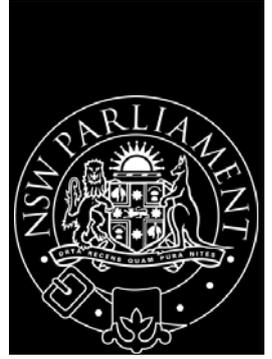


PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 10 of 2005

20 September 2005

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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 2005

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

Appendix 2: Index of Ministerial Correspondence on Bills for 2005

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 2005

This table specifies the action the Committee has taken with respect to Bills that received comment in 2005 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

Appendix 4: Index of correspondence on Regulations reported on in 2005

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. Anti-Discrimination Amendment (Religious Tolerance) Bill 2005*

Freedom of speech

- | |
|--|
| <p>22. The Committee is of the view that the rights to free speech and to freely practice religion or no religion are fundamental human rights essential to an open and democratic society. As such, they should not be restricted except on compelling public interest grounds.</p> <p>23. The Committee is also of the view that preventing religious vilification, which is inconsistent with an open and democratic society and which can have a serious and detrimental effect on individuals and society as a whole, is a highly compelling public interest reason to limit free speech.</p> <p>24. The Committee notes the safeguards in the Bill to avoid undue restriction on free speech while protecting people from vilification.</p> <p>25. Having regard to these safeguards and the compelling public interest in preventing and punishing religious vilification, the Committee is of the view that the Bill does not unduly trespass on the right to free speech.</p> |
|--|

2. Civil Liability Amendment (Offender Damages Trust Fund) Bill 2005

Property rights: Clause 26L

- | |
|--|
| <p>19. The Committee is of the view that, having regard to the mitigating provisions in the Bill, the trespass on an offender's right to deal freely with his or her property is not undue.</p> <p>22. The Committee is of the view that, having regard to the limitations in the Bill, it does not unduly trespass on an offender's right to be free from discrimination.</p> |
|--|

3. Crimes Amendment (Protection of Innocent Accused) Bill 2005*

Strict liability: Proposed section 583

- | |
|---|
| <p>11. The Committee is of the view that, except in extraordinary circumstances, it is inappropriate for an offence with such heavy penalties to be an offence of strict liability. Therefore, the Committee is of the view that proposed section 583 trespasses on personal rights and liberties.</p> <p>12. The Committee refers to Parliament the question as to whether this trespass on rights and liberties is undue.</p> |
|---|

Right to free speech

14. The Committee refers to Parliament the question whether the new offence under proposed section 583 is an undue trespass on the fundamental right to free speech.

4. Defamation Bill 2005

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

5. Duties Amendment (Abolition of Vendor Duty) Bill 2005

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

6. Local Government Amendment (Stormwater) Bill 2005

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

7. Property Legislation Amendment Bill 2005

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

8. Protection of the Environment Operations Amendment Bill 2005

Strict liability offences: Schedule 1, Clause 66 (proposed s 142) & Clause 70 (proposed s 144AA)

15. The Committee is of the view that strict liability is a very serious matter and should be:

- imposed only after careful consideration of all available options;
- subject to defences wherever possible where contravention appears reasonable; and
- have only limited monetary penalties and no terms of imprisonment.

16. The Committee notes that monetary penalties that do not make it uneconomical to commit offences may fail to provide adequate disincentives.

17. The Committee refers to Parliament whether the penalties up to \$1,000,000 for strict liability offences under the Bill inappropriately trespasses on personal rights and liberties.

9. Security Interests in Goods Bill 2005

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

10. Sporting Venues (Offenders Banning Orders) Bill 2005

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

11. Standard Time Amendment (Daylight Saving) Bill 2005

- | |
|--|
| 2. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
|--|

SECTION B: Ministerial Correspondence — Bills Previously Considered

12. Child Protection (Offenders Prohibition Orders) Bill 2004

- | |
|--|
| 4. The Committee thanks the Minister for his reply. |
|--|

13. Road Transport (General) Bill 2004

- | |
|---|
| 6. The Committee thanks the Minister for his response. |
| 7. The Committee is disappointed that the Minister has again not answered its question of why an authorised officer need not be a member of staff of a public authority. |

Part One – Bills

SECTION A: COMMENT ON BILLS

1. ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS TOLERANCE) BILL 2005*

Date Introduced: 15 September 2005
House Introduced: Legislative Council
Member Responsible: The Hon Peter Breen MLC

Purpose and Description

1. The object of the Bill is to promote religious tolerance.

Background

2. In his second reading speech, Mr Breen stated that:

...[the] bill does not attempt to reintroduce religion as a ground for prohibiting discrimination under the *Anti-Discrimination Act*...

[The] bill would make religious vilification unlawful, and vilification that incites violence and offence under the *Anti-Discrimination Act* would attract the same penalties as racial vilification and sexual [sic] vilification.¹

3. He also said that, under the laws of Tasmania, Victoria and Queensland, religious vilification is unlawful.

The Bill

4. The Bill amends the *Anti-Discrimination Act 1977* (the Act) to make religious vilification unlawful and creates a new offence of serious religious vilification. The Act already contains provisions outlawing racial vilification and vilification on the grounds that a person is a transgender person or a homosexual or has HIV/AIDS and contains the offence of serious vilification on these grounds.² The Bill mirrors those provisions.

5. Specifically, proposed section 49ZZB provides that:

It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the religious belief or activity of the person or members of the group.

¹ Mr Peter Breen MLC, Legislative Council *Hansard*, 15 September 2005.

² *Anti-Discrimination Act 1977*, sections 20B-20D; 38R, 38S & 38T, 49ZS, 49ZT & 49ZTA, & 49ZXA, 49ZXB & 49ZXC, respectively.

Anti-Discrimination Amendment (Religious Tolerance) Bill 2005*

6. **Public act** has the same meaning as in the Act in relation to vilification on the grounds referred to above.³ It includes:
- any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material;
 - any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia; and
 - the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the religious belief or activities of the person or members of the group.
7. Like the Act, the Bill excludes the following from the scope of the offence of vilification:
- a fair report of a “public act”;
 - a communication or the distribution or dissemination of any matter comprising a publication referred to in Division 3 of Part 3 of the *Defamation Act 1974*⁴ or which is otherwise subject to a defence of absolute privilege in proceedings for defamation; or
 - a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate and expositions of any act or matter.
8. The Bill extends the existing complaint handling provisions of the Act to a complaint of religious vilification [Schedule 1[2] &[3]]. Under the Act, a person may make a complaint of vilification to the Anti-Discrimination Board, which can then attempt to resolve the complaint by conciliation [s. 88 & 91A, respectively]. In certain circumstances, unresolved complaints can be referred to the Anti-Discrimination Tribunal for adjudication. If the Tribunal finds the complaint substantiated, it can make a variety of orders including ordering the respondent to pay up to \$40,000 damages, cease the unlawful conduct or require the respondent to publish an apology [s. 108].
9. The new offence of **serious religious vilification** under proposed section 49ZZC also mirrors equivalent provisions in the Act in relation to serious vilification on the grounds of race, transgender, homosexual or HIV/AIDS status. The new provision states that a person must not, by public act, threaten physical harm towards, or towards any property of, a person or group of persons, or incite others to threaten physical harm towards, or towards any property of, a person or group of persons, because of their religious activities or beliefs.

³ *Anti-Discrimination Act 1977*, sections 20B (racial), 38R (transgender), 49ZS (homosexual) & 49ZAA (HIV/AIDS).

⁴ Division 3 of Part 3 of the *Defamation Act 1974* deals with absolute privilege (eg, Parliamentary papers).

10. The maximum penalty for this offence is the same as for the equivalent provisions in the Act:
 - in the case of an individual—50 penalty units (\$1,100) or imprisonment for 6 months, or both; or
 - in the case of a corporation—100 penalty units (\$11,000).
11. The Attorney General must consent to a prosecution of a person for this offence.

Issues Considered by the Committee

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

Freedom of speech

12. Anti-vilification laws are often criticised as an infringement on the fundamental right to free speech as they criminalise certain types of expression.
13. The Committee notes that consideration of whether religion or any other specific characteristic should be the subject of anti-vilification laws is outside the scope of its functions under s 8A of the *Legislation Review Act*.
14. The Committee is of the view that the right to free speech is a fundamental right, vital to an open and democratic society. For this reason, the Committee is of the view that, although it is not an absolute right, freedom of speech should be protected and only limited by legislation if there are highly compelling public interest justifications.
15. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) provides for this right, stating that:
 1. Everyone shall have the right to hold opinions without interference.
 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
16. Importantly, the ICCPR recognises that this right is not absolute. Article 19(3) states that:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.
17. The Committee notes that the right to free speech is already curtailed in a number of ways under NSW law, including in relation to vilification on the grounds of race, transgender, homosexuality and HIV/AIDS. Free speech is curtailed in these circumstances in the interests of protecting individuals or groups of people from attack, discrimination or possible violence. Limitations on free speech for these reasons help also to promote an open and tolerant society.

Anti-Discrimination Amendment (Religious Tolerance) Bill 2005*

18. The ICCPR also protects the rights of people to be free from discrimination on a number of grounds, including religion [Articles 2(1) & 26] and it guarantees freedom of religion. Article 18 states that
- Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
19. Article 27 states:
- In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.
20. The Committee is of the view that religious vilification of a person or a group of persons is inconsistent with an open and democratic society and interferes with that person's fundamental right to practice their religion.
21. The Committee notes that, like freedom of speech, freedom of religion is not an absolute right and must be balanced against other, competing rights. The Committee also notes that these fundamental human rights are indivisible and are both aspects of the right to freedom of individual expression.
22. The Committee notes that the Bill attempts to balance these rights by including a number of safeguards to limit the diminution of one right (free speech) as it seeks to protect another right (freedom of religion). Specifically, the Bill expressly states that, among other things, the Bill does not render unlawful reasonable public acts done in good faith in the public interest. Further, in the case of a serious religious vilification attack, the Bill requires the Attorney General to consent to any prosecution.

- 23. The Committee is of the view that the rights to free speech and to freely practice religion or no religion are fundamental human rights essential to an open and democratic society. As such, they should not be restricted except on compelling public interest grounds.**
- 24. The Committee is also of the view that preventing religious vilification, which is inconsistent with an open and democratic society and which can have a serious and detrimental effect on individuals and society as a whole, is a highly compelling public interest reason to limit free speech.**
- 25. The Committee notes the safeguards in the Bill to avoid undue restriction on free speech while protecting people from vilification.**
- 26. Having regard to these safeguards and the compelling public interest in preventing and punishing religious vilification, the Committee is of the view that the Bill does not unduly trespass on the right to free speech.**

The Committee makes no further comment on this Bill.

2. CIVIL LIABILITY AMENDMENT (OFFENDER DAMAGES TRUST FUND) BILL 2005

Date Introduced:	15 September 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Tony Kelly MLC
Portfolio:	Justice

Purpose and Description

1. The object of this Bill is to amend the *Civil Liability Act 2002* to require that damages awarded against the Department of Corrective Services (and other public sector defendants) for injuries suffered by an offender in custody (**offender damages**) are to be held in trust and used to satisfy a claim for damages (a **victim claim**) for death or personal injury suffered by a victim of an offence committed by the offender. Any surplus remaining after victim claims are satisfied will be paid to the offender.
2. The Bill also allows a victim claim to be made within 6 months after offender damages are awarded despite the claim being barred because of the expiry of the limitation period for the making of the claim, but only for the purpose of the claim being satisfied from those offender damages.

Background

3. In the second reading speech, the Attorney General stated:

This Bill introduces a Government initiative that is the first of its kind in Australia – a scheme to quarantine awards of damages and compensation to offenders into a trust fund to enable victims to lodge claims against them.

Under the scheme, when an offender is awarded damages or compensation from a Government Department, the offender's personal injury victims will get the first opportunity to access the damages...

Under this Bill, damages awarded to offenders will be held in a trust fund. The offender's victims will be notified, and will have six months in which to make a claim against the offender in a civil court if they wish.

All victims have a right to sue an offender for civil damages; they have always had such a right. In most cases this right is illusory, since an offender rarely has sufficient assets with which to pay any damages awarded...

The scheme will facilitate a process whereby victims may, if they wish, take their own civil action against the offender, at their own expense, in the knowledge that quarantined funds exist to satisfy claims.⁵

The Bill

4. The Bill inserts new Division 6 into Part 2A of the *Civil Liability Act 2002*. Part 2A currently restricts the damages that can be awarded for death or personal injury suffered by an offender in custody when the award is against the Department of

⁵ The Hon RJ Debus MP, Attorney General, Legislative Assembly *Hansard*, 15 September 2005.

Corrective Services or other public sector defendants (referred to as *protected defendants*).

5. The new Division requires offender damages (damages awarded against a protected defendant for death or injury suffered by an offender in custody) to be held in trust as a *victim trust fund* for victims of the offender [cl 26L]. The funds are to be held and invested by the Public Trustee and any interest earned is to be paid into the trust fund [cl 26S].
6. Under the Bill, funds in the trust fund are available to satisfy claims for damages in respect of *death or personal injury* suffered by victims of offences committed by the offender. A victim must make their claim for damages from the victim trust fund in a court within 6 months after the award date of the offender's damages and must notify the protected defendant of their claim. The claimant must also certify to the court in which their claim is made that the claim is made as a claim eligible to be satisfied from the victim trust fund [cl 26M].
7. The protected defendant responsible for a victim trust fund must give notice about the fund to persons who appear to be entitled to make a victim claim against the offender [cl 26N].
8. The Bill allows a claimant to bring proceedings for damages payable from the victims trust fund, notwithstanding that the limitation period for the taking of those proceedings has expired, provided the claim is made within 6 months of the damages award being made in favour of the offender [cl 26P]. The Bill expressly limits the payment of an award of damages that results from such a claim to payment out of offender damages held in a victim trust fund.
9. A court that allows damages to be paid to a victim from the victims' trust fund may order whole or part of the damages awarded to be satisfied from the fund. In making such an order, the court is required to inform itself about and allow for the making of similar orders in respect of other claims eligible to be satisfied from the victim trust fund [cl 26Q].
10. Any surplus in the fund after payment of all victim claims ordered to be paid from the fund and administrative expenses of the fund must be paid to or at the direction of the offender [cl 26R].
11. The Bill also provides for legal costs awarded against a protected defendant in connection with an award of offender damages to not form part of a victim trust fund [cl 26T] and fixes a scale of maximum legal costs for legal services provided to the plaintiff on a victim claim that is eligible to be satisfied from a victim trust fund [cl 26U].
12. Proposed section 26W provides that the proposed Division overrides proposed Division 2 of Part 7 (which deals with offender damages awarded to persons who are not guilty of an offence because of mental illness).

13. The new Division will apply prospectively to all awards of offender damages, including awards in respect of proceedings commenced and causes of action that arose before the commencement of the amendments.

Issues Considered by the Committee

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

Property rights: Clause 26L

14. Proposed clause 26L authorises the payment of an award of damages for compensation to an offender to be held in trust for the purpose of facilitating civil claims against that person for personal injury suffered by their victims.
15. It could be argued that by fettering the ability of an offender to dispose of any damages he or she receives as compensation for a successful suit against a protected defendant, the Bill trespasses on the personal rights and liberties of offenders. In particular, it trespasses on the ability of an offender, as a successful plaintiff to a personal injuries claim, to deal freely with their property (ie, the damages awarded to them in pursuance of their common law or statutory rights).
16. Under existing law, a court order for payment of damages for personal injury is enforceable for a period of 12 years. This means that a person with such an order could seek to enforce it against an offender who had no assets at the time the order was made but who acquired some assets (eg, an award of damages) during that 12-year period.
17. The Bill gives a person who did not bring a civil action against an offender within the statute of limitations another, limited, opportunity in which to bring that action knowing that, if successful, it could be enforced against the trust fund. The Bill puts them on the same footing as a person who brought a successful action for damages within the statute of limitations period.
18. Mitigating against any trespass on an offender's rights are the following factors provided for under the Bill:
 - (a) a person who can claim upon the fund must have suffered an injury that on the civil standard constitutes an offence;
 - (b) a person seeking compensation from the trust fund must satisfy a court of the merit of their claim, according to the standards normally applied to civil claims for personal injury;
 - (c) the period in which a claim can be made on the trust is limited, protecting the offender from the possibility of claims being made against them for an indefinite period of time;
 - (d) any surplus remaining in the fund after all claims are finalised are to be released to the offender; and
 - (e) there is a right of appeal on a question of law.

19. The Committee is of the view that, having regard to the mitigating provisions in the Bill, the trespass on an offender's right to deal freely with his or her property is not undue.

Discrimination

20. The Committee notes that the Bill extends the statute of limitations only in relation to one class of plaintiff: victims of crime who suffered personal injury as a result. It applies only to offenders and not to anyone else who has been awarded damages and against whom there may be outstanding or potential claims for damages for personal injuries. In this way, the Bill may be said to be discriminatory.

21. However, the Committee notes that right to be free from discrimination is not an absolute right and must be balanced against other competing rights and public interest considerations. The Committee also notes that the limited extension of the statute of limitations will allow victims of crimes to try to obtain an order for damages that can be enforced. In addition, the Committee notes that the Bill limits the adverse impact on a defendant by providing for the matters set out above at paragraph 18.

22. The Committee is of the view that, having regard to the limitations in the Bill, it does not unduly trespass on an offender's right to be free from discrimination.

The Committee makes no further comment on this Bill.

3. CRIMES AMENDMENT (PROTECTION OF INNOCENT ACCUSED) BILL 2005*

Date Introduced: 24 May 2005
House Introduced: Legislative Council
Member Responsible: The Hon David Oldfield MLC

Purpose and Description

1. The object of this Bill is to amend the *Crimes Act 1900*:
 - (a) to prohibit the publication of information that would identify, or would be likely to lead to the identification of, a person accused of having committed a crime before that person is charged, and
 - (b) to provide that a court may order the publication of a notice of acquittal of a person in certain cases.

Background

2. This Bill is similar to a Bill of the same name, introduced into the Legislative Council by the Hon David Oldfield on 4 September 2003. After its first reading in the Legislative Council, that Bill was withdrawn and discharged from the Business Paper on 11 March 2004.

The Bill

3. The Bill creates a new offence of publishing and broadcasting information that identifies a person accused of having committed a crime before that person is charged with an offence [proposed s 583].
4. The maximum penalty for this offence is as follows:
 - for an individual, 200 penalty units (\$22,000) or 2 years imprisonment or both;
 - for a corporation, 4,000 penalty units (\$440,000).
5. The Bill states that this offence is a strict liability offence. However, it excludes some official publications that might identify an accused person, namely publications:
 - (a) authorised by the Commissioner of Police for the purpose of apprehending a person who is accused of having committed an offence,
 - (b) authorised by a person who has been accused of having committed an offence regarding the accusation,
 - (c) made after the death of the person accused of having committed an offence.
6. The Bill also proposes new section 584, which provides that a court that acquits a person of an offence may order the publication of a notice of acquittal of a person in certain cases. Failure to comply with such an order is also an offence. The maximum penalty for this offence is the same as for the offence of publishing or broadcasting the identity of an accused person under proposed section 583.

Issues Considered by the Committee

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

Strict liability: Proposed section 583

7. Proposed section 583(4) of the Bill provides that the offence of publishing or broadcasting the name of an accused person is a *strict liability offence*.
8. Strict liability is often imposed for regulatory offences (eg, driving a car without a current registration) where there is a need to ensure persons take all reasonable steps to avoid the offence. Otherwise, the Committee is of the view that providing for strict liability is a very serious matter as such offences remove the need for the prosecutor to prove that a person had the “mens rea” or “criminal mind” when they committed the offence. Therefore, strict liability offences should be:
 - imposed only after careful consideration of all available options;
 - subject to defences wherever possible where contravention appears reasonable; and
 - have only limited monetary penalties and no terms of imprisonment.
9. The Committee notes that the Bill does not provide a defence to this offence, although the common law defence of reasonable and honest mistake of fact remains available.
10. The Committee also notes that the maximum monetary penalty for this offence is very high and that the Bill also proposes a lengthy term of imprisonment.

11. The Committee is of the view that, except in extraordinary circumstances, it is inappropriate for an offence with such heavy penalties to be an offence of strict liability. Therefore, the Committee is of the view that proposed section 583 trespasses on personal rights and liberties.

12. The Committee refers to Parliament the question as to whether this trespass on rights and liberties is undue.

Right to free speech

13. This Bill clearly trespasses on the right to free speech. However, while the right to free speech may be considered essential for a democratic society, it is not absolute and it has long been accepted that, in certain circumstances, freedom of speech needs to be limited to protect the reputation of individuals.

14. The Committee refers to Parliament the question whether the new offence under proposed section 583 is an undue trespass on the fundamental right to free speech.

The Committee makes no further comment on this Bill.

4. DEFAMATION BILL 2005

Date Introduced:	13 September 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon R J Debus MP
Portfolio:	Attorney General

Purpose and Description

1. In November 2004, the Attorneys General of the States and Territories agreed to support the enactment in their respective jurisdictions of uniform model provisions in relation to the law of defamation (the model provisions).
2. The Bill enacts these model provisions, whose principal features are:
 - the retention (with some modifications) of the common law of defamation to determine civil liability for defamation;
 - the abolition of the distinction at common law between slander and libel;
 - the creation of a statutory cap on the amount of damages for non-economic loss that may be awarded in civil proceedings for defamation;
 - the enactment of provisions to facilitate the resolution of civil disputes about the publication of defamatory matter without litigation;
 - the delineation of the respective roles of juries and judicial officers in the jury trial of civil proceedings for defamation by limiting the role of juries to the determination of whether a person has been defamed and leaving the award of damages to judicial officers;
 - the abolition of exemplary and punitive damages in civil proceedings for defamation;
 - the establishment of truth alone as a defence to a civil action for defamation;
 - the imposition of a limitation period for civil actions for defamation of 1 year, subject to an extension (in limited circumstances) to a period of up to 3 years following publication.

Background

3. At the time of the agreement, each State and Territory had different laws governing the tort of defamation. In New South Wales, the civil law of defamation is predominantly governed by the common law as modified and supplemented by the NSW *Defamation Act 1974* (Defamation Act). The law of criminal defamation is partly codified by Part 5 of that Act.

The Bill

4. The Bill consists of the following:
 - Part 1 Preliminary

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- Part 2 General principles
 - Division 1 Defamation and the general law
 - Division 2 Causes of action for defamation
 - Division 3 Choice of law
 - Part 3 Resolution of civil disputes without litigation
 - Division 1 Offers to make amends
 - Division 2 Apologies
 - Part 4 Litigation of civil disputes
 - Division 1 General
 - Division 2 Defences
 - Division 3 Remedies
 - Division 4 Costs
5. The Bill does not define the circumstances in which a person has a cause of action for defamation, but operates by reference to the elements of the tort of defamation at general law⁶: if a plaintiff does not have a cause of action for defamation at general law, the plaintiff will not (subject to the modification of the general law effected by proposed s 7) have a cause of action for the purposes of the proposed Act.
6. An important definition in the Bill is that of *matter*, which is:
- an article, report, advertisement or other thing communicated by means of a newspaper, magazine or other periodical;
 - a program, report, advertisement or other thing communicated by means of television, radio, the Internet or any other form of electronic communication;
 - a letter, note or other writing;
 - a picture, gesture or oral utterance; or
 - any other thing by means of which something may be communicated to a person.

Cause of action

7. At general law, a plaintiff has a cause of action for defamation against a defendant if the defendant publishes defamatory accusations or charges (*imputations*) about the plaintiff to at least one other person (other than the defendant or his or her spouse).
8. The courts have formulated the test for determining what is defamatory in various ways. Examples include (but are not limited to) the following:
- “[Words that] tend to lower the plaintiff in the estimation of right-thinking members of society generally”;⁷ and

⁶ “General law” is defined as the common law and equity: proposed s 4.

⁷ *Sim v Stretch* [1936] 2 All ER 1237 at 1240 per Lord Atkin.

- “In order that one person may establish against another a civil cause of action [for defamation], it is essential that he should prove (1) that a statement or other representation has been made ... of a kind likely to lead ordinary decent folk to think the less of the person about whom it is made; (2) that it was about him that it was made; and (3) that the other has published it to at least one third party (who is not the husband or wife of the other)”.⁸

Libel and slander

9. The Bill abolishes the general law distinction between libel and slander.⁹ Previously, if a matter were libellous, the plaintiff did not need to prove that a material loss (*special damage*) had been sustained. However, if a matter were slanderous, the plaintiff had usually to prove such special damage in order for the matter to be actionable.
10. Accordingly, *all* publications of defamatory matter will be actionable without proof of special damage.¹⁰

Causes of action

11. The Bill provides for a *single* cause of action for defamation in relation to the publication of defamatory matter, even if there is more than one defamatory imputation about the person [proposed s 8].¹¹
12. A corporation cannot have a cause of action for defamation, unless:
 - the objects for which the corporation was formed did not include obtaining financial gain for its members or corporators; or
 - the corporation employed fewer than 10 persons, was not related to another corporation, and was not a public body [proposed s 9].
13. No civil action for defamation may be asserted, continued or enforced in relation to a deceased person, whether or not published before or after the person’s death; or against a publisher of defamatory matter who is deceased [proposed s 10].

Choice of law

14. The Bill provides for two choice of law rules where a civil cause of action is brought in a NSW court in relation to the publication of defamatory matter that occurred in an Australian jurisdictional area [see proposed s 11(5)].
15. The proposed section creates two such rules:
 - where a matter is published wholly within a *single* Australian jurisdictional area, a NSW court must apply the substantive law applicable in that Australian jurisdictional area;

⁸ *Consolidated Trust Co Ltd v Browne* (1948) 49 SR (NSW) 86 at 88 per Jordan CJ

⁹ Currently, libel is the publication of defamatory matter in a written or other permanent form while slander is the publication of defamatory matter in a form that is temporary and merely audible

¹⁰ The distinction has already been abolished in most Australian jurisdictions under existing law. The only exceptions are South Australia, Victoria and Western Australia.

¹¹ Under the existing NSW law, each defamatory imputation founded a separate cause of action.

Defamation Bill 2005

- where the same, or substantially the same, matter is published in more than one Australian jurisdictional area by a particular person, to 2 or more persons, a NSW court must apply the substantive law applicable in the jurisdictional area with which the harm occasioned has the closest connection.¹²

Offers to make amends

16. A publisher may make an offer to *make amends* to an aggrieved person, within 28 days of the publisher being given a concerns notice by the aggrieved person that the matter in question is or may be defamatory, or if a defence in an action for defamation brought by the aggrieved person has been served [proposed s 13 and s 14].
17. If the publisher carries out the terms of an accepted offer, the aggrieved person cannot assert, continue or enforce an action for defamation against the publisher, even if the offer were limited to any particular defamatory imputations.¹³

Litigation of civil disputes

18. A plaintiff or defendant in defamation proceedings may elect to have the proceedings determined by a jury unless the court orders otherwise¹⁴:
 - the *jury* is to determine whether the defendant has published defamatory matter and, if so, whether any defence raised by the defendant has been established;
 - the *judicial officer* is to determine the amount of damages (if any) that should be awarded in successful proceedings [proposed s 22].
19. Proposed s 22 makes it clear that it does not require or permit a jury to determine any issue that, at general law, is to be determined by the judicial officer.

¹² In determining which area has the closest connection with the harm, the court may take into account any matter it considers relevant, including:

- (a) the place at the time of publication where the plaintiff was ordinarily resident or, in the case of a corporation that may assert a cause of action for defamation, the place where the corporation had its principal place of business at that time, and
- (b) the extent of publication in each relevant Australian jurisdictional area, and
- (c) the extent of harm sustained by the plaintiff in each relevant Australian jurisdictional area.

The choice of law rules enacted by the proposed section apply only the *substantive* law of the jurisdiction concerned: rules which are directed to governing or regulating the mode or conduct of court proceedings are procedural and all other provisions or rules are to be classified as substantive: *John Pfeiffer Pty Limited v Rogerson* (2000) 203 CLR 503 at 544 - 545.

¹³ It is a defence if the publisher made an offer of amends that was not accepted and the offer was made as soon as practicable after the publisher became aware that the matter in question is or may be defamatory, the publisher was ready and willing to carry out the terms of the offer, and the offer was reasonable in the circumstances [proposed s 18]. Any apology made will not constitute an admission of liability, and will not be relevant to the determination of fault or liability, in connection with any defamatory matter published by the person [proposed s 20]. Similarly, a court must order costs against an unsuccessful party to proceedings for defamation to be assessed on an indemnity basis if the court is satisfied that the party unreasonably failed to make or accept a *settlement offer* made by the other party to the proceedings: proposed s 40.

¹⁴ The grounds on which a court may order otherwise include, but are not limited to, situations where:

- the trial requires a prolonged examination of records; or
- the trial involves any technical, scientific or other issue that cannot be conveniently considered and resolved by a jury.

Defences

20. A defence to the publication of defamatory matter under Part 4 Division 2 of the Bill is *additional* to any other defence or exclusion of liability available to the defendant apart from the proposed Act, including under the general law [proposed s 24]. Proposed s 24 also provides that the general law applies to determine whether a publication of defamatory matter was actuated by malice.¹⁵

Truth

21. It is a defence if the defendant proves that the defamatory imputations carried by the matter of which the plaintiff complains are *substantially true*.¹⁶
22. The Bill also provides for a defence of *contextual truth* [proposed s 26]. This is where there are a number of defamatory imputations, but the plaintiff has chosen not to proceed with all of them. In that circumstance, the defendant may have a defence of contextual truth if the defendant proves:
- the matter carried, in addition to the defamatory imputations of which the plaintiff complains, one or more other imputations (*contextual imputations*) that are substantially true; and
 - the defamatory imputations do not further harm the reputation of the plaintiff because of the substantial truth of the contextual imputations.¹⁷
23. Unlike the general law, the defence of contextual truth created by proposed s 26 will apply even if the contextual imputations are separate and distinct from the defamatory imputations of which the plaintiff complains.

Absolute privilege

24. It is a defence if the matter was published on an occasion of *absolute privilege*. Such occasions include:
- the publication of matter in the course of the proceedings of a parliamentary body of any country;
 - the publication of matter in the course of the proceedings of an Australian court or Australian tribunal; or
 - the publication of matter by persons or bodies in any circumstances specified in Sch 1 to the proposed Act.¹⁸

¹⁵ At general law, a publication of matter is actuated by malice if it is published for a purpose or with a motive that is foreign to the occasion that gives rise to the defence at issue: see *Robert v Bass* (2002) 212 CLR 1 at 30 - 33. However, the Bill provides that in awarding damages, a court must generally disregard the malice or other state of mind of the defendant at the time the relevant matter was published: proposed s 36.

¹⁶ The term substantially true is defined in proposed s 4 to mean true in substance or not materially different from the truth. It reflects the defence of justification at general law where truth alone is a defence to the publication of defamatory matter. Previously in New South Wales, the defendant had to prove both that the matter was true, *and* that it was in the public interest for it to be published.

¹⁷ At general law, the truth of each defamatory imputation must be proved to make out the defence of justification, unless it can be established that the imputations were not separate and distinct but, as a whole, carried a "common sting". In that case, the defence of justification is made out if the defendant can show that the "common sting" is true: see *Polly Peck (Holdings) Plc v Trefold* [1986] QB 1000 at 1032.

Public documents and public concern

25. It is a defence if the defendant proves that the matter was contained in:
- a public document or a fair copy of a public document; or
 - a fair summary of, or fair extract from, a public document [proposed s 28].
26. It is a defence if the defendant proves that the matter was, or was contained in, a fair report of any proceedings of public concern; or if the defendant proves that:
- the matter was, or was contained in, an earlier published report of proceedings of public concern;
 - the matter was, or was contained in, a fair copy of, a fair summary of, or a fair extract from, the earlier published report; and
 - the defendant had no knowledge that would reasonably make the defendant aware that the earlier published report was not fair [proposed s 29].¹⁹
27. Proposed s 28 provides an extensive and exclusive definition of *public document*; proposed s 29 provides an extensive definition of *proceedings of public concern*, and extends to a larger class of proceedings than the existing general law defence.
28. Both the defences are defeated if, and only if, the plaintiff proves that the defamatory matter was not published honestly for the information of the public, or the advancement of education.

Recipients

29. It is a defence to the publication to a person (the *recipient*) if the defendant proves that:
- the recipient has an interest or apparent interest in having information on some subject;
 - the matter is published to the recipient in the course of giving to the recipient information on that subject; and
 - the conduct of the defendant in publishing that matter is reasonable in the circumstances [proposed s 30(1)].
30. This is broader than the current defence, as the recipient's interest is not as limited as at general law.²⁰

¹⁸ The proposed section extends the defence of absolute privilege to the publication of matter that would be subject to absolute privilege under the corresponding law of another Australian jurisdiction.

¹⁹ At general law, fair and accurate reports of proceedings of certain persons and bodies are subject to qualified privilege. As the defence at common law is a defence of qualified privilege, it can be defeated by proof that the publication of the defamatory matter was actuated by malice.

²⁰ Proposed s 30 lists a number of factors that the court may take into account in determining whether the conduct of the defendant was reasonable. As the defence created is one of qualified privilege, it can be defeated on the same grounds as at general law, eg, if the plaintiff proves that the publication was actuated by malice. It alters the existing NSW law by requiring the court to take into account (i) whether it was in the public interest in the circumstances for the matter published to be published expeditiously; and (ii) the nature of the business environment in which the defendant operates.

Honest opinion

31. There are a series of defences where an opinion is honestly held by its maker, rather than being a statement of fact [proposed s 31]. Proposed s 31 distinguishes between three situations: defendant; employee or agent; and third party. In each case, the defence is made out if it is proved that the relevant person held the opinion, the opinion related to a matter of public interest and the opinion was based on proper material.²¹
32. Proposed s 31 largely reflects the existing defence of fair comment, but clarifies the position at general law in relation to the publication of the opinions of employees, agents and third parties.

Subordinate distribution

33. It is a defence if the defendant proves that:
- the defendant published the matter merely in the capacity, or as an employee or agent, of a subordinate distributor;
 - the defendant neither knew, nor ought reasonably to have known, that the matter was defamatory; and
 - the defendant's lack of knowledge was not due to any negligence on the part of the defendant.²²
34. The defence largely follows the existing defence of *innocent dissemination*.²³ However, proposed s 32 seeks to clarify the position of providers of Internet and other electronic and communication services, so that, for example, the provider of an Internet email service will generally not be treated as being the first or primary distributor of emailed defamatory matter, unless it can be shown that the service provider was the author or originator of the matter or had the capacity to exercise editorial control over the matter.

Remedies

35. In determining damages, a court must ensure that there is an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded [proposed s 34].

²¹ **Proper material**, for the purposes of proposed s 31, is material that:

- (a) is substantially true;
- (b) was published on an occasion of absolute or qualified privilege (whether under the proposed Act or at general law); or
- (c) was published on an occasion that attracted the protection of a defence under the proposed section or proposed s 28 or s 29.

²² A person will be a subordinate distributor of matter under proposed s 32 if the person:

- (a) was not the first or primary distributor of the matter;
- (b) was not the author or originator of the matter; and
- (c) did not have any capacity to exercise editorial control over the content of the matter (or over the publication of the matter) before it was first published.

²³ See, eg, *Thompson v Australian Capital Television Pty Ltd* (1996) 186 CLR 574. It is also a defence if the defendant proves that the circumstances of publication were such that the plaintiff was unlikely to sustain any harm: proposed s 33.

36. A limit of \$250,000 on damages for non-economic loss is imposed: damages in excess of this may only be awarded where a court is satisfied that the circumstances of publication are such as to warrant *aggravated damages* [proposed s 35(2)]. A court cannot award exemplary or punitive damages for defamation [proposed s 37].

Issues Considered by the Committee

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| <p>37. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

5. DUTIES AMENDMENT (ABOLITION OF VENDOR DUTY) BILL 2005

Date Introduced: 13 September 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Morris Iemma MP
Portfolio: Treasurer

Purpose and Description

1. This Bill amends the *Duties Act 1997* to abolish vendor duty, and duty on the disposal of interests in land rich companies and trust schemes, on and from 2 August 2005.²⁴

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

²⁴ 2 August 2005 was the date on which the abolition of these duties was first announced.

6. LOCAL GOVERNMENT AMENDMENT (STORMWATER) BILL 2005

Date Introduced: 13 September 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Kerry Hickey MP
Portfolio: Local Government

Purpose and Description

1. The Bill amends the *Local Government Act 1993* to allow councils to make and levy annual charges for the provision of stormwater management services.
2. Regulations made under the *Local Government Act 1993* are to cap the annual charge that a council may levy for the provision of these services.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

7. PROPERTY LEGISLATION AMENDMENT BILL 2005

Date Introduced:	15 September 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Tony Kelly MLC
Portfolio:	Lands

Purpose and Description

1. The object of this Bill is to make miscellaneous amendments to the law relating to real property by amending the following Acts to achieve the aims described below:
 - (a) the *Real Property Act 1900* so as:
 - (i) to require the boundaries of land to be adequately defined before an ordinary folio of the Register kept under that Act (the Register) is created for the land instead of a qualified folio;
 - (ii) to require the Registrar-General to have regard to a survey report and an identification survey before cancelling a caution on a qualified folio after receipt of an official title search under the *Conveyancing Act 1919*;
 - (iii) to authorise the Registrar-General to record a note in a folio of the Register indicating that land has the benefit of a permit to enclose a road or watercourse, or a licence authorising the use or occupation of Crown land, granted under the *Crown Lands Act 1989*, or a permissive occupancy granted over Crown land;
 - (iv) to allow the creation of easements, profits à prendre and restrictions on the use of land that will only affect land subject to the provisions of the *Real Property Act 1900* (otherwise than by the registration of an instrument under section 88B of the *Conveyancing Act 1919*) where the same person will be the proprietor of the parcels burdened and benefited by them;
 - (v) to provide for the registration in the Register of dealings affecting a common law lease that is recorded as an encumbrance in the Register;
 - (b) the *Conveyancing Act 1919* so as to remove a reference to a “general order” setting costs that is no longer provided for by that Act and omit an amendment to another Act that has already taken effect;
 - (c) the *Strata Schemes (Freehold Development) Act 1973* and *Strata Schemes (Leasehold Development) Act 1986* to make it clear that a by-law cannot be made under either of those Acts allowing the proprietors in a strata scheme to avoid any of their responsibilities under a strata management statement;
 - (d) the *Local Government Act 1993* to provide for the dedication and vesting in a council of land as a council public reserve, and the vesting in a council of land as a drainage reserve, on registration of a transfer or conveyance of the land to the council for that purpose (as may presently be effected by the registration of a plan of subdivision that identifies land as a “public reserve” or “drainage reserve”).

Property Legislation Amendment Bill 2005

2. The Bill also makes some minor amendments to the *Real Property Act 1900* that are consequential on other amendments described above, repeals an archaic and redundant provision (section 99 of that Act) and makes other minor amendments by way of statute law revision.

Issues Considered by the Committee

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| <ol style="list-style-type: none">3. 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.

8. PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT BILL 2005

Date Introduced:	13 September 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon RJ Debus MP
Portfolio:	Environment

Purpose and Description

1. This Bill amends the *Protection of the Environment Operations Act 1997* (the Principal Act) and other legislation by, amongst other things:
 - (a) extending the matters that may be taken into account when considering whether a person is a fit and proper person to hold an environment protection licence (a licence);
 - (b) making other provision with respect to licences, including in relation to conditions that may be imposed on licences and suspension and revocation of licences;
 - (c) requiring the environmental values of water to be considered in relation to licensing matters and prevention notices;
 - (d) increasing penalties for offences;
 - (e) making provision for the regulation of land pollution and waste, including new offences relating to land pollution and the supply of false information about waste, and amendment of existing offences;
 - (f) providing for the use of smoke abatement notices to control smoke pollution from residential premises and for offences for failure to comply with notices;
 - (g) conferring additional powers on authorised officers and make other provision in relation to authorised officers;
 - (h) making provision for enforcement, including providing for voluntary undertakings to the Environment Protection Authority (the EPA) and their enforcement;
 - (i) enabling noise control notices to be issued in relation to proposed activities;
 - (j) providing for green offsets to be implemented under licence conditions and to enable provision for the operation and elements of green offsets to be made by regulations;
 - (k) providing for the enforcement provisions contained in Chapter 8 of the Principal Act to apply in respect of the *Environmentally Hazardous Chemicals Act 1985*; and
 - (l) extending from 3 years to 4 years the interval between the making of reports by the EPA on the state of the environment.

Background

2. In the second reading speech, the Minister stated:

The bill I am introducing today is the result of a thorough review of the *Protection of the Environment Operations Act*, including an extensive consultation process involving industry associations, environment and community groups, government agencies, local councils and individuals. This review concluded that the Act is an overwhelming success and effectively protects the State's environment. However, some amendments were suggested, and have been proposed in this bill, to ensure that New South Wales remains at the forefront of environment protection and regulatory innovation.

The bill introduces some significant new provisions and makes a number of smaller amendments that will improve the day-to-day operation of the Act.

The House will recall that I tabled an exposure bill on 29 June 2005. The bill was simultaneously released for public comment. The feedback on the exposure bill was generally extremely positive. A number of minor amendments were made to the original bill to reflect the comments received. Some of the main changes relate to the following areas: further specifying the definition of "waste", clarifying the defence for providing false or misleading information about waste, inserting various factors the Environment Protection Authority must be satisfied of before imposing green offset requirements on licences.²⁵

The Bill

3. The Bill amends the *Protection of the Environment Operations Act 1997* (and other Acts and regulations) in relation to penalties, regulation of waste, land pollution, water pollution, smoke pollution from residences, green offsets, environment protection licences, reports and other related matters.

4. Specifically, the amendments include:

- increasing penalties for many offences under the Principal Act from \$250,000 for corporations to \$1,000,000, and for individuals from \$120,000 to \$250,000;²⁶
- introducing a new distinction between penalties for wilful and negligent commission of "tier 1" offences under the Act;²⁷
- creating new offences in relation to polluting land and supplying false or misleading information about waste and extending other existing offences;
- removing the "no-knowledge defence to corporate responsibility offences;

²⁵ The Hon RJ Debus MP, Minister for the Environment, Second Reading Speech, Legislative Assembly *Hansard*, 13 September 2005.

²⁶ See offences under sections 47-49, 64, 66(2), 86(3), 88(3), 91,97, 102, 112,113, 119, 123, 132, 141, 143, 144, 152, 155-159, 162, 167, 211. The penalty for the offence of littering under section 145 is to be increased from 10 penalty units to 20 penalty units (\$2,200).

²⁷ Under section 114 of the Act, "tier 1 offences" are the offences under Part 5.2 of the Act. They are the most serious offences under the Act. Under the Bill, the maximum penalty for the more serious tier 1 offence committed by a corporation is \$5,000,000 for a wilfully committed offence and \$2,000,000 for a negligently committed offence. For a tier 1 offence committed by an individual, the Bill proposes maximum penalties of \$1,000,000 or 7 years imprisonment, or both for wilfully committed offence or \$500,000 or 7 years imprisonment for a negligently committed offence.

- providing that an offender is to meet certain costs in relation to investigation of their offence under the legislation;
- providing for additional alternative sentencing orders;
- establishing a scheme for the giving of court enforceable undertakings by offenders;
- creating a new definition of “waste”:
- enabling noise abatement notices to be given to the State or a public authority; and
- removing the EPA as the appropriate regulatory authority for Sydney Olympic Park.

Issues Considered by the Committee

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

Strict liability offences: Schedule 1, Clause 66 (proposed s 142) & Clause 70 (proposed s 144AA)

5. The Bill creates two new offences that do not include any fault element. Clause 66 provides that a person who pollutes land²⁸ is guilty of an offence [proposed s 142A]. The maximum penalty for this offence is very high:
 - (a) in the case of a corporation—\$1,000,000, and in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues; or
 - (b) in the case of an individual—\$250,000, and in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.
6. Four defences are provided in relation to the offence of polluting land under proposed s 142, although these all relate to the act of polluting itself being legal rather than the knowledge or intention of the accused. These defences are:
 - (i) the action is authorised by regulation [proposed s 142B];
 - (ii) the action is authorised by licence [proposed s 142C];
 - (iii) the person establishes that the substance they place in or on land is a specified pesticide, fertiliser or other substance [proposed s 142D]; and
 - (iv) the person places the polluting substance in or on land that was an unlicensed landfill notified to the EPA in accordance with the legislation [proposed s 142E].
7. Proposed section 144AA creates the new offence of supplying false or misleading information about waste to another person in the course of dealing with the waste. The

²⁸ ***Land pollution or pollution of land*** means placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous:

- (a) that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial, or
 - (b) that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,
- but does not include placing in or on, or otherwise introducing into or onto, land any substance excluded from this definition by the regulations [Schedule 1 [154]].

Protection of the Environment Operations Amendment Bill 2005

maximum penalty for this offence is, in the case of a corporation—\$250,000, or in the case of an individual—\$120,000. It is a defence if the person establishes that they took all reasonable steps to ensure that the information they provided was not false or misleading in a material respect.

8. The Bill also increases the scope of the offence of unlawfully transporting or depositing waste [s 143] to include causing or permitting waste to be so transported and the offence. It also increases the penalty for this offence and the offence of using land as a waste facility without lawful authority [s 144] from \$250,00 to \$1,000,000 for a corporation and from \$120,000 to \$250,000 for an individual.
9. None of the above offences explicitly require proof of any criminal intent by the person who commits them and arguably would be interpreted as imposing at least strict liability.
10. The Bill also increases the penalty for the following existing offences, which do not include a fault element, to \$1,000,000 for a corporation or \$250,000 for an individual:
 - unlicensed carrying on of scheduled activities [ss 48 & 49];
 - failure to comply with a licence condition [s 64];
 - a licence holder supplying false or misleading information [s 66(2)];
 - contravening a notice for breach of licensing requirements [s 86];
 - failure to pay within time a contribution for the licence of a waste facility [s 88];
 - failure, without reasonable excuse, to comply with a clean-up notice [s 91];
 - failure to comply with a prevention notice [s 97];
 - failure, without reasonable excuse, to comply with a prohibition notice [s 102];
 - polluting waters [s 123];
 - polluting air [s 132]; and
 - various offences relating to the sale and maintenance of motor vehicles [ss 155 – 159, 162 & 167].
11. The Committee has previously expressed the view that providing for strict liability is a very serious matter as such offences remove the need for the prosecutor to prove that a person had the “mens rea” or “criminal mind” when they committed the offence. Therefore, strict liability offences should be:
 - imposed only after careful consideration of all available options;
 - subject to defences wherever possible where contravention appears reasonable; and
 - have only limited monetary penalties and no terms of imprisonment.
12. The Committee notes that the commission of these offences could have a highly deleterious effect on the environment.

13. The Committee further notes that heavy penalties may be necessary to provide a real disincentive for the offences. A small monetary penalty could result in the situation where it is more economical for a person to illegally pollute and incur any penalty than to dispose of wastes appropriately.
14. The Committee also notes that it may be appropriate to impose strict liability in relation to matters such as the handling of wastes as it is important to ensure that those who produce and handle such wastes bear responsibility for taking proper precautions to ensure that they do not cause harm.

- 15. The Committee is of the view that strict liability is a very serious matter and should be:**
- **imposed only after careful consideration of all available options;**
 - **subject to defences wherever possible where contravention appears reasonable; and**
 - **have only limited monetary penalties and no terms of imprisonment.**
- 16. The Committee notes that monetary penalties that do not make it uneconomical to commit offences may fail to provide adequate disincentives.**
- 17. The Committee refers to Parliament whether the penalties up to \$1,000,000 for strict liability offences under the Bill inappropriately trespasses on personal rights and liberties.**

The Committee makes no further comment on this Bill.

9. SECURITY INTERESTS IN GOODS BILL 2005

Date Introduced:	15 September 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon R J Debus MP
Portfolio:	Attorney General

Purpose and Description

1. The Bill's objects are to:

- (a) repeal the *Bills of Sale Act 1898* and the regulations made thereunder, and to enact instead provisions modifying the existing law as follows:
 - (i) the outdated distinction between trader's bills of sale and ordinary bills of sale is dispensed with, and the concept of a *security interest in goods* is used instead;
 - (ii) the registration of certain instruments relating to the creation of security interests in goods²⁹ (including interests created by bills of sale) will be optional rather than mandatory;
 - (iii) the period of registration will not be limited to the current period of 5 years;
 - (iv) the registration of a security interest in goods will generally confer priority over unregistered interests and subsequently registered interests over the same goods, but a failure to register an otherwise valid interest will not affect its validity; and
- (b) repeal the *Liens on Crops and Wool and Stock Mortgages Act 1898* (Liens Act)³⁰ and the regulations made thereunder, and to enact instead provisions that modify the existing law as follows:
 - (i) the registration of certain kinds of instruments will create *mortgages* over existing and future crops and wool instead of *liens* over such goods;
 - (ii) the kinds of animals over which a stock mortgage may be granted under the proposed Act is extended beyond sheep, cattle and horses;
 - (iii) the owners of fish that are cultivated or kept for the purposes of aquaculture will be permitted to grant a mortgage under the proposed;
- (c) make consequential amendments to certain Acts and Regulations; and

²⁹ **Goods** is defined in proposed s 3(1) as any chattels personal, fixtures or other things capable of complete transfer by delivery (whether immediately or at any future time), but does *not* include:

- (a) title deeds, negotiable instruments, choses in action or chattel interests in real estate,
- (b) shares or interests in the stock, funds or securities of any of the following:
 - (i) a Government (whether of this State or otherwise);
 - (ii) the Crown or a body representing the Crown (whether in right of this State or otherwise);
- (c) shares or interests in the capital or property of a body corporate (wherever constituted);
- (d) access licences in respect of water granted under the *Water Management Act 2000*; or
- (e) any other thing prescribed by the regulations for the purposes of the definition.

³⁰ A **lien** is the legal right to retain the lawful possession of the property of another until the owner fulfills a legal duty to the person holding the property, such as the repayment of money.

- (d) enact provisions of a savings and transitional nature.

Background

2. The Bills of Sale Act currently requires the registration of certain bills of sale within a specified time after their execution. Its aim is to prevent third parties from being misled into believing that goods to which a bill related were unencumbered, simply because the grantor retained possession of them.
3. The Liens Act currently provides for the following matters:
 - a landholder may grant a preferable lien over crops to be grown on the land to a person who advances money or goods to the landholder as a security for the advance;
 - an owner of sheep may grant a preferable lien over the wool of the sheep to a person who advances money or goods to the owner as a security for the advance; and
 - an owner of sheep, cattle or horses may grant a stock mortgage over such stock.
4. The Liens Act sought to overcome doubts at common law about the efficacy of securities granted over goods that were still in the course of production, and to clarify the rights of the holders of stock mortgages.

The Bill

5. The core of Bill is the ability to grant mortgages over the following:
 - (a) crops, if the relevant person:
 - (i) owns the land;
 - (ii) has exclusive possession of the land and a right to harvest crops that grow or are grown on the land;
 - (iii) holds a lease over the land granted under the *Western Lands Act 1901* (whether or not the lease confers exclusive possession of the land) and has a right to harvest crops that grow or are grown on the land; or
 - (iv) is entitled under a sharefarming agreement³¹ with the owner or lessee of the land to crops (or a share of the crops) that grow or are grown on the land and has obtained the written consent of the owner or lessee to grant the mortgage [proposed s 7]³²;

³¹ A **sharefarming agreement** is an agreement between the owner or lessee of land and another person, under which the other person undertakes to:

- cultivate or otherwise utilise the land; and
- share with the owner or lessee in agreed proportions any crops or other produce, or profits derived from crops or other produce, grown on or derived from the land: proposed s 3(1).

³² Under the *Liens on Crops and Wool and Stock Mortgages Act 1898*, a crop lien may only be granted over agricultural or horticultural crops that have already been sown. However, a crop mortgage may now extend to existing or future crops on the land concerned and also to crops that will be produced on the land in the ordinary course of nature: proposed s 7(2).

Security Interests in Goods Bill 2005

- (b) stock³³ and wool³⁴ [proposed s 12]; and
- (c) aquaculture [proposed s 15].³⁵

Scope of the Bill

6. The Bill does not:
- affect any rule or principle of the common law or equity in relation to security interests in goods, except to the extent that the proposed Act provides otherwise (whether expressly or by necessary implication) [proposed s 5(1)];
 - prevent any person from granting a mortgage or other security interest over agricultural goods under another law, instead of in accordance with the provisions of Part 2 of the proposed Act [proposed 5(2)];
 - apply to or affect any security interest in prescribed goods within the meaning of the *Registration of Interests in Goods Act 1986*, except to the extent provided by certain regulations made under that Act [proposed s 5(3)]; or
 - limit or affect the operation of the Commonwealth *Corporations Act 2001* [proposed s 5(4)].

Issues Considered by the Committee

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

³³ **Wool** is defined to mean the natural fibre from the fleece of sheep, goats, alpacas, llamas or any other kind of stock that produces fleece that can be shorn: proposed s 3(1).

³⁴ **Stock** is defined widely to include any sheep, goats, cattle, horses, swine, poultry, alpacas, llamas, ostriches or other animals (except fish): proposed s 3(1).

³⁵ The terms **aquaculture** and **fish** are defined in proposed s 3(1) to have the same meanings as they have in the *Fisheries Management Act 1994*. In this regard, it should be noted that s 144 of that Act prohibits a person from undertaking aquaculture except under the authority of an aquaculture permit issued under that Act even if the person owns the fish concerned.

10. SPORTING VENUES (OFFENDERS BANNING ORDERS) BILL 2005

Date Introduced:	13 September 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carl Scully MP
Portfolio:	Police

Purpose and Description

1. The Bill's object is to prevent violence and disorder at sporting events by enabling courts to ban persons from attending at or near specified sporting venues where they have been found guilty of certain offences involving violence or disorder at or in connection with certain sporting events.

Background

2. The following background was provided in the second reading speech:

In response to [soccer riots in March and April 2005] Soccer NSW conducted an independent inquiry chaired by Mr Stepan Kerkyasharian. The inquiry's report has now been released and tabled in Parliament.

The report makes the recommendation for legislative change...which permits persons to be banned from future matches... [The Bill] will act as a deterrent to people who may become violent at sporting fixtures. When persons are banned, it adds a further deterrent because if they breach a ban, it is a criminal offence.³⁶

The Bill

3. If a person is found guilty of a *sporting event offence*, he or she may be made the subject of a banning order. Such an order may be made only if the court is satisfied that there are reasonable grounds to believe that it would help to prevent violence or disorder at, or in connection with, any sporting event [proposed s 4(2)].³⁷
4. A banning order may prohibit the person who is the subject of the order from:
 - entering certain specified sporting venues for the purpose of attending a sporting event; and/or

³⁶ The maximum penalty is 50 penalty units (currently \$5,500) or imprisonment for 6 months, or both: proposed s 9. Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 13 September 2005.

³⁷ *Disorder* includes:

- inciting hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins, or against an individual as a member of such a group;
- using threatening words or threatening or abusive behaviour; and
- displaying any writing or other thing that is threatening or abusive.

Sporting Venues (Offenders Banning Orders) Bill 2005

- coming within the immediate vicinity of certain specified sporting venues during, or within 2 hours before or after, a sporting event [proposed s 5].³⁸
5. Any of the following offences is a *sporting event offence* if it occurred at or in connection with a sporting event:³⁹
- an offence involving an act of actual or threatened violence;
 - the offences of riot and affray under the *Crimes Act 1900*;
 - the offence under 20D of the *Anti-Discrimination Act 1977* of serious racial vilification;
 - the offence under s 11B of the *Summary Offences Act 1988* of having custody of an offensive implement in a public place or a school;
 - any offence under the *Crimes Act 1900* relating to the malicious destruction or damage of property;
 - any offence of attempting, conspiring or inciting to commit, or aiding, abetting, counselling or procuring the commission of, an offence referred to above.

Issues Considered by the Committee

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| 6. 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.

³⁸ A sporting event is taken to be held at a sporting venue for the period commencing 2 hours before the event begins and concluding 2 hours after the event has finished: proposed s 9(2).

³⁹ The Bill defines *sporting event* to be a sporting event at a sporting venue at which a fee is charged, or for which membership of a club or association is required, for admission to the venue, or both.

11. STANDARD TIME AMENDMENT (DAYLIGHT SAVING) BILL 2005

Date Introduced: 13 September 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon R J Debus MP
Portfolio: Attorney General

Purpose and Description

1. This Bill amends the *Standard Time Act 1987* to enable the daylight saving period to be changed in future by regulation and extends this period by one week in the year 2006 to coincide with the XVIII Commonwealth Games in Victoria.⁴⁰

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

⁴⁰ In his second reading speech, the Attorney General states:

“The regulatory impact process means that an assessment of any proposed changes to the daylight saving period would be undertaken. The public and peak industry bodies would be given the opportunity to comment on the proposals. Any regulation proposing a change to the daylight saving period would be subject to parliamentary scrutiny and possible disallowance.” (Legislative Assembly *Hansard*, 13 September 2005).

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

12. CHILD PROTECTION (OFFENDERS PROHIBITION ORDERS) BILL 2004

Background

1. The Committee considered the Child Protection (Offenders Prohibition Orders) Bill 2004 at its meeting of 18 June 2004.
2. On 18 June 2004, the Committee wrote to the then Minister to seek his advice as to the reasons for commencing this Bill by proclamation, and a likely commencement date of the Act.

Minister's reply

3. By letter dated 12 September 2005, the Minister advised that the reason for commencing the Bill by proclamation and the delay in commencement was due to the need to resolve implementation issues within NSW Police.

The Committee's Response

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| 4. The Committee thanks the Minister for his reply. |
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PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

18 June 2004

Our Ref:772

The Hon J Watkins MP
Minister for Police
Level 34, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Child Protection (Offenders Prohibition Orders) Bill 2004

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 9 of 2004*.

The Committee notes that this Bill provides that the ensuing Act is to commence on a day or days to be appointed by proclamation.

The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on whatever day it chooses after assent, or not to commence the Act at all. While there may be good reasons why such a discretion is required, the Committee considers that, in some circumstances, it can give rise to an inappropriate delegation of legislative power.

The Committee has therefore resolved to seek your advice as to the reasons for commencing this Bill by proclamation, and a likely commencement date of the Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barry Collier', written over a horizontal line.

**BARRY COLLIER MP
CHAIRPERSON**



NEW SOUTH WALES

**Minister for Police
Leader of the House**

MT3113

Mr R Keith
Committee Manager
Legislation Review Committee
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000



12 SEP 2005

Dear Mr Keith

I write in response to your facsimile of 8 June 2005 concerning the commencement of the Child Protection (Offenders Prohibition Orders) Act.

The Child Protection (Offenders Prohibition Orders) Act commenced on 1 July 2005. The reason for commencing the Bill by proclamation, and the delay in commencement, was due to the need to resolve implementation issues within NSW Police.

I apologise for the delay in advising the Legislation Review Committee of this.

Yours sincerely

**CARL SCULLY MP
Minister for Police**

13. ROAD TRANSPORT (GENERAL) BILL 2004

Background

1. The Committee reported on this Bill in *Legislation Review Digest* No. 1 of 2005. On 17 February 2005, the Committee wrote to the Minister to seek advice in relation to the following two matters.
 - Why an authorised officer, who is given significant powers under the Bill, need not be a member of staff of a public authority and why the Bill does not specify other requirements regarding the qualifications or attributes of persons who may be appointed as authorised officers under the Bill; and
 - Why there is a need for a power under the Bill to make regulations that can impose fees that may also comprise a tax.
2. The Minister replied to the Committee on 14 March 2005 noting that “the definition of ‘authorised officer’ in the above Bill is not limited to those employed by the [RTA], as other road managers, for example, local councils and Police also undertake a road transport enforcement task”.
3. The Committee replied on 1 April 2005 noting that the “other road managers” the Minister referred to were all members of staff of public authorities and again seeking advice as to why an authorised officer need not be a member of staff of a public authority (*Legislation Review Digest* No. 4 of 2005).

Minister’s Response

4. In his response of 19 July 2005, the Minister advised that the Bill is based on national model legislation developed by the National Transport Commission and approved unanimously by all Australian Transport Ministers in November 2003 and that the provision relating to authorised officers are also consistent with the *Road Transport (General) Act 1999*.
5. The Minister also repeated his advice that “authorised officers” may include other road managers such as local councils and NSW police and that enforcement powers would only be delegated to those authorised officers who have received appropriate training.

Committee’s Conclusion

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| <ol style="list-style-type: none">6. The Committee thanks the Minister for his response.7. The Committee is disappointed that the Minister has again not answered its question of why an authorised officer need not be a member of staff of a public authority. |
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PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

1 April 2005

Our Ref: LRC1096

The Hon Michael Costa MLC
Minister for Roads
Level 31 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Road Transport (General) Bill 2004

I refer to the Committee's letter of 17 February 2005 in relation to the above Bill and your letter of 14 March 2005 in response. The Committee has considered your response and thanks you for your reply.

The Committee also resolved to write to you again in relation to its concern that the Bill provides for the appointment of authorised officers who need not be a member of staff of a public authority and does not specify other requirements regarding the qualifications or attributes of persons who may be so appointed and, as a consequence, exercise considerable powers.

The Committee welcomes your assurance that the RTA and the Government intend to appoint only appropriately trained people as authorised officers.

The Committee notes that the examples you cite in your letter of non-RTA employees who may be appointed as 'authorised officers' are, in fact, employees of public authorities, namely the Police Force or a local council. However, the Committee remains concerned that a person who is not a member of staff of any public authority may be appointed as an 'authorised officer' and be given powers that could involve a trespass on individual rights and liberties.

The Committee continues to seek your advice as to why an authorised officer need not be a member of staff of a public authority.

Yours sincerely

A handwritten signature in cursive script that reads 'Peter Primrose'.

Peter Primrose MLC
Chairman



*Minister for Roads
Minister for Economic Reform
Minister for Ports
Minister for the Hunter*



M05/2857

Mr Peter Primrose MLC
Chairman, Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

19 JUL 2005

Dear Mr Primrose

Thank you for your further letter on behalf of the Legislation Review Committee regarding the *Road Transport (General) Act 2005*.

The above Bill is based on national model legislation developed by the National Transport Commission and approved unanimously by all Australian Transport Ministers in November 2003. The provisions relating to authorised officers reflect these national model laws and are also consistent with the current *Road Transport (General) Act 1999*.

As I previously outlined, I'm advised the definition of 'authorised officers' in the above Bill is not limited to those employed by the RTA, as other road managers, such as local councils and NSW Police also undertake a road transport enforcement task. The Committee may again be assured that it is the intent of the RTA and the Government that the provisions relating to enforcement powers in the Bill will only be delegated to those authorised officers who have received appropriate training.

If you require further information you may wish contact Mr Peter McMahon, A/General Manager, Compliance and Freight Strategy, RTA on 9218 6662.

Yours sincerely


MICHAEL COSTA

Level 31, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Tel 9228 5665 Fax 9228 5699

Part Two – Regulations

SECTION A: REGULATIONS ABOUT WHICH THE COMMITTEE IS SEEKING FURTHER INFORMATION

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Adoption Amendment (Adoption Service Providers) Regulation 2005	01/07/05	3312	12/09/05	
Centennial Park and Moore Park Trust Regulation 2004	27/08/04	6699	05/11/04 29/04/05	21/04/05
Companion Animals Amendment (Penalty Notices) Regulation 2005	19/08/05	4579	12/09/05	
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005	29/07/05	4033	12/09/05	
Legal Profession Amendment (Advertising) Regulation 2005	15/06/05	2279	12/09/05	
Stock Diseases General (Amendment) Regulation 2005	30/06/05	3277	12/09/05	
Workers Compensation Amendment (Advertising) Regulation 2005	15/06/05	2288	12/09/05	

SECTION B: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
<p>Hunter-Central Rivers Catchment Management Authority Regulation 2005</p> <ul style="list-style-type: none">• Letter dated 20/06/05 from the Committee to the then Minister for Natural Resources• Letter dated 04/09/05 from the Minister for Natural Resources to the Committee	<p>13/05/05 page 1663</p>

1. Hunter-Central Rivers Catchment Management Authority Regulation 2005



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

20 June 2005

Our Ref: LRC 1251
Your Ref:

The Hon. Craig Knowles MP
Minister for Infrastructure, Planning & Natural Resources
Level 33 Governor Macquarie Tower
1 Farrer Place Sydney NSW 2000

Dear Minister

Hunter-Central Rivers Catchment Management Authority Regulation 2005

Pursuant to its obligations under section 9 of the *Legislation Review Act 1987*, the Committee has resolved to write to you in relation to clause 7, which provides that the Authority may add to the amount of catchment contribution any reasonable expenses incurred in tracing the person liable to pay the catchment contribution. Clause 7 allows those expenses to be recovered as catchment contributions at the same time as any catchment contributions and without the need to give notice concerning them.

The Committee notes that this section is identical to section 605 of the *Local Government Act* in relation to the collection of rates or other charges by local councils.

Notwithstanding that fact, the Committee is of the view that, in the interests of fairness and transparency, all charges (including expenses relating to tracing a person) should be clearly identified as such and, where practicable, should be itemised in each case.

The Committee seeks your assurance that such charges will be clearly identified and, where practicable, itemised.

Yours sincerely

A handwritten signature in cursive script that reads 'Peter Primrose'.

Peter Primrose MLC
Chairman

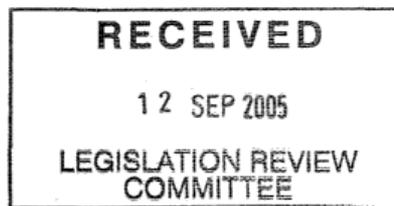
MINISTER FOR NATURAL RESOURCES
 MINISTER FOR PRIMARY INDUSTRIES
 MINISTER FOR MINERAL RESOURCES



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DO5/3649

The Hon Peter Primrose MLC
 Chairman
 Legislation Review Committee
 Parliament of New South Wales
 Macquarie Street
 SYDNEY NSW 2000



Dear Mr Primrose *Peter*

I refer to your letter to the former Minister for Natural Resources, the Hon Craig Knowles MP, on behalf of the Legislation Review Committee concerning the Hunter-Central Rivers Catchment Management Authority Regulation 2005.

The Regulation authorises the Hunter-Central Rivers Catchment Management Authority (CMA) to enter into agreements with local agencies for the collection of catchment contributions in the Hunter Catchment. Under these arrangements Hunter local government councils serve notices on behalf of the CMA as part of the council rate notice and collect the catchment contribution and council rate in a single combined operation. Costs to the CMA, including expenses of tracing persons liable to pay the catchment contribution, are thereby minimised.

Cost effectiveness requires the catchment contribution process to mirror the council rate collection process. If the CMA were to require councils to use procedures that differ from the local government procedures additional costs are likely to be incurred, which would either be passed on to ratepayers, or reduce the funding available for catchment activities.

I agree that the Regulation needs to be implemented fairly and transparently, and the CMA will request that, where practicable, councils identify and itemise the expenses incurred in tracing persons liable to pay catchment contributions.

If you require further information about this matter, please contact the Hunter-Central Rivers CMA General Manager, Mr Glenn Evans, on telephone number 4930 1030.

Yours sincerely

IAN MACDONALD MLC

Appendix 1: Index of Bills Reported on in 2005

	Digest Number
Anti-Discrimination Amendment (Religious Tolerance) Bill 2005*	10
Appropriation Bill 2005	7
Appropriation (Budget Variations) Bill 2005	6
Appropriation (Parliament) Bill 2005	7
Appropriation (Special Offices) Bill 2005	7
Brigalow and Nandewar Community Conservation Area Bill 2005	7
Building Legislation Amendment (Smoke Alarms) Bill 2005	9
Building Professionals Bill 2005	7
Civil Liability Amendment (Food Donations) Bill 2004	1
Civil Liability Amendment (Offender Damages) Bill 2005	2, 3
Civil Liability Amendment (Offender Damages Trust Fund) Bill 2005	10
Civil Procedure Bill 2005	5
Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005*	3
Coal Acquisition Amendment (Fair Compensation) Bill 2005	5
Courts Legislation Amendment Bill 2005	7
Court Security Bill 2005	2
Crimes Amendment (Grievous Bodily Harm) Bill 2005	3
Crimes Amendment (Protection of Innocent Accused) Bill 2005*	10
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	6
Criminal Appeal Amendment (Jury Verdicts) Bill 2004*	3
Criminal Assets Recovery Amendment Bill 2005	7
Criminal Procedure Amendment (Evidence) Bill 2005	3
Criminal Procedure Further Amendment (Evidence) Bill 2005	4
Crown Lands Amendment (Access to Property) Bill 2005*	4
Crown Lands Legislation Amendment Bill 2005	7
Defamation Bill 2005	10
Drug Misuse and Trafficking Amendment Bill 2005	8
Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005	6
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Duties Amendment (Abolition of Vendor Duty) Bill 2005	10
Electricity Supply Amendment Bill 2005	2, 5

	Digest Number
Energy Administration Amendment (Water and Energy Savings) Bill 2005	5
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004	1
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005	7
Fair Trading Amendment (Responsible Credit) Bill 2005*	6
Fire Brigades Amendment (Community Fire Units) Bill 2005	7
Fiscal Responsibility Bill 2005	7
Fisheries Management Amendment (Catch History) Bill 2005*	6
Gambling (Two-up) Amendment Bill 2005	7
Game and Feral Animal Control Amendment Bill 2005	5
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Independent Commission Against Corruption Amendment Bill 2005	2, 3
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Local Government and Valuation of Land Amendment (Water Rights) Bill 2005	9
Marine Safety Amendment (Random Breath Testing) Bill 2004	1
National Park Estate (Reservations) Bill 2005	7
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National Parks and Wildlife (Further Adjustment of Areas) Bill 2005	9
Occupational Health and Safety Amendment (Workplace Deaths) Bill 2005	7
Parliamentary Electorates and Elections Amendment (Voting Age) Bill 2005*	9
Passenger Transport Amendment (Maintenance of Bus Services) Bill 2005	8
Pawnbrokers and Second-hand Dealers Amendment Bill 2005	8
Petroleum (Submerged Lands) Amendment (Permits and Leases) Bill 2005	7
Photo Card Bill 2004	1
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	2
Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill 2005	7
Prisoners (Interstate Transfer) Amendment Bill 2005	4, 5
Property Legislation Amendment Bill 2005	10

	Digest Number
Protection of Agricultural Production (Right to Farm) Bill 2005*	4
Protection of the Environment Operations Amendment Bill 2005	10
Road Transport (General) Bill 2004	1, 4
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	1, 4, 7
Rural Workers Accommodation Amendment Bill 2005	7
Security Industry Amendment Bill 2005	9
Security Interests in Goods Bill 2005	10
Sheriff Bill 2005	2
Smoke-free Environment Amendment (Motor Vehicle Prohibition) Bill 2005*	9
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	1
Sporting Venues (Offenders Banning Orders) Bill 2005	10
Standard Time Amendment (Co-ordinated Universal Time) Bill 2005	2
Standard Time Amendment (Daylight Saving) Bill 2005	10
State Revenue Legislation Amendment Bill 2005	8
State Revenue Legislation Amendment (Budget Measures) Bill 2005	7
Statute Law Miscellaneous Provisions Bill 2005	8
Surveying Amendment Bill 2005	7
Sydney 2009 World Masters Games Organising Committee Bill 2005	7
Sydney University Settlement Incorporation Amendment Bill 2005*	7
Terrorism Legislation Amendment (Warrants) Bill 2005	8
Transport Administration Amendment (Transport Levy For Major Events) Bill 2005	2
Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005*	2
Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Bill 2005	7
Water Efficiency Labelling and Standards (New South Wales) Bill 2005	3
Workplace Surveillance Bill 2005	6

Appendix 2: Index of Ministerial Correspondence on Bills for 2005

Bill	Minister/Member	Letter sent	Reply	Digest 2004	Digest 2005
Building Professionals Bill 2005	Minister for Infrastructure and Planning (Planning Administration)	03/06/05	22/06/05		7, 9
Child Protection (Offender Prohibition Orders) Bill 2004	Minister for Police	18/06/04	12/09/05	6	10
Civil Liability Amendment (Offender Damages) Bill 2005	Minister for Justice	01/03/05	08/03/05		2, 3, 5
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05			6
Criminal Procedure Further Amendment (Evidence) Bill 2005	Attorney General	01/05/05	21/06/05		4, 9
Electricity Supply Amendment Bill 2005	Minister for Energy and Utilities	01/03/05	30/03/05		2, 5
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005	Minister for Infrastructure and Planning	03/06/05	24/06/05		7, 9
Gaming Machines Amendment Bill 2005	Minister for Gaming and Racing	20/06/05			8
Independent Commission Against Corruption Amendment Bill 2005	Premier	01/03/05	02/03/05		2, 3
Legal Profession Amendment Bill 2005					8
Legal Profession Bill 2004	Attorney General	17/02/05	07/04/05		1, 5
Licensing And Registration (Uniform Procedures) Amendment (Photo ID) Bill 2004	Minister for Commerce	03/12/04	09/12/04	17	1
Local Government Amendment Bill 2005	Minister for Local Government	20/06/05	05/09/05		8, 9
Marine Safety Amendment (Random Breath Testing) Bill 2004	Minister for Ports	17/02/05			1
Photo Card Bill 2004	Minister for Roads	17/02/05	30/06/05		1, 9
Prisoners (Interstate Transfer) Amendment Bill 2005	Minister for Justice	01/04/05	18/04/05		4, 5
Road Transport (General) Bill 2004	Minister for Roads	17/02/05 01/04/05	14/03/05 19/07/05		1, 4, 10
Road Transport (General) Amendment (Licence Suspension) Bill 2004	Minister for Roads	18/06/04	01/12/04	9	1, 5
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	Minister for Roads	17/02/05 01/04/05	14/03/05 23/05/05		1, 4, 7
Security Industry Amendment Bill 2005	Minister for Police	12/09/05			9

Bill	Minister/Member	Letter sent	Reply	Digest 2004	Digest 2005
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/04		15	
State Revenue Legislation Amendment Bill 2005	Treasurer	20/06/05			8

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2005

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Anti-Discrimination Amendment (Religious Tolerance) Bill 2005*	N				
Building Professionals Bill 2005	N, C				
Civil Liability Amendment (Food Donations) Bill 2004	N			N	
Civil Liability Amendment (Offender Damages) Bill 2005	N,C				
Civil Liability Amendment (Offender Damages Trust Fund) Bill 2005	N				
Civil Procedure Bill 2005	N			N	
Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005*	R				
Court Security Bill 2005				N	
Crimes Amendment (Protection of Innocent Accused) Bill 2005*	R				
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	R, C		R		
Criminal Appeal Amendment (Jury Verdicts) Bill 2004*	R				
Criminal Assets Recovery Amendment Bill 2005	R				
Criminal Procedure Amendment (Evidence) Bill 2005	N				
Criminal Procedure Further Amendment (Evidence) Bill 2005	C			N	
Drug Misuse and Trafficking Amendment Bill 2005				N	
Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005				N	
Electricity Supply Amendment Bill 2005				C	
Energy Administration Amendment (Water and Energy Savings) Bill 2005				R, N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004			N	N	N
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005	N, R	C	N, C		R, C
Gaming Machines Amendment Bill 2005	C				
Independent Commission Against Corruption Amendment Bill 2005				C	
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	R			N	
Legal Profession Amendment Bill 2005	N			R	
Legal Profession Bill 2004	N,C			N	
Local Government Amendment Bill 2005	C, R				
Marine Safety Amendment (Random Breath Testing) Bill 2004				C	
National Parks and Wildlife (Adjustment of Areas) Bill 2005				N	
Parliamentary Electorates and Elections Amendment (Voting Age) Bill 2005*	R				
Passenger Transport Amendment (Maintenance of Bus Services) Bill 2005	R	R	R	R	
Photo Card Bill 2004				C	
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	N				
Prisoners (Interstate Transfer) Amendment Bill 2005				C	
Protection of Agricultural Production (Right to Farm) Bill 2005*	R				
Protection of the Environment Operations Amendment Bill 2005	R				
Road Transport (General) Bill 2004	N	C		C	
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	N			C	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Rural Workers Accommodation Amendment Bill 2005	R				
Security Industry Amendment Bill 2005	C,R				
Sheriff Bill 2005				N	
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	R, N				
State Revenue Legislation Amendment Bill 2005	N, C, R				
State Revenue Legislation Amendment (Budget Measures) Bill 2005	N				
Surveying Amendment Bill 2005	N				
Terrorism Legislation Amendment (Warrants) Bill 2005	R				
Water Efficiency Labelling and Standards (New South Wales) Bill 2005	N			N	N

Key

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

Appendix 4: Index of correspondence on regulations reported on in 2005

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2005
Architects Regulation 2004	Minister for Commerce	21/09/04	30/11/04	1
Centennial and Moore Park Trust Regulation 2004	Minister for Tourism and Sport and Recreation	05/11/04 29/04/05	21/04/05	5
Environmental Planning and Assessment Amendment (ARTC Rail Infrastructure) Regulation 2004	Minister for Infrastructure and Planning	26/10/04 17/02/05	01/02/05	1
Forestry Regulation 2004	Minister for Primary Industries	26/10/04 17/02/05	18/01/05	1
Hunter-Central Rivers Catchment Management Authority Regulation 2005	Minister for Natural Resources	20/06/05	04/09/05	10
Institute of Teachers Regulation 2005	Minister for Education and Training	01/04/05 03/06/05	26/05/05	7
Mental Health Amendment (Transfer of Queensland Civil Patients) Regulation 2005	Minister for Health	29/04/05	11/07/05	9
Occupational Health and Safety Amendment (Transitional) Regulation 2004	Minister for Commerce	01/04/05 23/05/05	17/05/05	6
Passenger Transport (Drug and Alcohol Testing) Regulation 2004	Minister for Transport Services	30/04/04 01/03/05	17/02/05	2
Protection of the Environment Operations (Luna Park) Regulation 2005	Minister for the Environment	29/04/05	10/08/05	9
Road Transport (General) Amendment (Driver Licence Appeals) Regulation 2005	Minister for Roads	01/04/05	12/07/05	9
Stock Diseases (General) Regulation 2004	Minister for Primary Industries	05/11/04	16/12/04	1
Sydney Olympic Park Amendment Regulation 2004	Minister for Sport and Recreation	05/11/04	03/12/04	1

Appendix 5: Notice of Discussion Paper on the Right to Silence

The Legislation Review Committee is seeking comment in relation to the principles it should apply when considering bills that trespass on the right to silence. The Committee will then use these comments when suggesting standards and principles to which the Parliament should have regard when considering bills that trespass on this fundamental right.

The Committee has prepared a Discussion Paper raising a number of questions. This Discussion Paper will be available online at www.parliament.nsw.gov.au under "Inquiries receiving Submissions". Copies are also available from the Committee's Secretariat.

Tel: (02) 9230 3418 or 9230 2899

Fax: (02) 9230 3052

Legislation.Review@parliament.nsw.gov.au

Submissions responding to the Discussion Paper should be sent to:

Chairman
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
Sydney NSW 2000

Alternatively, submissions can be made on-line by following the links at www.parliament.nsw.gov.au

The closing date for submissions is **30 November 2005**.