a person who takes such action liable in damages for any loss suffered by the person who made the disclosure, to enable the Supreme Court to grant injunctions restraining a person from engaging in detrimental action and to constitute the taking of detrimental action as professional misconduct;
 - (d) to establish a Steering Committee to provide advice to the Minister on the operation of the public interest disclosures regime;
 - (e) to confer functions on the Ombudsman, including the promotion of public awareness and assisting agencies in complying with their duties under the Act;
 - (f) to repeal a provision that removes protection for disclosures considered to be frivolous or vexatious;

- (g) to create an exception to the requirement that authorities keep the identity of a person who has made a protected disclosure confidential so that the requirement will not apply if the person's identity has become public because the person has voluntarily identified himself or herself, and to provide that public authorities must extend the duty of confidentiality to an individual who has made a protected disclosure; and
- (h) to make other amendments of a reporting or oversight nature.

Background

3. The *Protected Disclosures Act* was introduced in 1994 to protect public officials who disclose wrongdoing in the public sector in accordance with the procedures set out in the Act. It has primarily related to reporting on instances of corrupt conduct, maladministration and serious or substantial financial waste.
4. Following a referral by both Houses of Parliament in 2008 to review the protected disclosures scheme, the Joint Committee on the Independent Commission Against Corruption released a discussion paper in March 2009 in which it canvassed opinion on a suite of proposed amendments to the *Protected Disclosures Act*.
5. In November 2009, the Committee published its final report entitled 'Protection of Public Sector Whistleblower Employees'. The report included a total of 31 recommendations for reform. These recommendations were unanimously endorsed by the cross-party Committee. In response, the Government advised the Committee that it would introduce a Bill to give effect to all the recommendations that it supported.
6. This Bill implements all of the major recommendations for legislative change in the ICAC Committee's report.
7. One of the major recommendations was that new institutional arrangements be established to gather evidence on the operation of the Act, as amended. The Bill achieves this through the proposed creation of the Public Interest Disclosures Steering Committee, thus leaving open the option for further reform.

The Bill

8. Outline of provisions

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

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

Schedule 1 Amendment of *Protected Disclosures Act 1994 No 92*

Protected disclosures

Schedule 1 [18] amends provisions that limit protected disclosures to disclosures that reveal corrupt conduct, maladministration or serious and substantial waste of public money so that a disclosure will be protected when the person making the disclosure honestly believes, on reasonable grounds, that the disclosure reveals corrupt conduct, maladministration or serious and substantial waste of public money. The amendment also

reflects the recent addition of government information contravention (a failure to exercise functions in accordance with the *Government Information (Public Access) Act 2009*) as a ground for a protected disclosure. The amendments made by **Schedule 1 [2], [4], [14], [16], [20], [21], [22], [32], [34] and [42]** are consequential on government information contravention being grounds for a protected disclosure.

Schedule 1 [17] provides that for the purposes of determining whether a disclosure is a protected disclosure, an assertion by a public official about what the public official believes in connection with a disclosure is evidence of the belief asserted and that the belief is an honest belief.

Public officials and public authorities

For a disclosure to be protected by the principal Act, it must be made by a public official to an investigating authority, an officer of a public authority, a member of Parliament or a journalist. Protected disclosures may be made about conduct by public authorities and public officials. **Schedule 1 [12]** extends the definition of **public official** to include a person who is engaged under contract to provide services to or on behalf of a public authority. The amendment also provides that members of Parliament and persons employed by the President of the Legislative Council or the Speaker of the Legislative Assembly are public officials. **Schedule 1 [8]** is a consequential amendment. **Schedule 1 [7]** clarifies the definition of **public authority**.

Schedule 1 [15] provides that a disclosure by a public official may be made to the Clerk of the Legislative Assembly, the Clerk of the Parliaments or the Executive Manager of the Department of Parliamentary Services if the disclosure concerns the conduct of a member of Parliament and is made in accordance with official established procedures. **Schedule 1 [23]** provides that for such a disclosure to be protected it must be a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by a member of Parliament.

Schedule 1 [36] establishes a transitional arrangement that enables disclosures to continue to be made to the principal officer of a public authority that becomes a separate office within another public authority (rather than to the principal officer of that other public authority). This transitional arrangement continues until a new procedure is established for, or an existing procedure is amended or confirmed to apply to, the making of protected disclosures by officers of that separate office.

Protection against reprisals

Schedule 1 [26] increases the penalty for the offence of taking detrimental action against a person in reprisal for the person making a protected disclosure from 50 penalty units or 12 months imprisonment (or both) to 100 penalty units or 2 years imprisonment (or both). **Schedule 1 [27]** provides that a public official who commits such an offence is guilty of engaging in misconduct and that the misconduct justifies disciplinary action being taken against the public official. **Schedule 1 [27]** also makes it clear that the section covers reprisal action taken on the basis of a belief or suspicion that a protected disclosure has been made or may have been made even if the disclosure was not made. **Schedule 1 [28]** requires an investigating authority or public authority to refer any evidence of such an

offence to the Director of Public Prosecutions or to the Attorney General if the evidence relates to conduct of the Director of Public Prosecutions.

Schedule 1 [29] (proposed section 20A) provides that a person who takes detrimental action against a person in reprisal for the other person making a protected disclosure is liable in damages (other than exemplary, punitive or aggravated damages) for any loss that the other person suffers as a result of the detrimental action. The section also covers reprisal action taken on the basis of a belief or suspicion that a protected disclosure has been made or may have been made even if the disclosure was not made.

Schedule 1 [29] (proposed section 20B) enables an investigating authority and, with the approval of the Attorney General, a public authority to apply to the Supreme Court for an injunction to prevent a person from taking detrimental action against another person that is in reprisal for the other person making a protected disclosure. The Court may grant an injunction restraining the person from engaging in such conduct and may also require the person to take action to remedy the detriment.

Misdirected disclosures

Schedule 1 [24] amends an existing provision that protects a disclosure when it is misdirected to the wrong investigating authority and then referred on to the appropriate investigating authority, public official or public authority. The amendment limits protection to cases where the disclosure is made in the honest belief that the investigating authority to which the disclosure was made was the appropriate body to deal with the matter. The amendment also extends the protection to cases where the misdirected disclosure is made in the honest belief that the investigating authority was the appropriate body to deal with the matter and the disclosure is not referred on because the investigating authority has power to investigate the matter. **Schedule 1 [33] and [35]** make it clear that the referral of a protected disclosure under the existing provisions for the referral of disclosures does not affect the protected status of the disclosure.

Confidentiality

Schedule 1 [30] creates a further exception to the prohibition against the disclosure of information revealing the identity of a person who has made a protected disclosure, so that the prohibition will not apply if the information is generally available as a result of the person who made the protected disclosure voluntarily identifying himself or herself as having made the protected disclosure. **Schedule 1 [31]** requires a public authority to establish procedures for ensuring that public officials of the authority maintain confidentiality in connection with protected disclosures made by those public officials.

Public Interest Disclosures Steering Committee

Schedule 1 [13] (proposed section 6A) establishes the Public Interest Disclosures Steering Committee. The Steering Committee is to provide advice to the Minister on the operation of the principal Act and suggestions for reform and to receive, consider and provide advice to the Minister on reports by the Ombudsman under the principal Act.

The Steering Committee is to consist of the following members:

- (a) the Ombudsman (who will chair the Committee),

- (b) the Director-General of the Department of Premier and Cabinet,
- (c) the Auditor-General,
- (d) the Commissioner for the Independent Commission Against Corruption,
- (e) the Commissioner for the Police Integrity Commission,
- (f) the Director-General under the *Local Government Act 1993*,
- (g) the Commissioner of Police,
- (h) such other members as are prescribed by the regulations.

Schedule 1 [37] requires the Minister to consult with the Steering Committee about a proposed regulation under the principal Act before the Minister recommends the making of the regulation. **Schedule 1 [38]** (proposed section 31B) requires the Steering Committee to review any Commonwealth legislation enacted in response to the 2009 report *Whistleblower protection: A comprehensive scheme for the Commonwealth public sector* of the House of Representatives Standing Committee on Legal and Constitutional Affairs. **Schedule 1 [10]** is a consequential amendment.

Functions of Ombudsman

Schedule 1 [13] (proposed section 6B) confers functions on the Ombudsman in connection with the operation of the principal Act, including the following:

- (a) to promote public awareness and understanding of the principal Act,
- (b) to provide information and assistance to public authorities, investigating authorities and public officials on any matters relevant to the principal Act (including by issuing guidelines and publications),
- (c) to monitor, audit and report on the exercise by public authorities of functions under, and compliance with, the principal Act,
- (d) to make reports and provide recommendations to the Minister about proposals for legislative and administrative changes to further the object of the principal Act.

Schedule 1 [13] (proposed section 6C) gives the Ombudsman power to require the provision of information and documents by public authorities for the purposes of an audit under proposed section 6B.

Schedule 1 [38] (proposed section 31A) enables the Ombudsman to make a special report under the *Ombudsman Act 1974* on any matter arising in connection with the exercise of the Ombudsman's functions under the principal Act, including systemic or other problems identified with the operation of the principal Act and proposals for legislative change.

Public authorities to have protected disclosure policy and to prepare annual reports

Schedule 1 [13] (proposed section 6D) requires all public authorities to have a policy that provides for procedures for receiving, assessing and dealing with protected disclosures. A public authority must have regard to any guidelines adopted by the Ombudsman in formulating such a policy.

Schedule 1 [38] (proposed section 31) requires each public authority to prepare an annual report on the authority's obligations under the principal Act that will be tabled in Parliament. The report is to be submitted to the Minister responsible for the public authority and a copy is to be given to the Ombudsman.

Review of principal Act

Schedule 1 [39] amends the requirements relating to reviews of the principal Act so that a review of the principal Act by a joint committee of members of Parliament will be required to be undertaken after 5 years from the date of assent to the proposed Act, and not every 2 years as is currently the case. The review will be required to consider the effectiveness of the amendments made by the proposed Act, whether the structures in place to support the operation and future direction of the protected disclosures scheme remain appropriate and the need for further review of the principal Act. The joint committee conducting the review is to consult with the members of the Steering Committee, who may assist and advise on the review.

Name of Act

Schedule 1 [1] changes the name of the principal Act to the *Public Interest Disclosures Act 1994*.

Other amendments

Schedule 1 [25] repeals a provision that operated to remove protection for a disclosure when an investigating authority or public authority declined or discontinued investigation of the disclosure on the basis that it was frivolous or vexatious.

Schedule 1 [5], [6], [9] and [19] replace references to the Director-General of the Department of Local Government with a reference to the Director-General under section 429A of the *Local Government Act 1993* (to be known in the principal Act as a **local government investigating authority**) as a consequence of recent departmental amalgamations.

Schedule 1 [3] omits an obsolete definition.

Schedule 1 [11] makes a consequential amendment.

Savings and transitional provisions

Schedule 1 [40] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [41] inserts savings and transitional provisions.

Schedule 2 Amendment of other Acts

Schedule 2 amends other Acts as a consequence of the proposed change of name of the principal Act.

Issues Considered by the Committee

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

Issue: Excessive Punishment

9. Section 20(1) of the Act provides that a person who takes detrimental action against another person that is substantially in reprisal for the other person making a protected disclosure is guilty of an offence. At present, the maximum penalty for this offence is 50 penalty units or imprisonment for 12 months, or both.
10. Clause 26 of the Bill proposes to double the maximum penalty to 100 penalty units or imprisonment for 2 years, or both.
11. The Committee recognises the seriousness of detrimental action taken against an individual that is substantially in reprisal for making disclosures deemed to be in the public interest. In this respect, strong penalties against offenders are warranted.
12. However, the Committee questions the reasons why the current penalty structure is considered inadequate. It could be fairly regarded that 100 penalty units and/or 12 months imprisonment for taking detrimental action against an individual substantially in reprisal for the making of a protected disclosure constitutes an already significant punishment and one that is proportionate to the gravity of the offence committed.
13. The Committee notes that in its 2009 report, 'Protection of public sector whistleblower employees', the Joint Committee on the Independent Commission Against Corruption recommended the doubling of the penalty provisions.¹ The reasons for this recommendation appear chiefly to bring the penalty provisions broadly in line with equivalent legislation in other jurisdictions, as well as in line with penalties for similar reprisals under the *Independent Commission Against Corruption Act 1988* and the *Ombudsman Act 1974*. The report also noted that tougher penalties would have a stronger deterrent effect.²
14. The Committee recognises these reasons as legitimate in attempting to bring nationwide consistency to whistleblower legislation and notes the importance of the deterrent effect in criminal legislation.
15. Despite this, the Committee considers the immediate doubling of the maximum penalty, without any evidence that the current penalty has not been effective, to be of concern.
16. **The Committee recognises the seriousness of action taken against an individual that is substantially in reprisal for making disclosures deemed to be in the public interest and appreciates the need for tough penalties. The Committee also recognises a desirability to achieve broad nationwide consistency in whistleblower legislation and maintain a strong deterrent effect.**

¹ Committee on the Independent Commission Against Corruption, 'Protection of public sector whistleblower employees', Report No. 8/54, November 2009 at pp 192 – 194.

² Ibid.

17. **However, the Committee considers the immediate doubling of the maximum penalty, without any evidence that the current penalty has not been effective, to be of concern. The Committee refers the matter to Parliament for its consideration.**

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

Issue: Commencement by Proclamation

18. The Committee notes that this Bill 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.
19. However, the Committee also notes that this Bill proposes to establish an oversight mechanism, chiefly through an extension of powers conferred to the Ombudsman, but also through the creation of a new Public Interest Disclosures Steering Committee. The Committee has been informed that some preparatory work still needs to take place with respect to the oversight bodies before the Bill can commence operation.

20. **The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation. The Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.**

The Committee makes no further comment on this Bill.

7. PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (ENVIRONMENTAL MONITORING) BILL 2010

Date Introduced:	24 September 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon. Frank Sartor MP
Portfolio:	Climate Change and the Environment

Purpose and Description

1. The object of this Bill is to amend the *Protection of the Environment Operations Act 1997* to enable the Environment Protection Authority (EPA) to establish programs to monitor the impact on the environment and human health of activities or works authorised or controlled by environment protection licences issued under the principal Act, including pollution resulting from those activities or works, and to recover the costs of those programs from license holders.

Background

2. This Bill is designed to address 'the shortcomings of current legislation' in cases where a cluster of industry is having a cumulative impact on communities and the environment. Particular reference was made during the Agreement in Principle speech to the Upper Hunter region where community concern exists about the impact of the power and coalmining industries on ambient air quality and effect of dust particles on human health.
3. The Bill would enable the EPA to investigate the need for an environmental monitoring program either upon its own initiative or at the direction of the Minister. The EPA would also be required to consult with industry and community representatives in the design of the monitoring program as well as with industry representatives in relation to the development of a fair and equitable formula for sharing the cost of the monitoring program.
4. The Bill also establishes the Environmental Monitoring Fund, into which the levies will be paid. The money in the fund is to be used for the costs of investigating the need for environmental monitoring programs, as well as their subsequent implementation.

The Bill

5. Outline of provisions

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

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

Schedule 1 Amendment of *Protection of the Environment Operations Act 1997 No 156*

Schedule 1 [3] inserts Part 9.3C into the principal Act. Under the proposed Part, the EPA may, on its own initiative, and must, at the direction of the Minister for Climate Change and the Environment, investigate the need for a program (referred to in the proposed Part as an ***environmental monitoring program***) to monitor the impact on the environment and human health of activities or works authorised or controlled by licences, including pollution resulting from those activities or works. After completing such an investigation, the EPA may develop and implement an environmental monitoring program if it is satisfied that such a program is required.

The EPA may arrange for a person or body to exercise the EPA's functions in relation to environmental monitoring programs on behalf of the EPA. The EPA is to obtain, and take into consideration, advice from one or more independent persons or bodies with relevant technical and health expertise as to the cost effectiveness of any environmental monitoring program.

The regulations may require holders of environment protection licences to pay a contribution (referred to in the proposed Part as an ***environmental monitoring levy***) towards the costs of an environmental monitoring program. The amount of the levy, or how it is to be calculated, will be set out in the regulations.

An Environmental Monitoring Fund (the ***Fund***) is to be established in the Special Deposits Account, which will be managed by the EPA. The environmental monitoring levies collected from licence holders will be paid into the Fund and the costs of the environmental monitoring programs will be paid out of the Fund.

Schedule 1 [1] and [2] enable the EPA to impose conditions on environment protection licences for the purposes of environmental monitoring programs.

Issues Considered by the Committee

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

Issue: Commencement by Proclamation

6. The Committee notes that this Bill 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.
7. However, the Committee also notes that this Bill proposes to set up both a new monitoring scheme and a new fund for the payment of levies, both of which require various administrative arrangements to take place before the program can commence operation. As the Committee has not identified any other concerns with this Bill that may trespass on the rights and liberties on individuals, the Committee does not regard the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

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| <p>8. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation. The Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

8. ROAD TRANSPORT (VEHICLE REGISTRATION) AMENDMENT (WRITTEN-OFF VEHICLES) BILL 2010

Date Introduced: 24 September 2010
House Introduced: Legislative Assembly
Minister Responsible: The Hon David Borger MP
Portfolio: Roads

Purpose and Description

1. The object of this Bill is to provide for the keeping of a register of written-off vehicles and the collection of information concerning written-off vehicles.
2. The proposed written-off vehicle register will prevent the registration of a vehicle having the same vehicle identifier as a written-off vehicle unless the Roads and Traffic Authority (RTA) has issued an authorisation to repair the vehicle, and a licensed motor vehicle repairer has assessed the vehicle as meeting certain repair standards and issued a certificate of compliance in relation to the vehicle.
3. The register will also prevent the registration of a vehicle that has the same vehicle identifier as certain written-off vehicles recorded on a register of written-off vehicles in another jurisdiction.
4. Lastly, the Bill will enable Austroads, the body maintaining the national database of written-off vehicles to have access to the details on the register of written-off vehicles.

Background

5. The Bill is designed to introduce major reforms to protect consumers from profiteers who trade in written-off vehicles that are dangerously repaired, often with stolen parts.
6. In May 2010, the RTA's Centre for Road Safety partnered with the New South Wales Motor Traders' Association to assess the potential risks involved in driving poorly repaired write-offs. The RTA study included crash lab testing poorly repaired write-offs.
7. As noted, many poorly repaired write-offs are built using stolen parts. According to the Agreement in Principle Speech, the National Motor Vehicle Theft Reduction Council (NMVTRC) estimates the cost of vehicle theft in Australia to be approximately \$1 billion. In NSW approximately 19,000 vehicles were stolen in 2008-09, of which 5,700 have not been recovered.
8. The NSW Police Force advises that the number of unrecovered stolen vehicles is a key indicator of vehicle thefts for use in rebirthing activities. It is estimated that up to

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six in 10 repairable write-offs presented for re-registration in New South Wales pose serious questions about the origin of the parts used to repair them. This amounts to more than 12,000 suspect repairable write-offs in New South Wales per year.

9. In 2008, the NMVTRC conducted a national review of written-off vehicles in response to the increase in rebirthing of repairable write-offs. In addition, the RTA released its discussion paper, 'Improving the Regulation of Written-Off Vehicles in New South Wales', in August 2009 for public comment. Consultation was sought with industry and community stakeholders and a total of 56 submissions were received. The final reports of both reviews are publicly available and contain detailed suggestions on how to rectify problems with written-off vehicles.
10. This Bill draws from the expertise and conclusions contained in those reports. In addition, the Bill gives effect to some of the key principles contained within the December 2005 New South Wales Parliamentary Staysafe Committee report No. 9/53, 'Repairing to a price, not a standard' which inquired into the crash-damaged vehicle assessment and repair industry. The Committee made 44 recommendations in relation to improving the motor vehicle smash repair industry, second-hand vehicle parts and unsafe repair practices.

The Bill

11. Outline of Provisions

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

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

Clause 3 repeals the *Road Transport (General) Amendment (Written-off Vehicles) Act 2007*.

Schedule 1 Amendment of *Road Transport (Vehicle Registration) Act 1997 No 119*

Schedule 1 amends the *Road Transport (Vehicle Registration) Act 1997* as follows:

Schedule 1 [1] clarifies that a reference in the *Road Transport (Vehicle Registration) Act 1997* to a vehicle being "registered" is a reference to the vehicle being registered on the Register of Registrable Vehicles.

Schedule 1 [2] inserts a new Part containing the following provisions relating to the notification, registration and management of certain written-off vehicles.

Part 2AA Written-off vehicles

Division 1 Preliminary

Proposed section 16A defines words and expressions used in the proposed Part.

Division 2 Restrictions on registration of certain written-off vehicles

Proposed section 16B requires the RTA to keep a register of written-off vehicles which records vehicles as either statutory written-off vehicles or former written-off vehicles. A vehicle recorded on the register will be a statutory written-off vehicle unless it is repaired

and registered in accordance with the proposed Part, in which case it will be a former written-off vehicle. The term **written-off vehicle** is defined to include a vehicle that an insurer, self-insurer, auto-dismantler, dealer or prescribed person has assessed as a total loss in accordance with proposed Division 3, a vehicle that has been disposed of by a self-insurer to an auto-dismantler or a vehicle that an auto-dismantler has demolished or dismantled or intends to demolish or dismantle. Vehicles recorded on the previous register of written-off vehicles immediately before the proposed Act commences will also be written-off vehicles.

Proposed section 16C requires the RTA to refuse to register vehicles that have the same vehicle identifier as a statutory written-off vehicle or an interstate written-off vehicle unless the RTA has approved the vehicle as both eligible and able to be repaired, and has issued an authorisation to repair the vehicle, and a licensed motor vehicle repairer has assessed the vehicle as meeting certain repair standards and issued a certificate of compliance in relation to the vehicle.

Proposed section 16D specifies the circumstances in which the RTA must refuse to issue an authorisation to repair a written-off vehicle. Proposed section 16E provides for the making and handling of applications for the issue of an authorisation to repair a written-off vehicle.

Division 3 Assessment of damaged vehicles

Proposed section 16F defines **assessor** as an insurer, self-insurer, auto-dismantler, dealer or other person prescribed by the regulations and **vehicle damage assessment** as an assessment made by or on behalf of, and in the course of business of, an assessor as to whether or not a notifiable vehicle (anywhere in Australia) is a total loss.

Proposed section 16G defines **notifiable vehicle** as a vehicle not more than 15 years old that complies with the Australian Design Rules, is linked to the State in some way and is not a heavy vehicle, or is a vehicle prescribed by the regulations.

Proposed section 16H defines a **total loss** as a vehicle that has been damaged, dismantled or demolished to the extent that its salvage value, plus the cost of repairing the vehicle for use on a road, would be more than the market value of the vehicle immediately before the damage, dismantling or demolition.

Proposed section 16I creates an offence (maximum penalty \$2,200) if an assessor fails to ensure that any vehicle damage assessment made by or on behalf of the assessor is made by a person who has the training, qualifications or experience required to make the assessment. The RTA may exempt people from that requirement. The proposed offence does not have effect until 6 months after the commencement of proposed Part 2AA.

Proposed section 16J creates an offence (maximum penalty \$27,500 for a corporation and \$5,500 for an individual and double those amounts in the case of a second or subsequent offence) if an assessor fails to ensure that any vehicle damage assessment made by or on behalf of the assessor includes an assessment of whether the vehicle has suffered damage that the regulations provide is non-repairable damage or fails to base the calculation of the cost of repair of the vehicle on the standard of repairs, and the repair methods, prescribed by the regulations.

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Proposed section 16K creates offences (maximum penalty \$2,200) if an assessor fails to ensure that any vehicle damage assessment made by or on behalf of the assessor in respect of a vehicle is, on request, provided to the registered operator or owner of the vehicle or to the RTA or any person authorised by the RTA.

Proposed section 16L creates an offence (maximum penalty \$2,200) if an assessor fails to ensure that the RTA is provided with information concerning each vehicle that is assessed to be a total loss in the course of a vehicle damage assessment conducted by, or on behalf of, the assessor. The proposed section also creates similar offences in relation to a self-insurer failing to provide information concerning a vehicle that is taken to be a total loss by virtue of being disposed of to an auto-dismantler or an auto-dismantler failing to provide information concerning any vehicle that the auto-dismantler intends to demolish or dismantle. A person (other than an insurer) is not guilty of an offence in respect of a failure to provide information if the person believes on reasonable grounds that the information has already been provided by another person.

Proposed section 16M requires an assessor to maintain the records prescribed by the regulations in relation to each vehicle damage assessment and provides for an authorised officer to direct a person to produce those records and creates an offence (maximum penalty \$2,200) if a person fails to maintain those records or to comply with any such direction.

Proposed section 16N creates an offence (maximum penalty \$27,500 for a corporation and \$5,500 for an individual and double those amounts in the case of a second or subsequent offence) if a person induces, attempts to influence, or coerces the making of a false vehicle damage assessment or the making of a vehicle damage assessment that does not comply with proposed Part 2AA.

Proposed section 16O creates an offence (maximum penalty \$2,200) if an assessor fails to take reasonable steps to remove, deface, obliterate or destroy the vehicle identifier on any part of a vehicle assessed as being a total loss if required to do so by the RTA.

Proposed section 16P creates an offence (maximum penalty \$2,200) if an assessor fails to attach a written-off warning label to any vehicle that is in the person's possession or control that has been assessed as being a total loss.

Division 4 General

Proposed section 16Q provides for the issue of a certificate of compliance in relation to the repairs carried out on a written-off vehicle. Such certificates are issued by persons who are licensed repairers (under the *Motor Vehicle Repairs Act 1980*), but only if the repairer's licence authorises the repair of that type of vehicle, and the relevant type of vehicle damage, and the licensed repairer is satisfied that the standard of repairs, and the repair methods used, are in accordance with the requirements adopted by or set out in the regulations. The proposed section creates offences (maximum penalty \$2,200) of issuing a false or misleading certificate of compliance or making false statements or misrepresentations in obtaining a certificate of compliance and specifies the consequences of the issue of a certificate in such circumstances. The section also creates an offence (maximum penalty \$110,000) if an unlicensed person purports to issue a certificate of compliance.

Proposed section 16R provides for access to the register of written-off vehicles.

Proposed section 16S creates an offence (maximum penalty \$27,500) in respect of unauthorised access to or interference with the register of written-off vehicles.

Proposed section 16T creates an offence (maximum penalty \$2,200) in respect of the unauthorised disclosure of information obtained in connection with the administration or execution of proposed Part 2AA and authorises disclosure of information on the register of written-off vehicles to Austroads for the purposes of the national database of written-off vehicles.

Proposed section 16U provides for the evidentiary value of a certificate purporting to have been issued by an Australian Authority or Australian authorised officer that a specified vehicle was or was not on the register of written-off vehicles or an interstate register.

Proposed section 16V inserts specific regulation-making powers relating to matters dealt with by proposed Part 2AA and provides for the making of regulations to create exemptions from all or part of that proposed Part.

Schedule 1 [3] provides for the making of savings or transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [4] inserts savings and transitional provisions concerning the register of written-off vehicles, exempting certain written-off vehicles from the need for an authorisation to repair or a certificate of compliance and the use of the term repairable written-off vehicle.

Schedule 2 Amendment of *Motor Vehicle Repairs Act 1980 No 71*

Schedule 2 amends the *Motor Vehicle Repairs Act 1980* as a consequence of the fact that proposed Part 2AA of the *Road Transport (Vehicle Registration) Act 1997* provides for the issue of certificates of compliance by persons who are licensed motor vehicle repairers under the *Motor Vehicle Repairs Act 1980*.

Schedule 2 [1] inserts a definition of **certification work**, which is defined to mean work relating to the issue of a certificate of compliance under proposed Part 2AA of the *Road Transport (Vehicle Registration) Act 1997*.

Schedule 2 [2] provides that the grounds on which a licensed motor vehicle repairer may be the subject of disciplinary proceedings include that the licence holder has been convicted of an offence against, or may have failed to comply with, the proposed provisions about certificates of compliance.

Schedule 2 [3] and [4] enable the Motor Vehicle Repair Industry Authority to require information to be provided to it that relates to the issue of a certificate of compliance.

Schedule 2 [5] provides for police officers and inspectors to enter premises and conduct examinations if they suspect a contravention of proposed Part 2AA of the *Road Transport (Vehicle Registration) Act 1997* or the regulations made under that proposed Part.

Schedule 2 [6] provides for inspectors to require the production of records if they suspect a contravention of proposed Part 2AA of the *Road Transport (Vehicle Registration) Act 1997* or the regulations made under that proposed Part.

Schedule 2 [7] provides for the disclosure to the RTA of information obtained in connection with the administration or execution of the *Motor Vehicle Repairs Act 1980* if the information relates to certification work.

Schedule 3 Amendment of *Road Transport (General) Act 2005* No 11

Schedule 3 amends the *Road Transport (General) Act 2005* as a consequence of the fact that written-off vehicles will now be dealt with under the *Road Transport (Vehicle Registration) Act 1997*.

Schedule 3 [1], [3], [4] and [5] omit provisions about written-off and wrecked vehicles. Such matters will now be dealt with under proposed Part 2AA of the *Road Transport (Vehicle Registration) Act 1997*.

Schedule 3 [2] applies the general investigative powers set out in Part 4.2 of the *Road Transport (General) Act 2005* to obligations and functions under proposed Part 2AA of the *Road Transport (Vehicle Registration) Act 1997*. Those powers, which include inspection and search powers, and powers to issue directions to produce records or information, will apply for the purposes of allowing an authorised officer to find out whether proposed Part 2AA is being complied with or to investigate a suspected breach of that proposed Part.

Issues Considered by the Committee

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

Issue: Commencement by Proclamation

12. The Committee notes that this Bill is to commence on a day or days to be appointed by proclamation. This may delegate to the Government the power to commence the Act on whatever day it chooses or not at all.
13. However, the Committee has been informed that regulations which will underpin the legislation are still being finalised and the Bill cannot take effect until the regulations are ready for gazetting. The Committee understands that the intended commencement date for the Bill is 31 October 2010, subject to passage of the Bill and finalisation of the regulations.
14. Given these considerations, and because the Committee has not identified any other issues with this Bill, the Committee does not regard the commencement by proclamation to be an inappropriate delegation of power in this instance.

15. **The Committee understands that regulations need to be finalised before the Bill can commence operation and that, assuming the regulations are ready for gazetting, the intended commencement date is 31 October 2010. Given these considerations, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.**

The Committee makes no further comment on this Bill.

9. VETERINARY PRACTICE AMENDMENT BILL 2010

Date Introduced:	23 September 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Steve Whan MP
Portfolio:	Minister for Rural Affairs

Purpose and Description

1. The object of this Bill is to amend the *Veterinary Practice Act 2003* (the principal Act) to give effect to recommendations arising from a statutory review of the principal Act.
2. The amendments relate to enabling the Veterinary Practitioners Board to require a veterinary practitioner to undergo an examination by a health practitioner for the purpose of investigating a complaint against the practitioner, as well as the power to suspend the registration of a veterinary practitioner in certain circumstances.
3. In addition, the Bill imposes a 3-year time limit on the making of complaints against veterinary practitioners, as well protecting persons who make complaints against veterinary practitioners from certain kinds of liability.
4. Lastly, the Bill makes further provision with respect to the continuing professional development of veterinary practitioners.

Background

5. In Australia, the veterinary services industry employs over 20,000 people and is expected to generate revenue of just over \$2 billion in the Australian economy.
6. The *Veterinary Practice Act 2003* regulates the provision of veterinary services in New South Wales. The Act establishes the Veterinary Practitioners Board, which is responsible for regulating the standard of care veterinarians provide to the animals they treat. The Board is responsible for licensing veterinarians and veterinary hospitals.
7. A statutory review of the Act took place in 2009. The review highlighted a number of issues with the operation of Act. The review process drew from the experience and expertise of the Veterinary Practitioners Board, in consultation with registered vets, stakeholder organisations including the Animal Welfare League of NSW, RSPCA NSW, the Australian Veterinary Association and the NSW Farmers Association. In addition, the veterinary science faculties at Charles Sturt and Sydney universities were consulted.
8. The amendments in this Bill draw largely from the recommendations of the 2009 review.

The Bill

9. Outline of provisions

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

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

Schedule 1 Amendment of *Veterinary Practice Act 2003 No 87* Complaints against veterinary practitioners

Schedule 1 [16] enables the Board to require a veterinary practitioner against whom a complaint has been made to undergo an examination by a health practitioner. The health practitioner will be required to prepare a report for the Board and will be protected from certain kinds of liability in relation to the preparation of the report. If a veterinary practitioner refuses to undergo an examination, it will be evidence, for the purposes of the principal Act, that the practitioner does not have sufficient physical or mental capacity to practise veterinary science. **Schedule 1 [21]** makes it an offence to disclose any information contained in a report by a health practitioner (maximum penalty: 50 penalty units, currently \$5,500). Such a report may not be used in civil proceedings before a court and a person may not be compelled to produce a report or give evidence in relation to a report or its contents in any such civil proceedings. **Schedule 1 [1]** defines *health practitioner* to mean any person registered in a health profession under the Health Practitioner Regulation National Law.

Schedule 1 [18] makes further provision in respect of the powers of the Board after it has completed an investigation into a complaint against a veterinary practitioner. The Board will be able to take various actions against a veterinary practitioner if it is satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct. The Board will not be required to apply to the Administrative Decisions Tribunal (the *Tribunal*) for a disciplinary finding against a veterinary practitioner in all cases of professional misconduct as it is currently required to do. However, if the Board is satisfied that a veterinary practitioner is guilty of professional misconduct of a kind that is of a sufficiently serious nature to justify the suspension or cancellation of a veterinary practitioner's registration, the Board must apply to the Tribunal for a disciplinary finding against the practitioner. The Board will be able to suspend the registration of a veterinary practitioner with immediate effect if satisfied that it is justified to protect the health or safety of a person or the health or welfare of an animal or to prevent damage to Australia's international reputation in relation to animal exports, animal welfare, animal produce or sporting events. **Schedule 1 [19] and [20]** are consequential amendments.

Schedule 1 [14] protects a person who makes a complaint in good faith against a veterinary practitioner, so that the making of a complaint does not constitute a breach of professional ethics or a ground for civil proceedings and no liability for defamation is incurred.

Schedule 1 [13] provides that the Board is not required to investigate a complaint about the conduct of a veterinary practitioner if the complaint is made more than 3 years after the conduct is alleged to have occurred, unless the Board determines that it is just and fair to investigate the complaint having regard to the delay and the reasons for the delay.

Schedule 1 [17] authorises the Board, if it dismisses a complaint against a veterinary

practitioner, to make a recommendation to the practitioner, rather than issuing a caution, as it is currently authorised to do.

Impairment

The proposed Act replaces the concept of a veterinary practitioner who is not fit to practise by reason of infirmity, injury or illness (whether mental or physical) with the concept of suffering from an impairment. **Schedule 1 [3]** provides that a person suffers from an **impairment** if the person suffers from any physical or mental impairment, disability, condition or disorder which detrimentally affects, or is likely to detrimentally affect, the person's physical or mental capacity to practise veterinary science. **Schedule 1 [6]** authorises the Board to refuse to register a person as a veterinary practitioner if the Board is satisfied that the person is not fit to practise veterinary science because the person suffers from an impairment. **Schedule 1 [7]** authorises the Board to impose a condition on the registration of a veterinary practitioner having regard to any impairment suffered by the practitioner. **Schedule 1 [9]** requires a veterinary practitioner to include details of any impairment suffered by the practitioner in the practitioner's annual return to the Board. **Schedule 1 [12] and [22]** are consequential amendments.

Continuing professional development

Schedule 1 [10] requires a veterinary practitioner to include details (prescribed by the regulations) of any continuing professional development undertaken by the practitioner in the practitioner's annual return to the Board.

Schedule 1 [11] extends the definition of **unsatisfactory professional conduct** to include a failure by a veterinary practitioner, without reasonable excuse, to comply with any continuing professional development requirements determined by the Board.

Schedule 1 [24] makes it clear that the Board's function to promote, provide for and facilitate the professional development of veterinary practitioners includes the function of determining the requirements for continuing professional development of veterinary practitioners.

Protection from incrimination

Schedule 1 [15] provides that a person is not excused from answering any question, providing any information or producing a document in complaint proceedings before the Board on the grounds of self-incrimination. However, any answer given or information provided by the person cannot be used as evidence against the person in criminal proceedings if the person objected at the time to giving the answer or providing the information on the ground of self-incrimination or if the person was not warned that the person may object.

Miscellaneous provisions

It is an offence under the principal Act for a corporation to represent itself as a veterinary practice unless one or more veterinary practitioners has, or have, the controlling interest in the corporation. **Schedule 1 [2]** amends the definition of **controlling interest** so that a veterinary practitioner will no longer be required to be involved in decisions about the financial policies of the corporation.

Schedule 1 [8] provides that the Board is to consider the advice of the Australasian Veterinary Boards Council Inc when it approves courses of study in veterinary science for the purposes of the registration of veterinary practitioners.

Schedule 1 [4] extends an existing offence that prohibits an employer from directing or inciting a veterinary practitioner to engage in unsatisfactory professional conduct or professional misconduct to all employers of veterinary practitioners, not only employers whose principal business is the supply of goods or materials used in connection with agriculture. **Schedule 1 [5]** is a consequential amendment.

Schedule 1 [23] provides that the Minister is to select the academic members of the Board from a panel prepared jointly by the University of Sydney and Charles Sturt University, not only the University of Sydney as is currently the case.

Schedule 1 [25] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [26] inserts savings and transitional provisions.

Issues Considered by the Committee

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

Issue: Limiting avenues of appeal

10. Proposed section 38A provides that the Veterinary Board is not required to investigate a complaint if the complaint is made more than three years after the conduct is alleged to have occurred, unless the Board determines that it is just and fair to investigate the complaint having regard to the delay and the reasons for the delay. This provision further provides that any determination made by the Board is final and not subject to appeal by either complainant or veterinary practitioner.
11. Generally, it is incumbent upon the Committee to raise its concern about matters which are unduly dependent upon non-reviewable decisions, or in circumstances where an existing right of appeal is fettered by statute, such as the provision set out in proposed section 38A.
12. However, the Committee notes that this provision refers to a relatively minor decision-making function of the Veterinary Board and, in the circumstances, it is appropriate that the Veterinary Board has the final authority on whether it is willing and able to hear complaints that are more than three years old.
13. **Although it is incumbent on the Committee to identify provisions that appear to limit avenues of appeal, it appears fair and reasonable in the circumstances that the Veterinary Board has the final authority on whether it is willing and able to hear complaints that are more than three years old.**

Issue: Self-incrimination

14. Proposed section 44A(1) provides that a person is not excused from answering any question, providing any information or producing any document if required to do so by the Veterinary Board in any proceedings before the Board in respect of a complaint on the ground that the answer, information or document might tend to incriminate the person or make the person liable to a penalty.
15. Historically, the common law has recognised a privilege against self-incrimination in which individuals have the right (within certain limitations) to not do or say anything that might be used as evidence against them in criminal proceedings. The Committee recognises that the right against self-incrimination as a fundamental, longstanding principle and would ordinarily raise its concerns to any abrogation or variation of that right.
16. However, the Committee notes that the requirement for a veterinary practitioner to provide information, or answer questions asked by, the Veterinary Board is tempered by proposed section 44A(2) which provides that any information provided or answer given by a veterinary practitioner in compliance with their statutory requirements is not admissible in evidence against that practitioner in criminal proceedings in certain circumstances. These circumstances include where the person objects at the time to providing information or answering questions on the ground that it might incriminate them. Another circumstance is when the person was not warned that they have the right to object to providing the information or answering the question on the ground that it might incriminate them.
17. Despite these protections, the Committee also notes that under proposed section 44A(3), any document produced in compliance with the proposed section 44A(1) is 'not inadmissible' in evidence against the person in criminal proceedings on the ground that the document might incriminate the person. In other words, although the privilege against self-incrimination is largely maintained with respect to information being provided or questions being answered by a veterinary practitioner, it is removed in circumstances where the veterinary practitioner concerned is compelled by the Board to produce documents that may be self-incriminating.
18. In the circumstances set out by the Bill, the Committee is of the view that the proposed provisions, as they are currently set out, erode the privilege against self-incrimination. As the Committee generally raises its concern with any erosion of this right, it refers the matter to Parliament for its consideration.
19. **Historically, the common law has recognised a privilege against self-incrimination in which individuals have the right (within certain limitations) to not do or say anything that might be used as evidence against them in criminal proceedings. The Committee recognises that the right against self-incrimination as a fundamental, longstanding principle and would ordinarily raise its concern to any abrogation or variation of that right.**

20. **In the Committee's view, the provision set out in proposed section 44A(1) erodes the privilege against self-incrimination insofar that it disallows a veterinary practitioner from refraining to produce documents that may incriminate himself or herself. Further, proposed section 44A(3) provides that any such document produced is 'not inadmissible' in criminal proceedings against the veterinary practitioner, further weakening any privilege against self-incrimination. The Committee refers this matter to Parliament for its further consideration.**

The Committee makes no further comment on this Bill.

Appendix 1: Index of Bills Reported on in 2010

	Digest Number
Adoption Amendment (Same Sex Couples) Bill 2010*	10
Adoption Amendment (Same Sex Couples) Bill (No. 2) 2010*	11
Appropriation Bill 2010	9
Appropriation (Parliament) Bill 2010	9
Appropriation (Special Offices) Bill 2010	9
Banana Industry Repeal Bill 2010	8
Building and Construction Industry Long Service Payments Amendment Bill 2009	1
Carers Recognition Bill 2010*	3
Carers Recognition Bill 2010*	5
Carers (Recognition) Bill 2010	5
Casino Control Amendment Bill 2010	2
Central Coast Water Corporation Amendment Bill 2010	13
Charter of Budget Honesty Amendment (Independent Election Costings) Bill 2010*	5
Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010	10
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	4
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010	12
Coal Mine Health and Safety Amendment Bill 2010	4
Coastal Protection and Other Legislation Amendment Bill 2010	9
Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)	13
Community Justice Centres Amendment Bill 2010	13
Community Relations Commission and Principles of Multiculturalism Amendment Bill 2010	8
Companion Animals Amendment (Dogs in Outside Eating Areas) Bill 2010*	4
Companion Animals Amendment (Outdoor Dining Areas) Bill 2010	5
Constitution Amendment (Recognition of Aboriginal People) Bill 2010	12
Court Information Bill 2010	4
Courts Legislation Amendment Bill 2010	9
Credit (Commonwealth Powers) Bill 2010	2
Crimes (Administration of Sentences) Amendment Bill 2010	2
Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010	9
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	3

	Digest Number
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	4
Crimes Amendment (Police Pursuits) Bill 2010	2
Crimes Amendment (Terrorism) Bill 2010	11
Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010	10
Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010	13
Duties Amendment (NSW Home Builders Bonus) Bill 2010	10
Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010	8
Electronic Transactions Amendment Bill 2010	10
Environmental Planning and Assessment Amendment (Development Consents) Bill 2010	5
Evidence Amendment Bill 2010	11
Fair Trading Amendment (Unfair Contract Terms) Bill 2010	9
Firearms Legislation Amendment Bill 2010*	8
Game and Feral Animal Control Repeal Bill 2010*	10
Gas Supply Amendment Bill 2009	1
Health Legislation Amendment Bill 2010	8
Home Building Amendment (Warranties and Insurance) Bill 2010	10
Housing Amendment (Community Housing Providers) Bill 2009	1
Industrial Relations Advisory Council Bill 2010	12
Industrial Relations Amendment (Public Sector Appeals) Bill 2010	9
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment Bill 2009	1
Jury Amendment Bill 2010	8
Law Enforcement and National Security (Assumed Identities) Bill 2010	10
Macedonian Orthodox Church Property Trust Bill 2010*	9
Marine Parks Amendment (Moratorium) Bill 2010*	8
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	5
Motor Accidents Compensation Amendment Bill 2010	13
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010	2
National Park Estate (Riverina Red Gum Reservations) Bill 2010	5
National Parks and Wildlife Amendment Bill 2010	2
National Parks and Wildlife Amendment (Adjustment of Areas) Bill 2010	12
National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010	8
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	5
Ombudsman Amendment (Removal of Legal Professional Privilege) Bill 2010*	10

	Digest Number
Paediatric Patient Oversight (Vanessa's Law) Bill 2010*	5
Parliamentary Contributory Superannuation Amendment Bill 2010	10
Parliamentary Electorates and Elections Amendment Bill 2010	4
Personal Property Securities Legislation Amendment Bill 2010	10
Plant Diseases Amendment Bill 2010	10
Plantations and Reafforestation Amendment Bill 2010	11
Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010	9
Privacy and Government Information Legislation Amendment Bill 2010	10
Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010	13
Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010	13
Registrar-General Legislation (Amendment and Repeal) Bill 2010	4
Relationships Register Bill 2010	5
Residential Tenancies Bill 2010	8
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010	4
Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010	13
State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010	5
State Revenue Legislation Amendment Bill 2010	9
State Senate Bill 2010	2
Statute Law (Miscellaneous Provisions) Bill 2010	9
Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010	10
Superannuation Legislation Amendment Bill 2010	9
Sydney Olympic Park Authority Amendment Bill 2009	1
Terrorism (Police Powers) Amendment Bill 2010	10
Trees (Dispute Between Neighbours) Amendment Bill 2010	5
Veterinary Practice Amendment Bill 2010	13
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	3
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)	4
Weapons and Firearms Legislation Amendment Bill 2010	4
Workers Compensation Amendment (Commission Members) Bill 2010	2
Workers Compensation Legislation Amendment Bill 2010	10

Appendix 2: Index of Ministerial Correspondence on Bills

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

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

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

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Building and Construction Long Service Payments Amendment Bill 2009				N	
Casino Control Amendment Bill 2010	N, R, C		N, R		
Central Coast Water Corporation Amendment Bill 2010				N	
Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010	N			N	
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	N				
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010	N, R				
Coal Mine Health and Safety Amendment Bill 2010	N, R			N, R	
Coastal Protection and Other Legislation Amendment Bill 2010	N, R	N, R		N	
Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)	N, R	N, R		N	
Community Justice Centres Amendment Bill 2010	N				
Court Information Bill 2010	N, R			N	
Courts Legislation Amendment Bill 2010	N, R				
Credit (Commonwealth Powers) Bill 2010	N, R, C			N, R, C	
Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010	N, R		N, R	N	
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	N			N	
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	N, R				

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Crimes Amendment (Police Pursuits) Bill 2010	N, R				
Crimes Amendment (Terrorism) Bill 2010	N				
Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010	N, R				
Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010				N	
Electronic Transactions Amendment Bill 2010				N	
Environment Planning and Assessment Amendment (Development Consents) Bill 2010			N, R		
Evidence Amendment Bill 2010				N	
Fair Trading Amendment (Unfair Contract Terms) Bill 2010				N	
Game and Feral Animal Control Repeal Bill 2010	N, R				
Gas Supply Amendment Bill 2009				N	
Health Legislation Amendment Bill 2010	N, R			N, R	
Home Building Amendment (Warranties and Insurance) Bill 2010	N				
Housing Amendment (Community Housing Providers) Bill 2009	N				
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment 2009				N	
Jury Amendment Bill 2010	N, R			N	
Macedonian Orthodox Church Property Trust Bill 2010*				N	
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	N, R				
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010				N	N

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
National Parks and Wildlife Amendment Bill 2010	N, R			N, R	
National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010				N	
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	N, R			N	
Ombudsman Amendment (Removal of Legal Professional Privilege) Bill 2010*	N				
Parliamentary Contributory Superannuation Amendment Bill 2010	N				
Personal Property Securities Legislation Amendment Bill 2010				N	
Plantation and Reafforestation Amendment Bill 2010	N, R			N	
Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010				N	
Privacy and Government Information Legislation Amendment Bill 2010				N	
Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010	N, R			N	
Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010				N	
Relationships Register Bill 2010	N			N	
Residential Tenancies Bill 2010	N, R			N, R	
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010				N, R	
Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010				N	
Statute Law (Miscellaneous Provisions) Bill 2010	N				
Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010	N, R				
Superannuation Legislation Amendment Bill 2010				N	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Sydney Olympic Park Authority Amendment Bill 2009	N, R			N	
Terrorism (Police Powers) Amendment Bill 2010				N	
Veterinary Practice Amendment Bill 2010	N, R				
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	N			N	
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)				N	
Weapons and Firearms Legislation Amendment Bill 2010	N, R			N	
Workers Compensation Legislation Amendment Bill 2010				N	

Key

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

Appendix 4: Index of correspondence on regulations

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