



Legislation Review Committee

LEGISLATION REVIEW DIGEST

Digest 2/55 – 23 August 2011





PARLIAMENT OF NEW SOUTH WALES

LEGISLATION REVIEW COMMITTEE

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Membership

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Functions of the 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.

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 Digest

COMMENT ON BILLS

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament on which the Committee has commented against one or more of the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987*.

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.

COMMENT ON 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 are set out in s 9 of the *Legislation Review Act 1987*.

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 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 2: 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.

Conclusions

PART ONE – BILLS

1. AUSTRALIAN JOCKEY AND SYDNEY TURF CLUBS MERGER AMENDMENT BILL 2011

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Commencement by proclamation

Therefore, the Committee notes that the Bill delegates to the Government the power to commence the Act on whatever day it chooses or not at all. However, given the nature of the administrative and transitional arrangements that the Bill proposes, the Committee considers that in these circumstances there has been no inappropriate delegation of legislative powers.

2. CLEAN COAL ADMINISTRATION AMENDMENT BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

3. CROWN LAW OFFICERS LEGISLATION AMENDMENT (RETIREMENT AGE) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

4. EDUCATION AMENDMENT (ETHICS CLASSES REPEAL) BILL 2011*

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

5. FINES AMENDMENT (WORK AND DEVELOPMENT ORDERS) BILL 2011

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Provide the executive with unfettered control over the commencement of an Act.

The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, in this instance, the Committee considers that it does not give rise to an inappropriate delegation of legislative power.

6. GAMING MACHINE TAX AMENDMENT BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

7. LOCAL GOVERNMENT AMENDMENT (LOCAL DEMOCRACY - WARD REPRESENTATION REFORM) BILL 2011*

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

8. LOCAL GOVERNMENT AMENDMENT (ROADSIDE VEHICLE SALES) BILL 2011*

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

The Committee refers to Parliament the question as to whether the prohibition on the purchase and sale of vehicles unduly trespasses on personal rights.

9. RESIDENTIAL PARKS AMENDMENT (REGISTER) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

10. THREATENED SPECIES CONSERVATION AMENDMENT (ECOLOGICAL CONSULTANTS ACCREDITATION SCHEME) BILL 2011*

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Strict liability

The Committee refers to Parliament the question as to whether the strict liability offences contained in this Bill trespass on personal rights.

11. TRUTH IN LABELLING (FREE-RANGE EGGS) BILL 2011*

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Strict liability

The Committee refers to Parliament the question as to whether the strict liability offences contained in this Bill trespass on personal rights.

PART TWO – REGULATIONS

12. PROPOSED POSTPONEMENT OF THE REPEAL OF THE LORD HOWE ISLAND REGULATION 2004, RADIATION CONTROL REGULATION 2003 AND FISHERIES MANAGEMENT (AQUATIC RESERVES) REGULATION 2002

That the Committee writes to the Minister for the Environment to advise that it does not have any concerns with the postponement of the repeal of the regulations.

13. PROPOSED POSTPONEMENT OF THE GAS SUPPLY (NATURAL GAS RETAIL COMPETITION) REGULATION 2001

That the Committee writes to the Minister for Energy to advise that it does not have any concerns with the postponement of the repeal of the regulation.

14. PROPOSED POSTPONEMENT OF THE REPEAL OF THE GAME AND FERAL ANIMAL REGULATION 2004

That the Committee writes to the Minister for Primary Industries to advise that it does not have any concerns with the postponement of the repeal of the regulation.

15. PROPOSED POSTPONEMENT OF THE REPEAL OF THE PUBLIC HEALTH (DISPOSAL OF BODIES) REGULATION 2002 AND PUBLIC HEALTH (GENERAL) REGULATION 2002

That the Committee writes to the Minister for Health to advise that it does not have any concerns with the postponement of the repeal of the regulations.

16. PROPOSED POSTPONEMENT OF THE REPEAL OF THE CRIMINAL RECORDS REGULATION 2004

That the Committee writes to the Attorney General to advise that it does not have any concerns with the postponement of the repeal of the regulation.

17. PROPOSED POSTPONEMENT OF THE REPEAL OF THE REGISTRATION OF INTERESTS IN GOODS REGULATION 2004, HOME BUILDING REGULATION 2004 AND PROPERTY, STOCK AND BUSINESS AGENTS REGULATION 2003

That the Committee writes to the Minister for Fair Trading to advise that it does not have any concerns with the postponement of the repeal of the regulations.

18. PROPOSED POSTPONEMENT OF THE REPEAL OF THE ENTERTAINMENT INDUSTRY REGULATION 2004

That the Committee writes to the Minister for Finance and Services to advise that it does not have any concerns with the postponement of the repeal of the regulation.

19. PROPOSED POSTPONEMENT OF THE REPEAL OF THE ARCHITECTS REGULATION 2004

That the Committee writes to the Minister for Finance and Services to advise that it does not have any concerns with the postponement of the repeal of the regulation.

20. PROPOSED POSTPONEMENT OF THE REPEAL OF THE ABORIGINAL LAND RIGHTS REGULATION 2002

That the Committee writes to the Minister for Aboriginal Affairs to advise that it does not have any concerns with the postponement of the repeal of the regulation.

Part One – Bills

1. Australian Jockey and Sydney Turf Clubs Merger Amendment Bill 2011

Date introduced	3 August 2011
House introduced	Legislative Assembly
Minister responsible	Hon George Souris MP
Portfolio	Tourism, Major Events, Hospitality and Racing

PURPOSE AND DESCRIPTION

1. In 1863, the then Governor, on behalf of the Crown, granted the land that comprises Randwick Racecourse on trust to 3 trustees for the principal purpose of enabling the land to be used as a racecourse by a lessee. The lessee of the Racecourse until recently was the Australian Jockey Club. The lessee of the Racecourse is now the new Australian Turf Club Limited by reason of the operation of the Australian Jockey and Sydney Turf Clubs Merger Act 2010 (the principal Act), which facilitated the merger of the Australian Jockey Club and the Sydney Turf Club for this purpose.
2. Randwick Racecourse continues to be subject to the terms of the trust established in 1863 (the existing trust), subject to certain statutory modifications contained in the principal Act. The principal role of the trustees of Randwick Racecourse (the existing trustees) is to act as the lessors of the Racecourse on behalf of the existing trust.
3. The object of this Bill is to amend the principal Act:
 - (a) to dissolve the existing trust and create a new corporation to be called the Randwick Racecourse Trust (the new Trust), and
 - (b) to provide for the new Trust to have 3 trustees and a modern corporate governance structure, and
 - (c) to transfer Randwick Racecourse to the new Trust and enable the Trust to exercise the functions of the lessor of the Racecourse, and
 - (d) to require the new Trust to obtain the approval of the Minister before it consents to the use of Randwick Racecourse for any activity that the lessee of the Racecourse would otherwise not be permitted to conduct (or allow another person to conduct) and to provide for the withdrawal of such consents, and
 - (e) to make provision for matters of a savings or transitional nature.

BACKGROUND

4. According to the Agreement in Principle speech the main purpose of the *Australian Jockey and Sydney Turf Clubs Merger Amendment Bill 2011* is to 'replace the life tenure provisions for Randwick Racecourse trustees with fixed terms and to ensure that the management of the Crown land at Randwick is in keeping with modern practice and community expectation.'¹
5. Currently three trustees are appointed by the Governor until they die, resign, cease to reside in the NSW, or become incapable of acting as a trustee. The Minister commented that life tenure is an outdated concept. He stated

The main responsibilities of the trustees are the granting of a lease to the Australian Turf Club and, subject to that lease, to give consent to additional activities including subleases. At present there is no control in the legislation over the decision making of the trustees in relation to giving consent for additional activities. The life tenure provisions exacerbate this situation if, for example, the trustees were to make a decision to grant a sublease for a commercial purpose that would have the effect of alienating the use of significant Crown land.²

6. Some of the key details of the new structure and role of the Randwick Racecourse Trust include:
 - A three member honorary trust consisting of a Chairperson and two members appointed by the Minister.
 - A trustee may not hold office for a term (taking into account reappointments) that exceeds 8 years in total.
 - Provisions to deal with matters such as bankruptcy, conviction for a criminal offence, mental incapacitation and absence from 3 consecutive meetings in specified circumstances.
 - Trustees must disclose any direct or indirect pecuniary interests.
 - The Trust must seek the Minister's approval before it gives consent to the use of Randwick Racecourse for additional activities.
 - The Trust may not sell, mortgage or otherwise dispose of any of the land or buildings that form part of Randwick racecourse without the consent of the Minister.
7. The Minister commented that the provisions in the Bill are 'in keeping with current Crown land management practices that are concerned with the care and control of Crown land for the public benefit.'³

¹ Hon G Souris MP, Minister for Tourism, Major Events, Hospitality and Racing, Legislative Assembly *Hansard*, 3 August 2011

² Hon G Souris MP, Minister for Tourism, Major Events, Hospitality and Racing, Legislative Assembly *Hansard*, 3 August 2011

³ Hon G Souris MP, Minister for Tourism, Major Events, Hospitality and Racing, Legislative Assembly *Hansard*, 3 August 2011

OUTLINE OF PROVISIONS

8. Clause 1 sets out the name (also called the short title) of the proposed Act.
9. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of *Australian Jockey and Sydney Turf Clubs Merger Act 2010* No 93

10. Schedule 1 [6] provides for the constitution of the new Trust, its functions and the appointment of the trustees of the Trust. Schedule 1 [1]–[5], [7] and [9]–[11] make consequential amendments.
11. Schedule 1 [8] requires the new Trust:
 - (a) to obtain the approval of the Minister before consenting to the use of Randwick Racecourse for any activity that the lessee of the Racecourse would otherwise not be permitted to conduct (or allow another person to conduct), and
 - (b) to obtain the approval of the Minister before withdrawing such a consent, and
 - (c) to withdraw such a consent if directed to do so by the Minister.
12. Schedule 1 [13] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.
13. Schedule 1 [14] enacts provisions of a savings or transitional nature, including provisions:
 - (a) to dissolve the existing trust, and
 - (b) to transfer Randwick Racecourse and the other assets, rights and liabilities of the existing trust to the new Trust.
14. Schedule 1 [12] makes an amendment that is consequential on the transfer of the assets, rights and liabilities of the existing trust to the new Trust.
15. Schedule 1 [15] enacts provisions relating to the procedure of the new Trust and provisions relating to the trustees of the new Trust.

ISSUES CONSIDERED BY THE COMMITTEE

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Commencement by proclamation

16. The Bill provides that the Act is to commence on a day or days to be appointed by proclamation. This provides the Government with the power to commence the Act on whatever day it chooses or not at all.
17. The purpose of the Bill is to make amendments to the constitution and functions of the Randwick Racecourse Trust. Such amendments involve administrative and transitional arrangements to be made. It is reasonable to consider that such arrangements may

require some time to implement and therefore some flexibility as to they're commencement.

Therefore, the Committee notes that the Bill delegates to the Government the power to commence the Act on whatever day it chooses or not at all. However, given the nature of the administrative and transitional arrangements that the Bill proposes, the Committee considers that in these circumstances there has been no inappropriate delegation of legislative powers.

2. Clean Coal Administration Amendment Bill 2011

Date introduced	3 August 2011
House introduced	Legislative Assembly
Minister responsible	Hon Chris Hartcher MP
Portfolio	Resources and Energy

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Clean Coal Administration Act 2008 as follows:
 - (a) to rename the Act as the *Coal Innovation Administration Act 2008*,
 - (b) to restructure the Clean Coal Council and rename it as Coal Innovation NSW,
 - (c) to rename the Clean Coal Fund as the Coal Innovation NSW Fund,
 - (d) to update certain terminology in the Act,
 - (e) to make other amendments of a minor or consequential nature (including providing for savings and transitional matters).

BACKGROUND

2. According to the Bill's Agreement in Principle Speech, the Bill aims to ensure the continued effectiveness of the Clean Coal Administration Act 2008 by streamlining the membership of the council, updating the language of the Act to reflect current terminology and renaming the council and the fund to better reflect their innovative purpose.⁴
3. Currently the membership of the Clean Coal Council includes five members from government agencies and five members representing the NSW black coal industry. The Minister may also appoint an unspecified number of members that have experience or qualifications relevant to the functions of the Council. The Bill amends the Act to limit the Council membership to nine. This will include:
 - An independent person appointed by the Minister to be the Chairperson
 - 2 persons from government agencies
 - 2 persons nominated jointly by the Australian Coal Association and the Mineral Council
 - Any persons (max of 4) appointed by the Minister who have qualifications or experience relevant to the functions of the council

⁴ Hon C P Hartcher MP, Minister for Resources and Energy, Legislative Assembly *Hansard*, 3 August 2011.

4. The Minister commented in the Agreement in Principle speech that the changes to the membership of the council will mean 'a more streamlined, efficient council that is able to effectively make recommendations to government and advise on low emissions technologies.'⁵
5. The Bill also seeks to amend the names of the Clean Coal Council and the Clean Coal Fund to Coal innovation NSW and Coal innovation NSW Fund. The Minister commented that:

[T]he original focus of the Clean Coal Council was the research and development of technologies around what was then referred to as "clean coal" technology. But the term "clean coal" is somewhat of a misnomer. It tends to suggest that research scientists might one day find a coal that burns without emissions. The term "clean coal" did not then, and does not now, accurately reflect the aims of the council or the fund that supports it. The purpose of the council is to acknowledge the emissions from coal-fired power and then encourage and promote new and innovative technologies to reduce those emissions.⁶

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of *Clean Coal Administration Act 2008*

8. Schedule 1 [1] amends the long title of the Act to reflect the changes proposed to be made by the proposed Act to the names of the fund and the council established under the Act and to certain terminology in the Act.
9. Schedule 1 [4] replaces the defined term clean coal technologies with the term low emissions coal technologies to better reflect the type of technologies falling within the definition (being technologies for facilitating reduction of greenhouse gas emissions from the use of coal). Schedule 1 [8] makes consequential amendments.
10. Schedule 1 [2] changes the name of the Act to the Coal Innovation Administration Act 2008 to better reflect the purposes of the fund and functions of the council established under the Act and to be consistent with their proposed renaming.
11. Schedule 1 [6] and [11] rename the Clean Coal Fund and the Clean Coal Council as the Coal Innovation NSW Fund and Coal Innovation NSW (CINSW), respectively, to better reflect their purposes and functions in relation to the funding and development of low emissions coal technologies. Schedule 1 [3], [5]–[7], [9], [10] and [13] make consequential amendments.
12. Schedule 1 [12] replaces provision for the constitution of the Clean Coal Council with provision for the constitution of Coal Innovation NSW. This body will now consist of 2 ministerially appointed members from government and 2 from industry (rather than 5 from government and 5 from industry, as is currently the case with the Clean Coal

⁵ Hon C P Hartcher MP, Minister for Resources and Energy, Legislative Assembly *Hansard*, 3 August 2011.

⁶ Hon C P Hartcher MP, Minister for Resources and Energy, Legislative Assembly *Hansard*, 3 August 2011.

Council), up to a further 4 members chosen and appointed by the Minister (rather than an unlimited number of such members, as is currently the case) and an independent person (rather than a member) appointed by the Minister as Chairperson.

13. Schedule 1 [14] updates a provision relating to the first meeting of the Clean Coal Council so that it relates to the first meeting of CINSW.
14. Schedule 1 [15] inserts provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.

ISSUES CONSIDERED BY THE COMMITTEE

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

3. Crown Law Officers Legislation Amendment (Retirement Age) Bill 2011

Date introduced	11 August 2011
House introduced	Legislative Assembly
Minister responsible	Hon Greg Smith SC MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The object of this Bill is to increase the retirement age from 65 years to 72 years for the holders of statutory offices under the *Director of Public Prosecutions Act 1986*, the *Crown Prosecutors Act 1986* and the *Public Defenders Act 1995*.

BACKGROUND

2. In the Agreement in Principle speech the Attorney General stated:

While it is recognised that there is some value in ensuring that the statutory officers in question be required to retire at a particular age, it is considered that this should be 72, to ensure consistency across all officers, including judicial officers, with judges and magistrates also required to retire at 72.⁷

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

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

5. Schedule 1 [3]–[5] increase the retirement age for a Deputy Director of Public Prosecutions and the Solicitor for Public Prosecutions from 65 years to 72 years.
6. Schedule 1 [1] provides that a person holding office as a Deputy Director of Public Prosecutions or the Solicitor for Public Prosecutions is, if the person was appointed for a term of less than 7 years, taken to have been appointed for a term of 7 years. Prior to this amendment a person could be appointed for a term of less than 7 years if that shorter term was necessary to ensure that the person's term of office extended to (but not beyond) the date on which the person reaches the age of 65 years.
7. Schedule 1 [2] enables regulations to be made containing provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.

⁷ Hon G E Smith SC MP, Attorney General, Legislative Assembly *Hansard*, 11 August 2011.

Schedule 2 Amendment of *Crown Prosecutors Act 1986*

8. Schedule 2 [1] increases the retirement age for a Crown Prosecutor (whether or not as a Senior Crown Prosecutor or Deputy Senior Crown Prosecutor) from 65 years to 72 years.
9. Schedule 2 [2] enables regulations to be made containing provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.
10. Schedule 2 [3] provides that a person holding office as a Crown Prosecutor (whether or not as a Senior Crown Prosecutor or Deputy Senior Crown Prosecutor) is, if the person was appointed for a term of less than 7 years, taken to have been appointed for a term of 7 years. Prior to this amendment a person could be appointed for a term of less than 7 years if that shorter term was necessary to ensure that the person's term of office extended to (but not beyond) the date on which the person reaches the age of 65 years.

Schedule 3 Amendment of *Public Defenders Act 1995*

11. Schedule 3 [1] increases the retirement age for a Public Defender, Senior Public Defender or Deputy Senior Public Defender from 65 years to 72 years.
12. Schedule 3 [2] enables regulations to be made containing provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.
13. Schedule 3 [3] provides that a person holding office as a Public Defender, Senior Public Defender or Deputy Senior Public Defender is, if the person was appointed for a term of less than 7 years, taken to have been appointed for a term of 7 years. Prior to this amendment a person could be appointed for a term of less than 7 years if that shorter term was necessary to ensure that the person's term of office extended to (but not beyond) the date on which the person reaches the age of 65 years.

ISSUES CONSIDERED BY THE COMMITTEE

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

4. Education Amendment (Ethics Classes Repeal) Bill 2011*

Date introduced	5 August 2011
House introduced	Legislative Assembly
	Rev the Hon Fred Nile MLC
	*Private Member

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Education Act 1990* to repeal the provision (inserted by the *Education Amendment (Ethics) Act 2010*) that allows special education in ethics as a secular alternative to special religious education at government schools.
2. The effect of the repeal will be delayed until the beginning of the next school year immediately following the commencement of the proposed Act.

BACKGROUND

3. Section 33A was inserted into the *Education Act 1990* by the *Education Amendment (Ethics) Act 2010*. It provides as follows:

(1) Special education in ethics is allowed as a secular alternative to special religious education at government schools.

(2) If the parent of a child objects to the child receiving special religious education, the child is entitled to receive special education in ethics, but only if:

(a) it is reasonably practicable for special education in ethics to be made available to the child at the government school, and

(b) the parent requests that the child receive special education in ethics.

(3) A government school cannot be directed (by the Minister or otherwise) not to make special education in ethics available at the school.

4. The Bill seeks to repeal s 33A.

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
7. Clause 3 amends the *Education Act 1990* as referred to above.

ISSUES CONSIDERED BY THE COMMITTEE

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

5. Fines Amendment (Work and Development Orders) Bill 2011

Date introduced	3 August 2011
House introduced	Legislative Assembly
Minister responsible	Hon Greg Smith SC MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The *Fines Act 1996* enables the State Debt Recovery Office to make a work and development order to enable a fine defaulter who has an intellectual disability, a mental illness or a cognitive impairment, is homeless or is experiencing acute economic hardship to satisfy the fine concerned by undertaking certain activities specified in the order (for example, unpaid work, medical treatment or counselling).
2. The object of this Bill is to amend the *Fines Act 1996*:
 - (a) to extend the categories of persons who are eligible to be the subject of a work and development order to persons who have a serious addiction to drugs, alcohol or volatile substances, and
 - (b) to enable the State Debt Recovery Office to rely on the assessment of an approved organisation or a health practitioner as to whether a person meets certain eligibility criteria for a work and development order, and
 - (c) to facilitate the appropriate administration of work and development orders.

BACKGROUND

3. The following was noted in the Bill's Agreement in Principle speech:

Fine debt is a significant problem for vulnerable people in our community. The Work and Development Orders program, or WDO program, helps to address this problem. It gives people who are very poor, homeless, mentally ill or intellectually disabled the chance to work off their fines through activities such as education, mental health treatment and voluntary work with charities...

The Work and Development Order scheme was initially established as a two-year pilot. The evaluation of the pilot was very positive. The evaluation found that the Work and Development Order scheme helps to reduce reoffending. Over 80 per cent of people who were given a work and development order had not had another fine or penalty notice enforced against them. The evaluation also found that the scheme provides a strong incentive for fine recipients to engage in activities such as vocational courses and mental health, drug and alcohol treatment...

With this bill, the Government is also proposing to amend the Fines Act to implement two of the other recommendations made in the evaluation report. Firstly,

the bill opens the scheme up to people who have serious addictions to drugs, alcohol or volatile substances. Secondly, the bill streamlines the Work and Development Order application process, so as to cut red tape and reduce processing times.⁸

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of *Fines Act 1996*

Expansion of eligibility criteria for work and development orders

6. Schedule 1 [4] amends section 99B of the Act to enable a work and development order to be made in relation to a fine defaulter who has a serious addiction to drugs, alcohol or volatile substances. Schedule 1 [6] amends that section to provide that, if an order is made in relation to such a fine defaulter, the only activities that may be carried out under the order are counselling and drug or alcohol treatment unless the fine defaulter also satisfies another of the existing criteria for the making of an order (such as, for example, having a mental illness).

Assessment of eligibility for work and development orders

7. Schedule 1 [5] amends section 99B of the Act to remove the requirement that an application for a work and development order always be accompanied by supporting evidence.
8. Schedule 1 [7] inserts section 99BA into the Act to require the State Debt Recovery Office, when determining an application for the making of a work and development order in relation to a particular fine defaulter, to rely on an assessment (if provided by an approved person supporting the application) that the fine defaulter meets certain criteria for eligibility. Those criteria are that the fine defaulter has a mental illness, has an intellectual disability or cognitive impairment, is homeless or is experiencing acute economic hardship or has a serious addiction to drugs, alcohol or volatile substances. The State Debt Recovery Office need not rely on such an assessment if it has information that gives it reason to believe that it should not.
9. The proposed section requires an approved person supporting an application for a work and development order or making an assessment of eligibility for an order to keep supporting evidence and enables the State Debt Recovery Office to require the production of that evidence. The proposed section also enables the State Debt Recovery Office to waive a requirement that an application for a work and development order or an assessment of eligibility for such an order be supported by a particular type of evidence.
10. Schedule 1 [1] and [2] make consequential amendments.

⁸ Hon G E Smith SC MP, Attorney General, Legislative Assembly *Hansard*, 3 August 2011.

Miscellaneous

11. Schedule 1 [8] amends section 99C of the Act to enable the State Debt Recovery Office to vary or revoke a work and development order if it is of the opinion that false or misleading information has been given in connection with the application for the order or a report of an approved person in relation to the order or the person subject to the order does not meet, or no longer meets, the eligibility criteria specified in the application for the order as a ground for the making of the order. An order may also be varied or revoked if the State Debt Recovery Office is of the opinion that an approved person in relation to the order cannot continue to supervise the activities under the order, or has breached the person's obligations under the Act as an approved person, or that the person supervising the activities under the order is no longer an approved person.
12. Schedule 1 [9] substitutes section 99I of the Act which deals with the issuing of guidelines in relation to work and development orders by the Attorney General in consultation with the Treasurer. Instead, the Minister administering the *Crimes (Sentencing Procedure) Act 1999* (currently, the Attorney General), in consultation with the Minister administering the State Debt Recovery Office, will be able to issue guidelines that are published on the NSW legislation website with respect to work and development orders. The State Debt Recovery Office, approved persons supporting applications for work and development orders and other persons exercising functions under the relevant provisions of the Act are required to comply with the guidelines. Schedule 1 [3] makes a consequential amendment.
13. Schedule 1 [10] amends section 99J of the Act to remove the regulation-making power that currently enables the regulations to limit the period for which the work and development orders scheme is to operate. The Fines Regulation 2010 was amended on 8 July 2011 to remove the clause that provided for that scheme to expire on 10 July 2011.
14. Schedule 1 [11] amends the Act to enable regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

ISSUES CONSIDERED BY THE COMMITTEE

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Provide the executive with unfettered control over the commencement of an Act.

15. The Bill is to commence on a day or days to be appointed by proclamation [proposed s 2].

The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, in this instance, the Committee considers that it does not give rise to an inappropriate delegation of legislative power.

6. Gaming Machine Tax Amendment Bill 2011

Date introduced	3 August 2011
House introduced	Legislative Assembly
Minister responsible	Hon George Souris MP
Portfolio	Tourism, Major Events, Hospitality and Racing

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Gaming Machine Tax Act 2001* [the Act] as follows:
 - (a) to reduce the gaming machine tax rates payable by registered clubs,
 - (b) to rename the community development and support expenditure (CDSE) tax rebate scheme as “ClubGRANTS”,
 - (c) to increase the tax rebate available to a registered club under that scheme from 1.5% to 1.85% of the club’s prescribed profits (being a club’s gaming machine profits that exceed \$1,000,000 during any tax year),
 - (d) to create a new category of community development and support projects and services (Category 3 projects and services) for large scale projects or services associated with sport, health or community infrastructure and to apply 0.4% of registered clubs’ prescribed profits towards a fund for such projects and services,
 - (e) to make other consequential, savings and transitional amendments.
2. The effect of the amendments referred to in paragraphs (c) and (d) is that amounts equalling 2.25% of registered clubs’ prescribed profits in every tax year are to be returned to the community from gaming machine tax receipts through ClubGRANTS (being 1.85% to clubs as ClubGRANTS tax rebates and 0.4% as payments to the ClubGRANTS Fund on behalf of clubs).

BACKGROUND

3. The following was noted in the Agreement in Principle speech:

In October last year the New South Wales Liberals and Nationals signed a memorandum of understanding with ClubsNSW. The title of that agreement was Strong Clubs Stronger Communities, which very clearly points to the future that the New South Wales Liberal-Nationals Government wants for clubs and communities across this State. The memorandum of understanding contains a range of commitments to help secure the long-term financial viability and sustainability of New South Wales clubs and allow them to strengthen their economic and social contribution to the State and the communities they service. The bill implements two important commitments relating to reduced gaming machine taxation rates and the

expanded and renamed Community Development and Support Expenditure Scheme, now called ClubGRANTS.⁹

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on 1 September 2011.

Schedule 1 Amendment of *Gaming Machine Tax Act 2001*

Reduction of gaming machine tax rates for registered clubs

6. Schedule 1 [4] reduces the gaming machine tax payable by registered clubs for the 2011 and subsequent tax years. Schedule 1 [3] makes a consequential amendment. At present, the tax rates range from 10% of gaming machine profits to 30.9% of gaming machine profits, with the first \$200,000 of profits being tax free. Schedule 1 [4] provides for tax rates in the 2011 tax year and subsequent tax years ranging from 10% of gaming machine profits to 28.4% of gaming machine profits.
7. The first \$200,000 of profits remains tax free.

Renaming community development and support expenditure (CDSE) tax rebate scheme as "ClubGRANTS"

8. Schedule 1 [5], [9], [11] and [13] amend various provisions of the Principal Act to rename the community development and support expenditure (CDSE) tax rebate scheme as "ClubGRANTS".

Increase of tax rebate available to a registered club

9. Schedule 1 [7] increases the tax rebate available to a registered club under ClubGRANTS from 1.5% to 1.85% of the club's prescribed profits (being a club's gaming machine profits that exceed \$1,000,000 during any tax year). Schedule 1 [1], [2], [8] and [12] make consequential amendments.

Creation of new ClubGRANTS category

10. Schedule 1 [6] and [10] create a new category of community development and support projects and services under the ClubGRANTS scheme (to be called Category 3 projects and services) for large scale projects or services associated with sport, health or community infrastructure. The ClubGRANTS guidelines (formerly CDSE guidelines) will define Category 3 projects and services. That definition is to be settled in consultation with Clubs NSW.
11. Schedule 1 [10] establishes the ClubGRANTS Fund and provides that amounts equal to 0.4% of each registered club's prescribed profits (being a club's gaming machine profits that exceed \$1,000,000 during any tax year) are appropriated from the Consolidated Fund to the ClubGRANTS Fund for such Category 3 projects and services. Registered clubs may also pay amounts into the ClubGRANTS Fund.

⁹ Hon G Souris MP, Minister for Tourism, Major Events, Hospitality and Racing, and Minister for the Arts, Legislative Assembly *Hansard*, 3 August 2011.

Savings and transitional provisions

12. Schedule 1 [14] and [15] make amendments of a savings and transitional nature.

ISSUES CONSIDERED BY THE COMMITTEE

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

7. Local Government Amendment (Local Democracy - Ward Representation Reform) Bill 2011*

Date introduced	5 August 2011
House introduced	Legislative Council
	Mr David Shoebridge MLC
	*Private Member

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Local Government Act 1993* to provide that each council for an area that is divided into wards must have at least 3 councillors for each ward.
2. The Bill also provides that, at least six months before the next ordinary council elections, each council of an area divided into wards that has fewer than 3 councillors for each ward must alter its ward boundaries or change its number of councillors or both to ensure that it complies with this new requirement. A council will not need to obtain approval at a constitutional referendum for a change to the number of councillors made in accordance with the new requirements.

BACKGROUND

3. The following background was noted in the Bill's Second Reading Speech:

This bill, if passed, will ensure that local governments are not only representative but also are effective and accountable. It will put in place some necessary checks and balances at local councils that will prevent councils in the future from falling prey to what we have seen to be essentially corrupt conduct, corrupt behaviour that has brought down some key previous administrations. Two of the most high-profile administrations that were brought down through corruption or mismanagement were Wollongong and Shellharbour councils. Both councils effectively had one-party dominance through the undemocratic process of having two-member wards.¹⁰

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. Clause 3 amends section 224 of the *Local Government Act 1993* to give effect to the above.

¹⁰ Mr D Shoebridge MLC, Legislative Council *Hansard*, 5 August 2011.

ISSUES CONSIDERED BY THE COMMITTEE

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

8. Local Government Amendment (Roadside Vehicle Sales) Bill 2011*

Date introduced	5 August 2011
House introduced	Legislative Assembly
	Ms Clover Moore MP
	*Private Member

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Local Government Act 1993* to enable councils to erect notices to prohibit the roadside parking of vehicles that are being offered for sale. A person who does not comply with such a notice will be guilty of an offence with a maximum penalty of 10 penalty units (currently \$1,100).

BACKGROUND

2. In the Agreement in Principle speech Ms Moore outlined the issues which this bill attempts to address. Ms Moore stated:

Large numbers of overseas visitors use Victoria Street, Potts Point and Brougham Street, Woolloomooloo as car yards to sell their vehicles at the end of their holiday. Up to 35 vehicles are offered for sale on Victoria Street, with the problem at its peak in the warmer months. Inner city parking is already limited and this use of public road for what is essentially a commercial purpose prevents residents, business operators and other visitors parking on these streets. Unlike in community land such as parks and enclosed lands, councils have no power to stop people from selling their vehicles on public roads. The Minister for Local Government made a number of suggestions to the City of Sydney to assist council to manage the problem, however unfortunately none of the suggestions address the problem of vehicle sales and they are not supported by residents.¹¹

3. The Bill provides councils the power to prohibit the parking of vehicles on certain public roads for the purpose of offering the vehicles for sale. Currently section 632 (2A) of the *Local Government Act 1993* prevents councils enforcing a notice that prohibits or regulates the parking or use of a vehicle on a public road.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. Clause 3 amends the *Local Government Act 1993* as referred to above.

¹¹ Ms C Moore MP, Legislative Assembly *Hansard*, 5 August 2011.

ISSUES CONSIDERED BY THE COMMITTEE

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

The Committee refers to Parliament the question as to whether the prohibition on the purchase and sale of vehicles unduly trespasses on personal rights.

9. Residential Parks Amendment (Register) Bill 2011

Date introduced	11 August 2011
House introduced	Legislative Assembly
Minister	Hon Anthony Roberts MP
Portfolio	Fair Trading

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to provide for the establishment of a register of residential parks, which is to contain certain information about residential parks, and
 - (b) to require park owners or park managers to provide information about residential parks for entry in the register.

BACKGROUND

2. The Minister noted the following in the Bill's Agreement in Principle Speech:

Residential parks provide an attractive and affordable lifestyle choice, especially for many retirees. Residents are able to purchase a dwelling in a residential park for much less than it would cost them to buy an equivalent type of home in, say, a retirement village. The dwellings that people are able to buy now in a residential park are very different from those available in the early caravan days. They are more akin to your average suburban home, the main difference being that they are manufactured off site. The close living environment in residential parks provides a sense of community that some people feel has been lost in the cities and suburbs. A lot of residents develop strong networks of support within their park that they value highly. It is important to recognise that some parks also rent out dwellings for itinerant workers, people who have been locked out of the rental market for various reasons and those who cannot afford to buy a home...

Our aim is to provide greater certainty for residents and the industry by simplifying the legislation and ensuring that disputes are resolved more quickly and with less acrimony.¹²

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

¹² Hon A J Roberts MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 11 August 2011.

Schedule 1 Amendment of *Residential Parks Act 1998*

5. Schedule 1 [2] inserts a new Part into the *Residential Parks Act 1998* (the Act) which relates to the creation of a residential parks register and the processes by which information to be entered into the register are obtained.
6. Proposed section 142A gives the Director-General of the Department of Finance and Services the power to require a park owner or park manager to provide registrable information about the residential park within the period specified in the notice. Failure to comply with this requirement attracts a maximum penalty of 5 penalty units. Information which constitutes registrable information includes the trading name, address and contact details of a residential park and the name and contact details of any park owner or park manager.
7. Proposed section 142B imposes an obligation on the park owner to give the Director-General notice of a *registrable event* within 30 days of the park owner becoming aware that the event has occurred. Failure to comply with this requirement attracts a maximum penalty of 5 penalty units. Events which constitute registrable events include a change in the trading name of the park, a change in park owner or manager, the closure or opening of a park or a significant change in the number of sites in the residential park used for permanent occupancy.
8. Proposed section 142C prohibits a person from providing false or misleading information. The maximum penalty that may be imposed for such conduct is 20 penalty units.
9. Proposed section 142D requires the Director-General to establish and maintain a register of residential parks, in which the Director-General must enter all information provided to the Director-General under the proposed Part. The trading name, address and contact details for residential parks may be made available to the public for inspection.
10. Schedule 1 [1] updates the definitions of *Department* and *Director-General*. The amendment enables the Director-General's functions to be exercised by the Commissioner for Fair Trading in the Department of Finance and Services.
11. Schedule 1 [3] allows for provisions of a savings and transitional nature in relation to the amendments to be made in the regulations.
12. Schedule 1 [4] provides that the obligation imposed on a park owner to give the Director-General notice of a registrable event only applies to an event that occurs after the commencement of proposed section 142B.

Schedule 2 Amendment of *Residential Parks Regulation 2006*

13. Schedule 2 makes a consequential amendment to the *Residential Parks Regulation 2006* by prescribing the offences created by proposed sections 142A and 142B of the Act as penalty notice offences which may be dealt with under section 149 of the Act. In such cases, the amount of the penalty for those offences is \$220.

ISSUES CONSIDERED BY THE COMMITTEE

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

10. Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Bill 2011*

Date introduced	5 August 2011
House introduced	Legislative Council
	Hon Cate Faehrmann MLC
	*Private Member

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Threatened Species Conservation Act 1995* (the Principal Act) to establish an accreditation scheme for ecological consultants preparing or carrying out certain assessments, impact statements or surveys under the Principal Act, the *Fisheries Management Act 1994* or the *Environmental Planning and Assessment Act 1979* (the Planning Act), and certain other documents and activities (ecological assessments).
2. The Bill will make it an offence for a person to:
 - (a) prepare or carry out an ecological assessment if the person is not an accredited ecological consultant (unless the person is acting in accordance with the directions of, or under the supervision of, an accredited ecological consultant), or
 - (b) prepare or carry out an ecological assessment requiring specialist accreditation if the person has not obtained specialist accreditation in accordance with the scheme (unless the person is acting in accordance with the directions of, or under the supervision of, a specialist ecological consultant), or
 - (c) make representations, or cause or allow any representation to be made, that the person is accredited or has specialist accreditation under the scheme (unless the person is so accredited).
3. The Bill also:
 - (a) establishes the processes for the grant and renewal of accreditation, and
 - (b) enables the Chief Executive of the Office of Environment and Heritage (the Chief Executive) to impose, vary or revoke conditions in respect of accreditation or to revoke or suspend accreditation in certain circumstances, and
 - (c) establishes an accreditation panel to perform certain functions relating to accreditation, such as making certain recommendations to the Chief Executive and conducting peer reviews of any ecological assessment that has been prepared or carried out by an accredited ecological consultant, and

- (d) establishes a process for the conduct by the accreditation panel of peer reviews of ecological assessments, so that the accreditation panel may make recommendations in respect of revocation or suspension of, or the imposition, variation or revocation of conditions on, a person's accreditation.

BACKGROUND

4. In the Second Reading speech, the Hon Cate Faehrmann MLC outlined the reasons for the Bill. She stated:

Members may be aware that the Ecological Consultants Association of New South Wales recently proposed a voluntary industry accreditation scheme in the absence of any statutory scheme to accredit ecological consultants. However, in this voluntary scheme decisions, whether for accreditation, review, discipline and appeals, are made only by members of the association. It would have no statutory basis for public disclosure or a public register for hearing complaints or for penalizing bad practice. A voluntary scheme is more likely to result in a conflict of interest than the proposed mandatory scheme set out in this bill.¹³

5. In addition, the Hon Cate Faehrmann MLC indicated that it is an anomaly to have left the issue of accreditation of ecological consultants to this stage. Accreditation schemes have been introduced for practitioners conducting equivalent complex site assessments, such as biobanking assessors pursuant to the *Threatened Species Act 1995*, and site auditors under the *Contaminated Lands Management Act 1997*.
6. In the Second Reading speech it was also stated that the proposed Bill would have a comparable operating cost to that of the scheme for auditing site auditors under the *Contaminated Lands Management Act 1997*. In 2008 that scheme cost \$272 740 to administer.

OUTLINE OF PROVISIONS

7. Clause 1 sets out the name (also called the short title) of the proposed Act.
8. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of *Threatened Species Conservation Act 1995*

Introduction of ecological consultant accreditation scheme

9. Schedule 1 [2] inserts a new Part 8A into the Principal Act, which establishes an accreditation scheme for any person who is engaged or employed to prepare or carry out an ecological assessment (an ecological consultant). Currently, the Principal Act gives the Director-General of the Department of Premier and Cabinet (the Director-General) the power to institute arrangements for the accreditation of suitably qualified and experienced persons to prepare species impact statements or to undertake and prepare surveys and assessments for use in connection with certain requirements under the Principal Act, the *Fisheries Management Act 1994* and the Planning Act. The new Part replaces that scheme.

¹³ Hon C Faehrmann MLC, Legislative Council *Hansard*, 5 August 2011.

Accreditation of ecological consultants

10. Proposed section 138A allows the regulations to make provision for or with respect to eligibility for accreditation as an ecological consultant. It also provides that only natural persons are eligible for accreditation.
11. Proposed section 138B enables the regulations to specify that certain types of ecological assessment require the ecological consultant preparing or carrying it out to have specialist accreditation. The regulations may also make provision for or with respect to eligibility for accreditation as a specialist ecological consultant.
12. Proposed section 138C requires the Minister to refer any proposed regulation relating to eligibility for accreditation to be referred to the accreditation panel for comment.
13. Proposed sections 138D–138J provide for the grant, renewal, revocation or suspension of accreditation. The Chief Executive may grant or renew accreditation subject to conditions, which the Chief Executive may impose, vary or revoke. The regulations may also impose conditions on accreditation or a class of accreditation. Accreditation remains in force for a fixed period of 3 years, unless sooner revoked. The regulations may make provision for an accreditation fee to be paid to the Chief Executive.
14. Proposed section 138K enables a person to apply to the Administrative Decisions Tribunal for a review of certain decisions made by the Chief Executive in respect of the person under the scheme.
15. Proposed section 138L provides that the Chief Executive is to keep a register of ecological consultants, in which the name, contact details and particulars of accreditation of all accredited ecological consultants and specialist ecological consultants are to be recorded. The register is to be made available for public inspection on the website of the Office of Environment and Heritage. The Chief Executive must also cause the name of any ecological consultant whose accreditation has been suspended or revoked, and the name of the employer of that ecological consultant, to appear in the register.

Establishment of accreditation panel

16. Proposed sections 138M–138P provide for the establishment of an accreditation panel. The functions of the accreditation panel include making recommendations to the Chief Executive regarding the eligibility of an applicant for accreditation (including specialist accreditation) and making recommendations following a peer review conducted by the accreditation panel of an ecological assessment. The accreditation panel may also make recommendations to the Minister regarding any regulation that makes provision for the eligibility of a person for accreditation (including specialist accreditation). The proposed sections also provide for the determination of the procedure of the panel and the disclosure of relevant interests by members of the panel.

Peer reviews of ecological assessments

17. The accreditation panel may conduct a peer review of any ecological assessment, following which the accreditation panel may make a recommendation to the Chief Executive that the accreditation of an ecological consultant be revoked or suspended, that conditions or further conditions be imposed on the ecological consultant's accreditation or that existing conditions on the accreditation be varied or revoked.

18. Proposed section 138Q provides that any accredited ecological consultant or a consent authority may request the accreditation panel to conduct a peer review of any ecological assessment. A person who is not an accredited ecological consultant or a consent authority, but whose request for peer review is supported by either an accredited ecological consultant or a consent authority, may also request a peer review. The request for peer review may only be made on the ground that the ecological assessment does not conform to industry best practice or on any other ground provided for by the regulations. Proposed section 138R provides for the conduct of a peer review. The accreditation panel may refuse to carry out a peer review if it is of the opinion that the review request is frivolous or vexatious.

Offences

19. Proposed section 138S makes it an offence for an ecological consultant to prepare or carry out an ecological assessment unless he or she is accredited under Part 8A. It is also an offence if an ecological consultant who does not have specialist accreditation prepares or carries out an ecological assessment that requires specialist accreditation. The proposed section provides that a person is not guilty of an offence if the person prepares or carries out, or assists in preparing or carrying out, an ecological assessment under the supervision of, or in accordance with the directions of, a person who is duly accredited. This offence does not apply to a Minister or an officer of the Crown exercising functions under the Principal Act, the Planning Act or any other law, nor does it apply to any other person in such circumstances as may be prescribed by the regulations.
20. Proposed section 138T makes it an offence for a person to make or cause or allow any representation to be made that he or she is duly accredited under Part 8A unless that person is duly accredited. The maximum penalty for each offence is 600 penalty units.

Responsibilities of ecological consultants

21. Under the scheme, an ecological consultant has the responsibility to avoid conflicts of interest. Although it is not an offence not to do so, it may be grounds for suspension or revocation of accreditation. The regulations may also make further provision with respect to the responsibilities of ecological consultants (proposed sections 138U and 138V).

Other amendments

22. Schedule 1 [1] and [4] repeal the existing provisions that relate to the Director-General's power to accredit persons to prepare species impact statements, assessments and surveys.
23. Schedule 1 [5] allows for regulations to be made that are of a savings or transitional nature. Schedule 1 [6] provides that the new provisions relating to the ecological consultants accreditation scheme will not apply to any ecological assessment that was submitted to a consent authority or other person before the commencement of the amendments. It also provides for the phasing-in of the offence contained in proposed section 138S and provides that the Minister must ensure that the making of a regulation under proposed section 138A is recommended within 6 months after the date of assent to the proposed Act.
24. Schedule 1 [3] makes a minor consequential amendment.

ISSUES CONSIDERED BY THE COMMITTEE

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Strict liability

1. Proposed sections 138S and 138T create strict liability offences in relation to the:
 - preparation or carrying out of an ecological assessment without proper accreditation; and
 - making of false representations that a person is duly accredited.
2. The maximum penalty for these offences is 600 penalty units, or \$660,000.

The Committee refers to Parliament the question as to whether the strict liability offences contained in this Bill trespass on personal rights.

11. Truth in Labelling (Free-range Eggs) Bill 2011*

Date introduced	5 August 2011
House introduced	Legislative Council
	Dr John Kaye MLC
	*Private Member

PURPOSE AND DESCRIPTION

1. The object of this Bill is to regulate the labelling of eggs by:
 - (a) prohibiting the sale of eggs as free-range eggs or barn eggs unless certain requirements in relation to the eggs and the laying fowl that produce the eggs have been complied with, and
 - (b) requiring eggs that are not free-range eggs or barn eggs to be labelled as cage eggs and prohibiting the use of any words or images in advertising or packaging of the eggs that suggests the laying fowl that produce the eggs are not kept in cages.

BACKGROUND

2. In the Second Reading speech Dr Kaye commented that one of the Bill's objectives is to 'protect free-range egg producers who are forced into unfair competition with cage egg producers who misleadingly or falsely label their products as "free range".¹⁴
3. The Bill introduces the following measures:
 - Creating a legislative definition of "free range egg production systems" which includes the number of hens allowed to be kept in a certain area, surgical procedures and housing conditions.
 - Enforcement measures regarding labelling requirements for free-range, barn-laid and cage eggs including restrictions on positive imagery and text on cage egg packaging, and specifications on font size and type used on labels. The Bill imposes a maximum penalty of \$55 000 for corporations and \$5 500 and 6 months imprisonment for individuals who contravene any of the labelling and advertising provisions.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

¹⁴ Dr J Kaye MLC, Legislative Council *Hansard*, 5 August 2011.

6. Clause 3 defines certain words and expressions used in the proposed Act.
7. Clause 4 makes it an offence to advertise, package or label eggs that are for sale as free-range, or use images or other means to suggest that the eggs are free-range, unless the requirements set out in the clause with respect to the eggs and the laying fowl that produce the eggs are complied with. The maximum penalty is 500 penalty units (currently, \$55,000) for a corporation and 50 penalty units (currently, \$5,500) or 6 months imprisonment or both for an individual.
8. Clause 5 makes it an offence to advertise, package or label eggs that are for sale as barn eggs, or use images or other means to suggest that the eggs are barn eggs, unless the requirements set out in the clause with respect to the laying fowl that produce the eggs are complied with. The maximum penalty is 500 penalty units (currently, \$55,000) for a corporation and 50 penalty units (currently, \$5,500) or 6 months imprisonment or both for an individual.
9. Clause 6 creates the following offences in relation to eggs that cannot lawfully be advertised, packaged or labelled as free-range or barn eggs (non-complying eggs):
 - (a) a person must not, in any advertising, packaging or labelling of non-complying eggs that are for sale, use any words, images or other means to suggest that the laying fowl that produce the eggs are not kept in cages,
 - (b) a person must not package non-complying eggs for sale, unless the package is labelled with the words "cage eggs" in letters that are at least 10 mm high,
 - (c) a person must not, in any packaging or labelling of non-complying eggs, make a positive claim in relation to the production of the eggs in letters that are more than 6 mm high.
10. The maximum penalty for these offences is 500 penalty units (currently, \$55,000) for a corporation and 50 penalty units (currently, \$5,500) or 6 months imprisonment or both for an individual.
11. Clause 7 provides that the regulations may establish a scheme for the accreditation of persons who keep laying fowl for the production of free-range eggs.
12. Clause 8 provides for proceedings for offences under the proposed Act or regulations made under that Act to be dealt with summarily before the Local Court.
13. Clause 9 is a general regulation-making power.

ISSUES CONSIDERED BY THE COMMITTEE

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Strict liability

14. Clause 6 of the Bill creates three strict liability offences in relation to the advertising, packaging and labelling of eggs as free range when they do not comply with the requirements. The maximum penalty for these offences is \$55,000 for a corporation and \$5,500 or 6 months imprisonment or both for an individual.

The Committee refers to Parliament the question as to whether the strict liability offences contained in this Bill trespass on personal rights.

Part Two – Regulations

12. Proposed Postponement of the Repeal of the Lord Howe Island Regulation 2004, Radiation Control Regulation 2003 and Fisheries Management (Aquatic Reserves) Regulation 2002

BACKGROUND

1. By correspondence received 1 February 2011, the then Minister for Climate Change and the Environment¹⁵ advised the Committee of the intention to postpone the repeal of the above regulations.

COMMENT

Lord Howe Island Regulation 2004

2. The postponement of the repeal of the above regulation is proposed for the third time.
3. The then Minister advised that a review of the Lord Howe Island Act 1953 was completed in March 2010 and recommended a study be undertaken to identify the most efficient and equitable funding model for Lord Howe Island. Given that this study may lead to significant changes to the Act and the Regulation, there does not appear to be merit in remaking the Regulation in its current form in 2011. It is expected that the Regulation will be re-made by August 2012.

Radiation Control Regulation 2003

4. The postponement of the repeal of the above regulation is proposed for the fourth time.
5. The postponement is due to the passing of the Radiation Control Amendment Bill 2010 on 4 November 2010. The amendments to the Radiation Control Act 1990 require significant changes to be introduced into the Regulation. Some of these changes will depend on decisions made at the Commonwealth level and with the agreement of all Australian jurisdictions, and others will require negotiation and consultation with affected businesses and certain government agencies. It is expected that the Regulation will be re-made by August 2012.

Fisheries Management (Aquatic Reserves) Regulation 2002

6. The postponement of the repeal of the above regulation is proposed for the fifth and final time.

¹⁵ All the parent acts relating to the regulations are now administered by the Minister for the Environment.

LEGISLATION REVIEW COMMITTEE

PROPOSED POSTPONEMENT OF THE REPEAL OF THE LORD HOWE ISLAND REGULATION 2004, RADIATION CONTROL REGULATION 2003 AND FISHERIES MANAGEMENT (AQUATIC RESERVES) REGULATION 2002

7. The Fisheries Management Act 1994 has recently been reviewed by the Department of Industry and Investment and the then Minister advised that given the Regulation will need to be significantly amended as a result of this review, there does not appear to be merit in remaking the Regulation in its current form in 2011. It is expected that the Regulation will be re-made by August 2012.

CONCLUSION

That the Committee writes to the Minister for the Environment to advise that it does not have any concerns with the postponement of the repeal of the regulations.

13. Proposed Postponement of the Gas Supply (Natural Gas Retail Competition) Regulation 2001

BACKGROUND

1. By correspondence received 31 January 2011, the then Minister for Energy advised the Committee of the intention to postpone the repeal of the above regulation.

COMMENT

2. The postponement of the repeal of the above regulation is proposed for the fifth and final time.
3. The then Minister advised that an extensive national review of energy regulation is taking place with the objective of creating a National Energy Customer Framework. This reform will lead to extensive amendments to state and territory regulations. The amendments to the Gas Supply (Natural Gas Retail Competition) Regulation 2001 may affect the staged repeal process, and until the Framework is in place the then Minister was not able to propose a timetable for the remake of the Regulation.

CONCLUSION

That the Committee writes to the Minister for Energy to advise that it does not have any concerns with the postponement of the repeal of the regulation.

14. Proposed Postponement of the Repeal of the Game and Feral Animal Regulation 2004

BACKGROUND

1. By correspondence received 4 February 2011, the then Minister for Primary Industries advised the Committee of the intention to postpone the repeal of the above regulation.

COMMENT

2. The postponement of the repeal of the above regulation is proposed for the third time.
3. The then Minister advised the Committee that due to the possibility of the amendment of the Game and Feral Animal Control Act 2002 in the current session of Parliament, amendment of the regulation should be postponed until any such Bill seeking amendments has been introduced.

CONCLUSION

That the Committee writes to the Minister for Primary Industries to advise that it does not have any concerns with the postponement of the repeal of the regulation.

15. Proposed Postponement of the Repeal of the Public Health (Disposal of Bodies) Regulation 2002 and Public Health (General) Regulation 2002

BACKGROUND

1. By correspondence received 9 February 2011, the then Minister for Health advised the Committee of the intention to postpone the repeal of the above regulations.

COMMENT

2. The postponement of the repeal of the above regulations is proposed for the fourth time.
3. The then Minister advised the Committee that the above regulations were made under the Public Health Act 1991.
4. In November 2010, Parliament passed the Public Health Act 2010 and on the commencement of this Act, the Public Health Act 1991 and any regulations made under that Act will be repealed.
5. Prior to the commencement of the Public Health Act 2010, regulations under that Act must be made and as part of this public consultation and the appropriate regulatory impact process will be undertaken.
6. The then Minister considered it an inefficient use of time and resources to remake the Public Health (Disposal of Bodies) Regulation 2002 and the Public Health (General) Regulation 2002 as they would be repealed following the commencement of Public Health Act 2010 which was expected to be in early 2012.

CONCLUSION

That the Committee writes to the Minister for Health to advise that it does not have any concerns with the postponement of the repeal of the regulations.

16. Proposed Postponement of the Repeal of the Criminal Records Regulation 2004

BACKGROUND

1. By correspondence received 3 June 2011, the Attorney General advised the Committee of the intention to postpone the repeal of the above regulation.

COMMENT

2. The postponement of the repeal of the above regulations is proposed for the third time.
3. The Attorney General informed the Committee that following approval of a model Bill by the Standing Committee of Attorneys General in November 2009, significant amendments are being considered to the Criminal Records Act 1991.
4. Recommendations were also made by the Legislative Council Standing Committee on Law and Justice report on 'Spent Convictions for Juvenile Offenders' which are being considered.

CONCLUSION

That the Committee writes to the Attorney General to advise that it does not have any concerns with the postponement of the repeal of the regulation.

17. Proposed Postponement of the Repeal of the Registration of Interests in Goods Regulation 2004, Home Building Regulation 2004 and Property, Stock and Business Agents Regulation 2003

BACKGROUND

1. By correspondence received 27 June 2011, the Minister for Fair Trading advised the Committee of the intention to postpone the repeal of the above regulations.

COMMENT

Home Building Regulation 2004

2. The postponement of the repeal of the above regulation is proposed for the third time.
3. The Minister informed the Committee that due to an ongoing process to rewrite the Home Building Act 1989, it is inappropriate to remake the Home Building Regulation at this time. Further consultation is taking place with industry stakeholders and this work will be necessary to inform any recommendations to amend the Act.

Registration of Interests in Goods Regulation 2004

4. The postponement of the repeal of the above regulation is proposed for the third time.
5. The need for the postponement has arisen because the regulation deals with matters which will soon be regulated by the Commonwealth. It is anticipated that regulatory arrangements will be completed to allow transfer of this responsibility by the end of 2011 or early 2012. It is proposed to postpone the repeal of this regulation until the transfer is completed.

Property, Stock and Business Agents Regulation 2003

6. The postponement of the repeal of the above regulation is proposed for the fourth time.
7. The re-making of the above regulation has been postponed because of the review of the Property, Stock and Business Agents Act 2002 currently being conducted. The review may lead to recommendations for amendments to the Act. The establishment of a national licensing system for the sector is expected to commence in 2012, which will lead to amendments to the Act. Therefore, it is a more appropriate and efficient use of resources to review the Regulation after the passage of these amendments.

CONCLUSION

That the Committee writes to the Minister for Fair Trading to advise that it does not have any concerns with the postponement of the repeal of the regulations.

18. Proposed Postponement of the Repeal of the Entertainment Industry Regulation 2004

BACKGROUND

1. By correspondence received 18 July 2011, the Acting Minister for Finance and Services advised the Committee of the intention to postpone the repeal of the above regulation.

COMMENT

2. The postponement of the repeal of the above regulations is proposed for the third time.
3. The Acting Minister informed the Committee that the Better Regulation Office released a report following a review of the Entertainment Industry Act 1989 (the Act) in October 2010.
4. The report recommends amendments to the Act which are currently being considered by the Government. If the recommendations are adopted, legislation would be required to replace the Act and the Acting Minister contends that this situation amounts to 'exceptional circumstances' justifying non-interference with the present regulatory arrangements through the staged repeal program.

CONCLUSION

That the Committee writes to the Minister for Finance and Services to advise that it does not have any concerns with the postponement of the repeal of the regulation.

19. Proposed Postponement of the Repeal of the Architects Regulation 2004

BACKGROUND

1. By correspondence received 18 July 2011, the Acting Minister for Finance and Services advised the Committee of the intention to postpone the repeal of the above regulation.

COMMENT

2. The postponement of the repeal of the above regulations is proposed for the third time.
3. The Acting Minister advised the Committee that following a recent review of the Architects Act 2003, proposed amendments are being considered.
4. Given that these amendments may also have an impact on the regulation, it would be premature to remake the Architects Regulation 2004.

CONCLUSION

That the Committee writes to the Minister for Finance and Services to advise that it does not have any concerns with the postponement of the repeal of the regulation.

20. Proposed Postponement of the Repeal of the Aboriginal Land Rights Regulation 2002

BACKGROUND

1. By correspondence received 18 July 2011, the Minister for Aboriginal Affairs advised the Committee of the intention to postpone the repeal of the above regulation.

COMMENT

2. The postponement of the repeal of the above regulation is proposed for the third time.
3. The Minister noted that following reviews of the Aboriginal Land Rights Act 1983 in 2004 and 2009, the Aboriginal Land Rights Regulation 2002 (the Regulation) was also reviewed and amended to improve the operational efficacy of the regulation.
4. The Minister advised that further minor amendments to the Regulation have been made as the need has arisen in recent years so it remains relevant.

CONCLUSION

That the Committee writes to the Minister for Aboriginal Affairs to advise that it does not have any concerns with the postponement of the repeal of the regulation.

Appendix One – Index of Ministerial correspondence on Bills

The Committee currently has no ministerial correspondence on Bills.

Appendix Two – Index of correspondence on Regulations on which the Committee has reported

The Committee currently has no correspondence in respect of Regulations on which it has reported