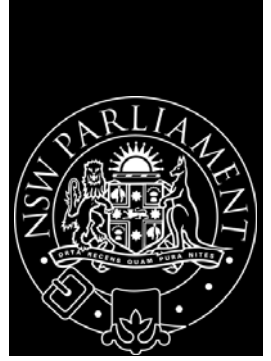


PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 10 of 2006

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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. Apiaries Amendment Bill 2006

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

2. Channel 7 Former Epping Site Protection Bill 2006*

Retrospectivity: CI 5(3)

9. The Committee will always be concerned to identify the retrospective effects of legislation which may adversely impact on any person.
10. The Committee notes that legislatively revoking a declaration duly made under the law trespasses upon a person's right to order his or her affairs in accordance with the current law.
11. The Committee refers to Parliament the question of whether providing for the revocation of any declaration made under s 75B of the *Environmental Planning and Assessment Act 1979* in relation to the site unduly trespasses on personal rights and liberties.

3. Crimes Legislation Amendment (Gangs) Bill 2006

Clarity of criminal laws: Proposed Part 3E of the *Crimes Act 1900*

38. The Committee notes that the Bill aims to undermine the foundations of criminal gangs by making it an offence to knowingly or recklessly participate in a criminal group, where such participation contributes to the occurrence of any criminal activity.
39. The Committee is concerned that the meaning of "participate" in proposed s 93IK is unclear and may result in criminal liability for participation in a group to arise in circumstances where a person did not intend to advance the criminal objectives of the group as set out in proposed s 93IJ.
40. The Committee is also concerned that meaning of the phrase "contributes to the occurrence of any criminal activity" in proposed s 93IK is unclear and may apply to conduct not connected to the commission of a particular crime on a particular occasion.
41. The Committee is concerned that this lack of clarity may allow a person to be convicted of the proposed offence under s 93IK, which carries a maximum penalty of 5 years' imprisonment, on the basis of conduct which is relatively peripheral to the commission of a minor summary offence by others, where the accused merely foresees that it is possible (ie, being reckless) that his or her conduct will contribute to the occurrence of such a crime in the future.

42. The Committee has written to the Minister seeking his advice as to whether, under proposed Part 3E:
- it is intended that a person who knows that a client is a member of a criminal group and foresees that his or her services may contribute to the occurrence of criminal activity, although not intending to advance the criminal objectives of the group, should be liable;
 - a person must intend to pursue the objectives of the criminal group in order to be defined as a “participant”;
 - it is necessary for the prosecution to prove that the accused knowingly or recklessly contributed to the commission of a specific crime; and
 - the term “contribute” replicates the traditional complicity formulation of “counselling, procuring, aiding or abetting”.
43. The Committee refers to Parliament whether the lack of clarity in the Bill unduly trespasses on the individual right to legal certainty.

Power to disperse groups: s 87MA

53. The Committee notes that the special powers under the Bill and the manner in which they may be exercised have the potential to significantly trespass on the personal right of peaceful assembly.
54. The Committee considers that such special powers must have sufficient checks to ensure that they are only exercised when required to ensure public safety.
55. The Committee notes that the authorisation of special powers can be given by the Commissioner of Police or by a Deputy or Assistant Commissioner of Police where the relevant officer has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder.
56. The Committee also notes that there are considerable penalties for failing to comply with a direction to disperse.
57. The Committee refers to Parliament the question of whether the terms of the Bill unduly trespass upon the right to peaceful assembly.

Removal of fortification: Part 16A

63. The Committee notes that a structure may be deemed to be a fortification for the purposes of proposed s 210A on the grounds that it could have the effect of preventing or impeding police access to the premises and is “excessive for the particular type of premises”.

64. The Committee also notes that the Bill provides that a Local Court may only make a fortification removal order if it is satisfied that there are reasonable grounds to believe that the premises are being used, have been used or are likely to be used in relation to the commission of a serious indictable offence, and the owner of relevant premises must be notified of the intention to remove a fortification.
65. The Committee refers to Parliament the question of whether the enforcement of a fortification removal order constitutes an undue trespass on the right to privacy

4. Deer Bill 2006

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

5. Parliamentary Electorates and Elections Amendment Bill 2006

Privacy of personal information: Proposed Part 4, Division 3A

8. The Committee notes the public interest in the permitted uses of the electoral roll set out in the Bill and the significant penalties for inappropriate use of the information.
9. The Committee notes that the Bill includes date of birth as information to be recorded on the roll and available for public inspection and provided to political parties, Members of Parliament, candidates for elections, and, when found to be in the public interest, to other persons on request.
10. The Committee notes that the Bill removes occupation particulars from copies of the roll available for public inspection but allows such information to be included in copies of the roll provided to political parties, Members of Parliament, candidates for elections, and, when found to be in the public interest, to other persons on request.
11. The Committee refers to Parliament the question whether the access provided to the particulars recorded on the roll under the Bill trespasses unduly on the right to privacy.

6. Police Amendment (Police Promotions) Bill 2006

Review rights to be in subordinate legislation: Schedule 1[5], Proposed s. 79

11. The Committee is of the view that a fair promotions and appointments process should include an adequate system of review and appeal of decisions related to that process. The Bill allows for a process of review and appeal to be established by regulation and the second reading speech makes clear that it is the Government's intention that the regulations will so provide.
12. However, given the importance of a proper review and appeal mechanism for a fair promotions and appointments process, the Committee refers to Parliament the question of whether, to avoid an undue delegation of legislative power, such matters should be provided for in the primary legislation.

7. Police Integrity Commission Amendment Bill 2006

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| 14. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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SECTION B: Ministerial Correspondence — Bills Previously Considered

8. Commission for Children and Young People Amendment Bill 2005

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|---|
| 7. The Committee thanks the Minister for her reply. |
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Part One – Bills

SECTION A: COMMENT ON BILLS

1. APIARIES AMENDMENT BILL 2006

Date Introduced:	30 August 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Ian Macdonald MLC
Portfolio:	Minister for Primary Industries

Purpose and Description

1. This bill makes miscellaneous amendments to the *Apiaries Act 1985*, including amendments that:
 - (a) abolish the office of registrar of beekeepers and provide for the functions of the registrar to be exercised by the Director-General of the Department of Primary Industries, and
 - (b) provide for the relocation or forfeiture of beehives in certain circumstances, and
 - (c) allow certain persons (including inspectors under the Act, police officers and local council employees acting in their capacity as such) to inspect, and take copies from, the register of beekeepers free of charge, and
 - (d) repeal a provision restricting the introduction of bees into New South Wales (while retaining a provision that permits the Minister to prohibit the importation of bees into New South Wales), and
 - (e) confer on inspectors under the Act a power to require certain persons on premises on which activities connected with beekeeping are being carried on to produce to the inspector any records or documents under the person's extracts from, the records and documents so produced, and
 - (g) provide for the exclusion of personal liability of certain persons executing the Act, and
 - (h) transfer certain matter from the regulations to the Act, and are consequential or savings and transitional amendments.

Background

2. The second reading speech states:

Responsible beekeeping in New South Wales is promoted through a voluntary Beekeeping Code of Practice. Apiarists, decision-making authorities and the public use the code, which was developed in consultation with key industry stakeholders, to provide a consistent approach to beekeeping issues. The regulation of beekeeping in New South Wales is primarily carried out through the *Apiaries Act 1985*.

That Act requires the registration of all commercial and recreational beekeepers. Its main purpose is to prevent the introduction of, and to control and eradicate, certain diseases and pests that afflict bees in New South Wales. Additionally, the Act contains provisions to manage nuisance bees. The Act is being amended to improve the administrative arrangements. The amendments are designed to promote responsible beekeeping, enhance compliance with the Apiaries Act, and minimise potential risks to human safety, while still recognising the importance of recreational and commercial beekeeping.

... In terms of consultation, the amendments were discussed with key industry and amateur beekeeping representatives, including the New South Wales Apiarists Association and the New South Wales Amateur Beekeepers Association. I am advised that there was support from these groups for the amendments currently before the House.¹

Issues Considered by the Committee

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| <p>3. 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 these Bills.

¹ Mr Graham West MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly (Hansard), 30 August 2006.

2. CHANNEL 7 FORMER EPPING SITE PROTECTION BILL 2006*

Date Introduced: 31 August 2006
House Introduced: Legislative Assembly
Member Responsible: Mr A Tink MP

Purpose and Description

1. The object of this Bill is to protect the Channel 7 Former site at Epping (the site):
 - (a) by ensuring that Parramatta City Council remains the consent authority for any application to carry out development on the site, and
 - (b) by prohibiting the carrying out of excessive development on the site, and
 - (c) by requiring community consultation in relation to the carrying out of development on the site.

Background

2. The Channel 7 site has been declared a major project site under Part 3A of the *Environmental Planning and Assessment Act 1979*, which means that the Department of Planning assesses and determines proposed major projects on the site.

The Bill

3. The bill provides that the Parramatta City Council is the consent authority in relation to the carrying out of any developments on the site [Clause 4].
4. It prevents the making or operation of any declaration under the *Environmental Planning and Assessment Act 1979* that the carrying out of development on the site is a project to which Part 3A of that Act applies or that has the effect of making development on the site a project or part of a project to which Part 3A of that Act applies. Any such declaration that has been made or is made has no effect to the extent to which it applies to the site [Clause 5].
5. The bill also provides that all development (other than exempt development) on the site cannot be carried out except with development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* [Clause 6].
6. The bill provides that the Council must:
 - consult with the community to prepare and implement a concept plan for the site [Clauses 8 and 9];
 - establish an effective procedure for community consultation concerning the management of land at the site reserved as public open space and the development of the concept plan for the site [Clause 11]; and

- establish a community consultative forum [Clause 12].
7. The Bill further provides that the Council must not consent to the carrying out of development on the site unless it:
- has taken into consideration the concept plan [Clause 7]; and
 - is satisfied that the local community has been properly informed of the proposed development. In particular, the Council must not consent to an application for development consent unless the development application has been publicly notified in accordance with the *Environmental Planning and Assessment Act 1979* as if it were advertised development and the Council has taken into account any objections received as part of that notification procedure [Clause 10].

Issues Considered by the Committee

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

Retrospectivity: Cl 5(3)

8. Clause 5(3) revokes any declaration under s 75B of the *Environmental Planning and Assessment Act 1979* that the site is a major project to which Part 3A applies. Such a revocation could cause losses to persons who have taken action in reliance on any such declaration, or on decisions consequential to the declaration.

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| <p>9. The Committee will always be concerned to identify the retrospective effects of legislation which may adversely impact on any person.</p> <p>10. The Committee notes that legislatively revoking a declaration duly made under the law trespasses upon a person's right to order his or her affairs in accordance with the current law.</p> <p>11. The Committee refers to Parliament the question of whether providing for the revocation of any declaration made under s 75B of the <i>Environmental Planning and Assessment Act 1979</i> in relation to the site unduly trespasses on personal rights and liberties.</p> |
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The Committee makes no further comment on this Bill.

3. CRIMES LEGISLATION AMENDMENT (GANGS) BILL 2006

Date Introduced:	30 August 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carl Scully MP
Portfolio:	Minister for Police

Purpose and Description

1. The object of this Bill is to amend the *Crimes Act 1900* (the Crimes Act) and the *Law Enforcement (Powers and Responsibilities) Act 2002* (the LEPAR Act) so as to:
 - create new offences relating to participation in criminal groups and recruiting persons to carry out or assist in criminal activity;²
 - create new aggravated offences in relation to various offences involving assault or damage to property where the assault or damage occurred during a public disorder (with an increased maximum penalty);
 - extend offences involving assault and other actions taken against law enforcement officers to circumstances where a missile is thrown at the law enforcement officer;
 - increase the maximum penalty for offences involving obtaining personal information about law enforcement officers or members of their families;
 - extend the limitation period for commencing proceedings for the offence of consorting;³
 - give police further powers to disperse groups;
 - give police further powers with respect to entry and search of premises; and
 - give police power to remove unnecessary fortifications to premises.
2. The Bill also consequentially amends the *Criminal Procedure Act 1986* and the *Local Courts Act 1982*.⁴

Background

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

² "Recruit" means counsel, procure, solicit, incite or induce: s 351A of the *Crimes Act 1900*.

³ The Bill amends s 546A of the *Crimes Act 1900* (consorting with convicted persons) to allow proceedings for an offence under that section to be commenced up to 12 months after they are alleged to have been committed.

⁴ Sch 3.1 amends the *Criminal Procedure Act 1986* as a consequence of the amendments to the Crimes Act, to allow some of the new offences to be dealt with summarily in certain circumstances; Sch 3.2 makes it clear that Part 6 of the *Local Courts Act 1982* (which sets out procedures for application proceedings in Local Courts) applies to applications for fortification removal orders under the proposed amendments to the LEPAR Act.

The bill recognises that crimes committed by gangs, whether they be crimes of violence, revenge attacks, systematic property damage, organised motor vehicle theft, protection rackets, armed robberies or the drug and gun trade, are a far greater threat to the safety and wellbeing of the community than most crimes committed by individuals acting alone. The bill attacks the foundations of two very different types of gangs. It deals with both organised criminal groups and impromptu groups of violent individuals or mobs. The two types of gangs are dealt with separately in the bill.

...The bill also targets persons involved in less organised gang activities, such as the rioters at Cronulla and those who took part in revenge attacks.⁵

The Bill

Amendment of the *Crimes Act 1900*

Participating in criminal groups

4. The Bill creates new offences relating to participation in *criminal groups*. A criminal group is a group of 3 or more people who have any of the following as their objectives:
 - obtaining material benefits from conduct that is an indictable offence punishable by imprisonment for life or a term of 5 years or more;
 - committing serious violence offences;⁶ or
 - obtaining material benefits from, or engaging in, such conduct *outside* New South Wales [proposed s 93IJ].
5. A group is capable of being a criminal group *whether or not*:
 - any of them are subordinates or employees of others;
 - only some of the people involved in the group are involved in planning, organising or carrying out any particular activity; or
 - the group's membership changes from time to time [proposed s 93IJ(2)].
6. It is an offence for a person to participate in a criminal group knowing it is a criminal group and knowing, or being reckless as to whether, participation in that group contributes to the occurrence of any criminal activity (penalty of 5 years' imprisonment) [proposed s 831K(1)].
7. It will be an *aggravated* offence to:
 - assault another person with the intention of participating in a criminal activity of a criminal group (maximum penalty 10 years' imprisonment);

⁵ Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 30 August 2006.

⁶ A serious violence offence is an offence punishable by imprisonment for life, or for a term of 10 years or more, where the conduct constituting the offence involves:

- loss of a person's life or serious risk of loss of a person's life;
- serious injury or serious risk of serious injury to a person;
- serious damage to property in circumstances endangering the safety of any person; or
- perverting the course of justice in relation to any such conduct: proposed new s 93IJ(1) of the *Crimes Act 1900*.

- destroy or damage property belonging to another person, or to threaten to do so, with the intention of participating in a criminal activity of a criminal group (maximum penalty 10 years' imprisonment); and
- assault a police officer or other law enforcement officer with the intention of participating in a criminal activity of a criminal group (maximum penalty 14 years' imprisonment) [proposed s 93IK(2) - (4)].

New aggravated public disorder offences

8. The Bill creates new aggravated offences for various crimes involving assault or damage to property by increasing the maximum penalty for the offence concerned by 2 years, if it is committed during a public disorder.⁷
9. A new definition of *public disorder* is added to s 4 in the same terms as that formerly in s 59A, namely:
- a riot or other civil disturbance that gives rise to a serious risk to public safety, whether at a single location or resulting from a series of incidents in the same or different locations.

Throwing missiles at police officers and other law enforcement officers

10. The Bill extends the offences relating to assaulting, stalking, harassing or intimidating a police officer, or any other law enforcement officer, to include throwing a missile at such an officer [proposed amended s 60(1)].⁸

⁷ These aggravated offences relate to:

- s 60(1): assault, throw a missile at, stalk, harass or intimidate an on-duty police officer;
- s 60(2): assault an on-duty police officer and by that assault occasion actual bodily harm;
- s 60(3): maliciously wound or inflict grievous bodily harm on an on-duty police officer;
- s 93GA(1): fire a firearm at a dwelling-house or other building with reckless disregard for the safety of any person;
- s 195: maliciously destroy or damage property belonging to another person or to that person and another person;
- s 196: maliciously destroy or damage property, and by that action cause bodily injury to another person;
- s 197: destroy or damage property with the aim of dishonestly making a personal gain or a gain for another person;
- s 199: without lawful excuse, make a threat to another, with the intention of causing that other to fear that the threat would be carried out either:
 - to destroy or damage property belonging to that other or to a third person; or
 - to destroy or damage the first-mentioned person's own property in a way which that person knows will or is likely to endanger the life of, or to cause bodily injury to, that other or a third person.

With respect to s 195 and s 196, every act done of malice, or done without malice but with indifference to human life or suffering, or with intent to injure, and without lawful cause or excuse, or done recklessly or wantonly, is taken to have been done maliciously: s 5 of the *Crimes Act 1900*.

⁸ There is no definition of "missile" in the Crimes Act. However, s 93A thereof provides that, under Part 3A (offences relating to public disorder), *violence* is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct, eg, throwing at or towards a person a missile *of a kind capable of causing injury* which does not hit or falls short [Emphasis added].

Increased penalty for particular offences

11. The Bill increases, from 2 to 5 years' imprisonment, the maximum penalty for offences involving obtaining personal information about law enforcement officers or their families [proposed amended s 60B(2) and s 60C].

Amendment of the *Law Enforcement (Powers and Responsibilities) Act 2002*

Fortified premises

12. The Bill provides police with further powers with respect to fortified premises' defined in proposed s 210A (see below), and establishes a scheme for their removal [proposed s 210B].

Police powers to enter and search premises

13. With respect to various warrants granted under the LEPAR Act, or other Acts to which the LEPAR Act regime applies, a police officer:
- authorised by the warrant to enter premises may, if it is reasonably necessary to do so for the purpose of entering those premises, disable any alarm, camera or surveillance device at the premises, or pacify a guard dog at the premises [proposed new s 70(1A)]; or
 - authorised by the warrant to search premises may do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, any thing connected with an offence that the police officer believes on reasonable grounds to be at those premises, including by blocking drains at or used in connection with those premises [proposed s new s 70(3)].

Issues Considered by the Committee

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

Clarity of criminal laws: Proposed Part 3E of the *Crimes Act 1900*

14. As noted above, the Bill creates a series of new criminal offences centred around the concept of "participation in a criminal group", namely:
- participation in a criminal group with knowledge that it is a criminal group (as defined in s 93IJ), and with knowledge or recklessness that the participation contributes to the occurrence of any criminal activity [s 93IK(1)];
 - assault with intent to participate in any criminal activity of a criminal group [s 93IK(2)];
 - destroying/damaging property or threatening to destroy/damage property with intent to participate in any criminal activity of a criminal group [s 93IK(3)]; and
 - assault a law enforcement officer with intent to participate in any criminal activity of a criminal group [s 93IK(4)].

The offence of participation in a criminal group: s 93IJ - s 93IK(1)

15. The conduct element for the offence defined by s 93IK(1) is participation in a criminal group; the fault elements are:
- knowledge by the accused that the group in which he or she participates is a criminal group; and
 - knowledge or recklessness by the accused that his or her participation contributes to the occurrence of any criminal activity.
16. It would appear that any such participation must be proved to have had the consequence of actually contributing to “the occurrence of any criminal activity”, although the Bill does not make this entirely clear.
17. Traditionally, the boundaries of criminal responsibility relating to criminal activity by groups have been set by the common law doctrines of *conspiracy* and *complicity* (liability of accessories to criminal offences).
18. The offence of conspiracy requires a specific agreement by at least two persons to commit a particular crime or crimes.⁹ The offence is committed at the point in time at which such an agreement is made: it does not have to be completed, nor need there be any overt actions to carry it out.
19. The Bill’s concept of a *criminal group* is akin to a permanent, or at least long-term, conspiracy, which lasts for as long as three or more people maintain an association in pursuit of at least one of the criminal objectives listed in s 93IJ(1). However, s 93IK(1) is broader than the traditional crime of conspiracy, in that it is the general criminal *objectives* of the group which provide the basis for criminal liability, rather than any specific agreements to commit particular crimes.
20. Although complicity extends liability to those who simply provide assistance or encouragement with respect to an offence, it is limited to those persons who are connected with that specific offence. The prosecution must prove that the accused intentionally provided assistance or encouragement to the person or persons who actually committed the offence,¹⁰ in circumstances where he or she had knowledge of the “essential matters” which constitute the offence.¹¹
21. The offence defined by s 93IK(1) criminalises conduct that is currently beyond the reach of the rules relating to accessory, in that:
- there is no requirement that the accused must have *intended* to provide assistance or encouragement to others. Instead, the offence relies simply on the concept of participation with knowledge or recklessness about whether assistance will be derived; and
 - it does not appear to be necessary for the prosecution to prove that the accused knowingly or recklessly contributed to the commission of a *specific*

⁹ See *Gerakiteys v The Queen* (1984) 153 CLR 317.

¹⁰ *Giorgianni v The Queen* (1985) 156 CLR 473.

¹¹ This includes both the conduct and fault elements of the offence: *Stokes and Difford* (1990) 51 A Crim R 25.

crime. It necessarily follows that the “knowledge of essential matters” threshold required to prove accessory under the traditional common law is not a relevant factor.

“Participation”

22. The Bill does not define participation in a criminal group. More particularly, it does not make it clear that a person must intend to pursue the objectives of the criminal group in order to be defined as a participant. All that the prosecution must prove is that the accused knew that he or she was participating in a criminal group.
23. It was suggested in the second reading speech that a mechanic who maintains and repairs the bikes of a criminal motorcycle gang would not fall within the ambit of s 93IK(1).¹² However, the language of the Bill does not unequivocally support this position.
24. A mechanic specialising in motorcycle maintenance may have regular clients who are members of a “bikie gang” which satisfies the s 93IJ definition of a criminal group, in circumstances where he or she in fact knows that the bikie gang is a criminal group. It is also conceivable that the mechanic would know, or perceive a risk - ie, be reckless - that the effective maintaining of the motorcycles used by the gang members in the course of their criminal activities *contributes* to the occurrence of such activities.
25. If a charge were laid in such circumstances, the only way that the mechanic could assert that he or she had not committed an offence pursuant to s 93IK(1) would be to assert that his or her maintenance and repair work did not amount to *participation* in a criminal group.
26. Although the second reading speech indicates that the concept of participation has been deliberately chosen as demanding more than simple membership, it also makes it clear that one can be a participant without being a member or part of the group. Thus, it would appear that a person may participate in a criminal group without intending to advance the objectives of the group, provided that he or she:
 - knows that it is a criminal group; and
 - knows or is reckless as regards his or her participation contributing to the occurrence of any criminal activity.
27. The prosecution does not even have to prove an intention to contribute to the occurrence of criminal activity, but that the accused was simply reckless. Although “reckless” is not defined in the Bill, judicial interpretation of other Crimes Act offences suggest that it would include the person who merely foresaw the *possibility* that the criminal activity would eventuate.¹³
28. The second reading speech indicates that the proposed offence:

targets those hiding in the background of a criminal enterprise and those who facilitate organised criminal activity. They may be accountants, bookkeepers,

¹² Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 30 August 2006.

¹³ See *Stokes and Difford* (1990) 51 A Crim R 25; *R v Kurtic* (1996) 85 A Crim R 57; *Hemsley* (1988) 36 A Crim R 334; *Banditt v The Queen* [2005] HCA 80. See also *R v Crabbe* (1985) 156 CLR 464.

executives and lawyers who fudge records, launder money, construct sham corporate structures and hide assets.¹⁴

29. However, the speech also refers to “licensed hoteliers, real estate agents, smash repairers, pharmacists or public officials, who, in various ways, aid and abet ongoing criminal activity”.¹⁵ This suggests that a broader interpretation is to be given to the concept of participation, one that does not clearly exclude the hypothetical mechanic.

“Contributes to the occurrence of any criminal activity”

30. It appears that under the Bill the prosecution does not have to establish that the accused was (at least) reckless to the fact that his or her conduct would contribute to the commission of a *particular criminal incident*, but that a more general, open-ended exposure to criminal liability is intended.
31. Although “contributes” may appear to constitute a low threshold of involvement, it arguably reflects the traditional complicity formulation of “counselling, procuring, aiding or abetting”. However, it is the wording of s 93IK(1) which evidences its potential breadth.
32. On its face, “any criminal activity” is broad enough to include any crime, whether complete or incomplete, at any time in the future. Indeed, the deliberate use of the phrase “occurrence of any criminal activity” and the Bill’s stated objective of “undermin[ing] the very foundations of crime gangs”¹⁶ indicates the parliamentary intention of a broad operation.¹⁷

Principle of legal certainty – Rule of Law

33. From the above it will be seen that there is a lack of clarity in proposed Part 3E. The Bill seems to contemplate that a person could be convicted of the proposed offence under s 93IK(1) on the basis of conduct which is relatively peripheral to the commission of a minor summary offence by others, where the accused merely foresees that it is possible that his or her conduct will contribute to the occurrence of such a crime at some time in the future.
34. Thus, the Bill as drafted may not in fact carry out Parliament’s clear intention, in that it potentially criminalises activities which were singled out as beyond the Bill’s ambit in the second reading speech.
35. The principle of legal certainty requires that it should be possible to predict, with reasonable confidence and on the basis of reasonably accessible legal materials, the circumstances in which a power will be used so as to interfere with one’s rights.¹⁸ The

¹⁴ Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 30 August 2006.

¹⁵ Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 30 August 2006.

¹⁶ Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 30 August 2006.

¹⁷ In addition, there is an incongruity between, on the one hand, the categories of *serious indictable offence* and *serious violence offences* used to define a criminal group in s 93IJ, and the much broader category of *any criminal activity*. When “criminal activity” is used in the context of the proposed recruiting offence defined by s 351A, it is defined as “conduct that constitutes a serious indictable offence”: proposed new s 351A(3).

¹⁸ See Joint Committee on Human Rights of the United Kingdom Parliament, *Fifth Report*, www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/59/5904.htm

principle forms an important part of rights jurisprudence under the European Convention on Human Rights [ECHR]. In applying the ECHR, the European Court of Human Rights has held:

a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.¹⁹

36. The Court's jurisprudence shows that the more severe the sanction or important the right is, the more important it is that the law should be unambiguous and precise;²⁰ and that the division between acceptable flexibility and unacceptable vagueness depends on the content of the law, the field it is designed to cover and the number and status of those to whom it is addressed.²¹

37. The Tasmanian Law Reform Institute has noted that an unclear law is "unfair and morally unacceptable", citing Professor Patrick Parkinson to the effect that:

Parliament has a fundamental duty to all citizens to ensure that the law is clear enough that they can know what the law requires of them. It is inevitable that some laws are very complex...

In areas of law which regulate the lives of ordinary citizens, clarity is especially important, because people cannot be expected to consult lawyers about everything they do...People should not be exposed to criminal prosecution if they fail to adhere to vague laws.²²

38. The Committee notes that the Bill aims to undermine the foundations of criminal gangs by making it an offence to knowingly or recklessly participate in a criminal group, where such participation contributes to the occurrence of any criminal activity.

39. The Committee is concerned that the meaning of "participate" in proposed s 93IK is unclear and may result in criminal liability for participation in a group to arise in circumstances where a person did not intend to advance the criminal objectives of the group as set out in proposed s 93IJ.

40. The Committee is also concerned that meaning of the phrase "contributes to the occurrence of any criminal activity" in proposed s 93IK is unclear and may apply to conduct not connected to the commission of a particular crime on a particular occasion.

41. The Committee is concerned that this lack of clarity may allow a person to be convicted of the proposed offence under s 93IK, which carries a maximum penalty of 5 years' imprisonment, on the basis of conduct which is relatively peripheral to the commission of a minor summary offence by others, where the accused merely foresees that it is possible (ie, being reckless) that his or her conduct will contribute to the occurrence of such a crime in the future.

¹⁹ *Sunday Times v United Kingdom* (1979) 2 EHRR 245 at paragraph 49.

²⁰ *Kruslin v France* (1990) 12 EHRR 547.

²¹ *Hashman and Harrup v United Kingdom* (1999) 30 EHRR 241.

²² Submission regarding the NSW *Crimes Amendment (Child Protection - Excessive Punishment) Bill 2000*, to the Standing Committee on Law & Justice, September 2000, cited in the Tasmanian Law Reform Institute *Issues Paper No 3 of 2002*

- 42. The Committee has written to the Minister seeking his advice as to whether, under proposed Part 3E:**
- it is intended that a person who knows that a client is a member of a criminal group and foresees that his or her services may contribute to the occurrence of criminal activity, although not intending to advance the criminal objectives of the group, should be liable;
 - a person must intend to pursue the objectives of the criminal group in order to be defined as a “participant”;
 - it is necessary for the prosecution to prove that the accused knowingly or recklessly contributed to the commission of a specific crime; and
 - the term “contribute” replicates the traditional complicity formulation of “counselling, procuring, aiding or abetting”.
- 43. The Committee refers to Parliament whether the lack of clarity in the Bill unduly trespasses on the individual right to legal certainty.**

Power to disperse groups: s 87MA

44. Under s 87D of the LEPAR Act, a senior police officer may authorise the use of special powers in a targeted area if there is a large-scale public disorder occurring in the area (or a threat thereof in the near future), and that officer is satisfied that the powers are reasonably necessary to prevent or control the public disorder.
45. The Bill gives further powers to police officers to prevent or control public disorders in relation to an area that is the subject of a public disorder authorisation under the LEPAR Act [proposed s 87MA]. A police officer may direct a group of people to disperse immediately, when the police officer has:
- informed the persons to whom the direction is given that an authorisation has been given under the LEPAR Act [proposed s 87MA(2)(a)]; and
 - warned them that a refusal or failure to comply with the direction may be an offence [proposed s 87MA(2)(b)].²³
46. Refusing or failing without reasonable excuse to comply with such a direction carries a maximum penalty of 50 penalty units (currently \$5,500) [proposed s 87MA(3)].
47. If such a direction is given to a group, it must be likely to be audible to all persons in that group, or to as many of them as practicable [proposed s 87MA(5)]. However, it is not necessary for the police officer to repeat the direction, or the information and warning, to each person in the group [proposed s 87MA(6)]. Nonetheless, the fact that a police officer is not required to repeat any such direction does not in itself give rise to any *presumption* that each person in the group has in fact received the direction, information or warning [proposed s 87MA(7)].

²³ To refuse or fail to comply with such a direction without reasonable excuse: maximum penalty 50 penalty units.

The Law Enforcement Legislation Amendment (Public Safety) Act 2005

48. The powers in the LEPAR Act relating to public disorders were introduced in December 2005 by the *Law Enforcement Legislation Amendment (Public Safety) Act 2005*.²⁴ The Committee reported on that Act in its *Digest* No 1 of 2006.
49. The Committee noted therein that the Act potentially trespassed on the right to peaceful assembly, a right established by long custom at common law,²⁵ and also at international law.²⁶ The Committee was concerned that the process of authorisation and the exercise of powers thereunder posed two threats to this right.
50. The first was that the very breadth of the Act's scope may well result in situations where people not involved in riots or *any* kind of protest, affray or assault, but who are merely bystanders or residents of the targeted area, will be the subject of these powers, eg, a direction to disperse under proposed s 87MA.²⁷
51. The second is that, pursuant to s 87D, an authorisation may be given where there is a "threat" of a public disorder occurring in the near future. The Committee noted that the *existence* of a threat is a matter of opinion, albeit one which ought reasonably to be based on experience and observation. If, for example, a senior police officer believed that a political protest posed a *threat* of public disorder, a targeted area could be declared. Protestors could be ordered to disperse under s 87MA, and charged with an offence if they refused to do so.
52. Such a power to significantly interfere with people's civil rights needs to have sufficient checks to ensure that it is only exercised when required to ensure public safety.
- 53. The Committee notes that the special powers under the Bill and the manner in which they may be exercised have the potential to significantly trespass on the personal right of peaceful assembly.**
- 54. The Committee considers that such special powers must have sufficient checks to ensure that they are only exercised when required to ensure public safety.**

²⁴ The NSW Ombudsman is to scrutinise these new powers under Part 6A and provide a detailed report to the Attorney General and Minister for Police in late 2007: s 87O of the LEPAR Act 2002.

²⁵ In New South Wales, the right is now governed by statute, the *Summary Offences Act 1988*. See also Hunt J in *Commissioner of Police v Allen* (1984) 14 A Crim R 244; and, more recently, Simpson J in *Commissioner of Police v Rintoul* [2003] NSWSC 662.

²⁶ Article 21 of the ICCPR provides that no restrictions shall be placed upon the right of peaceful assembly, other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

²⁷ The Committee's concerns were heightened by the fact that the relevant special powers may be exercised by any police officer, whether or not the officer has been provided with, or notified of the terms of, the authorisation [s 87H(2)]. In practice, the ambit of the authorisation might be expanded as a result of a genuine mistake by such a police officer as to its terms.

- 55. The Committee notes that the authorisation of special powers can be given by the Commissioner of Police or by a Deputy or Assistant Commissioner of Police where the relevant officer has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder.**
- 56. The Committee also notes that there are considerable penalties for failing to comply with a direction to disperse.**
- 57. The Committee refers to Parliament the question of whether the terms of the Bill unduly trespass upon the right to peaceful assembly.**

Removal of fortification: Part 16A

58. The Bill provides that the Commissioner of Police may apply to a Local Court for a fortification removal order, directing a person to remove or modify any fortifications at premises [proposed s 210B]. *Fortification* means any security measure that involves a structure or device forming part of, or attached to, premises that:
- is intended or designed to prevent or impede police access to the premises; or
 - has, or could have, the effect of preventing or impeding police access to the premises and is excessive for the particular type of premises [proposed 210A].
59. The Bill does not contain any definition of what may be considered “excessive” for the purposes of Part 16A.
60. A Local Court may make a fortification removal order only if satisfied that there are fortifications at the premises concerned and that:
- the fortifications have been constructed or put in place in contravention of the *Environmental Planning and Assessment Act 1979*; or
 - there are reasonable grounds to believe that the premises are being used, have been used or are likely to be used:
 - for, or in connection with, the commission of a serious indictable offence;
 - to conceal evidence of a serious indictable offence; or
 - to keep the proceeds of a serious indictable offence [proposed s 210B(2)].
61. If the relevant fortifications are not removed or modified in accordance with a fortification removal order, the Commissioner, or any police officer authorised thereby, may:
- enter the premises without a warrant;
 - use such force as is reasonably necessary for the purpose of entering the premises;
 - make use of such assistants as the Commissioner or police officer considers necessary to remove or modify the fortifications;
 - seize anything required to be removed for the purpose of complying with the order; and

- do anything else it is reasonably necessary to do to remove or modify the fortifications to the extent required by the order [proposed s 210D(2)].²⁸

62. The Crown is not liable for property damage resulting from the enforcement of a fortification removal order [proposed s 210F(1)]. However, an owner may recover the reasonable costs of property repairs which are necessitated by damage caused by the creation of fortifications or the enforcement of a fortification removal order from the person who caused the fortifications to be constructed or put in place [proposed s 210F(2)].

63. The Committee notes that a structure may be deemed to be a fortification for the purposes of proposed s 210A on the grounds that it could have the effect of preventing or impeding police access to the premises and is “excessive for the particular type of premises”.

64. The Committee also notes that the Bill provides that a Local Court may only make a fortification removal order if it is satisfied that there are reasonable grounds to believe that the premises are being used, have been used or are likely to be used in relation to the commission of a serious indictable offence, and the owner of relevant premises must be notified of the intention to remove a fortification.

65. The Committee refers to Parliament the question of whether the enforcement of a fortification removal order constitutes an undue trespass on the right to privacy

The Committee makes no further comment on this Bill.

²⁸ Before premises are first entered the Commissioner must cause a notice to be prepared which:

- contains a summary of the fortification removal order; and
- specifies the intention of the Commissioner to enter, or to authorise entry, to the premises to cause the fortifications to be removed or modified in accordance with the order on or from a date specified in the order (the enforcement date): s 210D(4).

4. DEER BILL 2006

Date Introduced: 30 August 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Ian Macdonald MLC
Portfolio: Primary Industries

Purpose and Description

1. The objects of this Bill are as follows:
 - (a) to clarify the ownership of deer,
 - (b) to regulate the keeping of captive deer,
 - (c) to prevent the release of deer from captivity,
 - (d) to control deer that are not captive.

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.

5. PARLIAMENTARY ELECTORATES AND ELECTIONS AMENDMENT BILL 2006

Date Introduced: 30 August 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Morris Iemma, MP
Portfolio: Premier

Purpose and Description

1. The object of this Bill is to amend the Parliamentary Electorates and Elections Act 1912 (the Principal Act) in connection with electoral administration, redistribution of electoral districts, the conduct of State elections, and associated matters, and in particular to make the following amendments:
 - (a) with respect to electoral administration:
 - (i) to replace the State Electoral Office with a New South Wales Electoral Commission, which is to be administered by the Electoral Commissioner,
 - (ii) to revise provisions for the appointment, tenure and functions of the Electoral Commissioner,
 - (iii) to revise provisions for the appointment and functions of returning officers,
 - (iv) to provide for the appointment of polling place managers and election assistants,
 - (v) to abolish the position of Principal Returning Officer,
 - (vi) to transfer the responsibility for carrying out certain duties from returning officers to the Electoral Commissioner,
 - (vii) to replace references to deputy returning officers, poll clerks and similar officials with references to the new categories of election officials,
 - (b) with respect to electoral redistributions:
 - (i) to make adjustments to the procedures to be followed by the Electoral Districts Commissioners when preparing a redistribution of electoral districts,
 - (ii) to provide for the boundaries of electoral districts to be described by reference to maps in digital or electronic form,
 - (c) with respect to overseas electors—to extend to 6 years the period for which electors may remain enrolled and vote after leaving Australia, with similar arrangements for spouses and children,
 - (d) with respect to the joint roll arrangements with the Commonwealth:

- (i) to ensure that privacy legislation does not affect the furnishing of information to the Australian Electoral Commission under those arrangements,
- (ii) to provide for local councils to contribute one-half of the amounts payable by the State to the Commonwealth under those arrangements,
- (e) with respect to the electoral rolls:
 - (i) to revise provisions for the inspection of the rolls and the provision of enrolment information,
 - (ii) to revise requirements for State agencies to provide information to the Electoral Commissioner for purposes connected with the rolls,
 - (iii) to provide that an elector's date of birth will be included on the roll,
 - (iv) to provide that particulars of an elector's occupation will form part of enrolment information but will not appear on the copies of the rolls used at elections,
 - (v) to provide that a person is not entitled to be enrolled or to remain enrolled if the person, because of unsoundness of mind, is incapable of understanding the nature and significance of enrolment and voting, but to require production of a medical certificate before a person's name can be removed from the roll on that ground,
- (f) with respect to elections for the Legislative Assembly:
 - (i) to provide that the Electoral Commissioner is responsible for the conduct of elections, and that the returning officer for a district is responsible to the Electoral Commissioner for the administration of the election within the district,
 - (ii) to provide that the writs are to be directed to and returnable by the Electoral Commissioner,
 - (iii) to provide that it is the responsibility of the Electoral Commissioner to give public notice of a writ, the nomination day, polling day and return day, and the places at which nominations will be received,
 - (iv) to enable the registered officer of a party to deliver nomination papers to the Electoral Commissioner up to noon on the day before the day by which nominations must be made (without affecting the right to deliver nomination papers to the returning officer up to noon on the day by which nominations must be made),
 - (v) to require details of nominations to be placed on the Commission's internet website as soon as practicable after they are received,
 - (vi) to provide for the return of a candidate's deposit to the registered officer of the party to which the candidate belongs,
 - (vii) to provide that it is the responsibility of the Electoral Commissioner to give public notice of a declaration by the returning officer for a district that a sole candidate is elected or of an announcement by the returning officer that a poll will be held because there are two or more candidates,

- (viii) to require the suburb, town or other locality of the place of residence of each nominated candidate to be included in the announcement and public notice of a poll,
- (g) with respect to elections for the Legislative Council:
 - (i) to require details of nominations to be placed on the Commission's internet website as soon as practicable after they are received,
 - (ii) to provide for the return of a candidate's deposit to the registered officer of the party to which the candidate belongs or to the nominated person in the case of a group to which the candidate belongs,
- (h) with respect to elections generally:
 - (i) to remove the provision declaring polling day to be a public holiday,
 - (ii) to enable licensed premises to be used as polling places, subject to certain restrictions,
 - (iii) to require assignment of a polling place manager and election assistants to each polling place,
 - (iv) to require ballot papers to be initialled on the front instead of being signed or initialled on the back,
 - (v) to require electors seeking to vote to state their date of birth, for the purpose of checking entitlement to vote,
 - (vi) to provide that the Electoral Commissioner is responsible for preparing a list of electors who appear not to have voted at an election,
 - (vii) to require ballot papers and other material relating to an election to be retained by the Electoral Commissioner for 6 months after polling day or until the election cannot be challenged or all challenges have been determined, after which the ballot papers and other material are to be destroyed,
 - (viii) to provide that a ballot paper is not informal merely because the elector has placed a number, tick or cross adjacent to but outside the square, if the elector's intention is clearly indicated,
- (i) with respect to postal voting:
 - (i) to provide for the Electoral Commissioner to be responsible for administering the scheme for postal voting,
 - (ii) to revise the provisions relating to the registration of general postal voters and applications for registration,
 - (iii) to permit silent electors to be registered as general postal voters,
 - (iv) to permit any Australian citizen to be an authorised witness for postal voting outside Australia,
- (j) with respect to scrutineers:
 - (i) to revise the provisions relating to the appointment of scrutineers and the making of declarations by scrutineers,

- (ii) to require a scrutineer to present a completed form of appointment and declaration each day at the place at which he or she will act as scrutineer,
 - (k) with respect to posters and other printed electoral matter or material:
 - (i) to remove the limit on the size of posters that may be exhibited,
 - (ii) to revise the provisions relating to the registration of electoral material,
 - (iii) to authorise returning officers, polling place managers and police officers to confiscate posters that are illegally exhibited or electoral material that is being illegally distributed,
 - (l) with respect to canvassing on polling day—to prohibit canvassing on polling day within a polling place, at an entrance to a polling place or on any public or private place within 6 metres of an entrance to a polling place,
 - (m) with respect to the offence of “electoral treating”—to modernise the provisions creating the offence,
 - (n) with respect to polls and elections under other Acts, regulations or by-laws—to provide for the accreditation by the Electoral Commissioner of election service providers, who may be appointed under the other legislation to conduct polls and elections (but not State or local government elections),
 - (o) to make amendments by way of statute law revision,
 - (p) to make amendments of a savings or transitional nature,
 - (q) to make other amendments of a minor, consequential or ancillary nature.
2. The Bill also amends:
- (a) the *Election Funding Act 1981*, to enable applications for registration in the Register of Candidates to be lodged with the Election Funding Authority of New South Wales (as an alternative to lodging them with returning officers) and to make other consequential amendments, and
 - (b) the *Public Sector Employment and Management Act 2002* and the *Public Finance and Audit Act 1983*, consequentially on the establishment of the New South Wales Electoral Commission, and
 - (c) the *Surveying Act 2002*, to require the register of public surveys to include details of the areas of electoral districts, and
 - (d) other Acts and instruments, to enable accredited election service providers to be authorised or appointed to conduct polls and elections (but not State or local government elections).

Background

3. The second reading speech stated:

This bill implements recommendations made by the New South Wales Parliament's Joint Standing Committee on Electoral Matters, the electoral districts commissioners and the Council on the Cost and Quality of Government. It also includes numerous changes proposed by the Electoral Commissioner as well as measures arising from an extensive consultation process. In fact, the Joint Standing Committee on Electoral

Matters received a number of submissions and held two public hearings as part of its inquiry into the administration of the 2003 State election. In addition, the bill was released on 3 July as a consultation bill for public comment, and 17 submissions were received by the Cabinet Office.²⁹

Issues Considered by the Committee

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

Privacy of personal information: Proposed Part 4, Division 3A

4. The electoral roll contains personal information on every elector in the State, including name, residence, occupation, sex and, under the Bill, date of birth.
5. The Bill provides exemptions from the requirements of the *Privacy and Personal Information Protection Act 1998*:
 - to the Electoral Commissioner and officers when furnishing personal information to the Australian Electoral Commission [proposed s 21B(3)];
 - to persons and public service agencies regarding furnishing personal information to the Electoral Commission and the Electoral Commissioner and officers regarding the collection, use or disclosure of information in connection with the preparation, maintenance or revision of the rolls [proposed s 31].
6. The Bill provides for the following access to the electoral roll:
 - a copy of the roll, excluding particulars relating to a person's occupation, is to be available for public inspection, although a person so inspecting the roll is not entitled to use a device (such as a photocopier, camera, telephone, mobile phone, voice recorder or video recorder) [proposed s 31B];³⁰
 - the Commissioner is to provide a list specifying electors and their particulars to all registered parties and Members of Parliament and, on request, any candidate for election to the Council or Assembly [proposed s 31C];
 - the Commissioner may provide to any person a list specifying electors and their particulars if the Commissioner finds that the public interest in providing the requested information outweighs the public interest in protecting the privacy of personal information — the Commissioner must make available for public inspection any such finding and the reason for the finding [proposed s 31D]; and
 - the Commissioner may provide internet on-line access to information contained in the roll for a district for the purpose of allowing an individual to ascertain whether or not he or she is correctly enrolled for the district [proposed s 31G].
7. The Bill provides the following restrictions on access to the electoral roll:

²⁹ Mr Graham West MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly (Hansard), 30 August 2006.

³⁰ Currently under the Act, copies of the roll (including occupation particulars) are available for inspection and may be purchased [s 30].

- information provided must not include particulars of a silent elector's³¹ residence or any particulars prescribed in regulations [proposed s 31A(4);
- any person or registered party may not use the information for any purpose other than a permitted purpose (maximum penalty 1,000 penalty units (\$110,000)) [proposed s 31E].

Permitted purposes in relation to a registered party or a candidate are:

- any purpose in connection with an election;
- monitoring the accuracy of information contained on a roll; and
- any purpose prescribed by regulations.

Permitted purposes in relation to a Member of Parliament are:

- any purpose in connection with an election;
- monitoring the accuracy of information contained on a roll; and
- exercising the functions of a member in relation to the member's constituents.³²

Permitted purposes for any other person are the purposes for which the Commissioner agreed to provide the information.

- no person may disclose enrolment information provided under s 31C or 31D or use it for a commercial purpose except in accordance with a permitted purpose [proposed s 31F].

- 8. The Committee notes the public interest in the permitted uses of the electoral roll set out in the Bill and the significant penalties for inappropriate use of the information.**
- 9. The Committee notes that the Bill includes date of birth as information to be recorded on the roll and available for public inspection and provided to political parties, Members of Parliament, candidates for elections, and, when found to be in the public interest, to other persons on request.**
- 10. The Committee notes that the Bill removes occupation particulars from copies of the roll available for public inspection but allows such information to be included in copies of the roll provided to political parties, Members of Parliament, candidates for elections, and, when found to be in the public interest, to other persons on request.**
- 11. The Committee refers to Parliament the question whether the access provided to the particulars recorded on the roll under the Bill trespasses unduly on the right to privacy.**

The Committee makes no further comment on this Bill.

³¹ *Silent elector* means an elector whose residence is not shown on a roll because of a request made under s 38A.

³² For a Member of the Legislative Council, in relation to an elector.

6. POLICE AMENDMENT (POLICE PROMOTIONS) BILL 2006

Date Introduced:	30 August 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carl Scully MP
Portfolio:	Police

Purpose and Description

1. This Bill amends the *Police Act 1990* and the *Police Regulation 2000* to implement a new promotion and appointment system for police officers (other than constables and executive officers) based on selection for, and appointment from, promotion lists for particular ranks or grades within ranks.

Background

2. The Second Reading Speech stated that the former Minister for Police initiated a ministerial inquiry into the NSW Police promotion system in 2002. The report, known as the Schuberg report, was finalised in December 2003. The Second Reading Speech stated:

In order to implement key recommendations from the Schuberg report, the former Minister for Police convened a high-level working party in July 2004.... The report of the working party, 'Review and Implementation of the Report of the Ministerial Inquiry into Police Promotions', December 2004, proposed the implementation of a new police promotion system based on the recommendations of the Schuberg report....³³

3. It also stated that the Minister consulted on the proposed new promotion system with officers of NSW Police and the NSW Police Association executive.

The Bill

4. The new promotion and appointment system established by the Bill requires police officers wishing to be considered for promotion to apply to have their names put on a promotion list. To be eligible to be put on such a list a police officer must satisfy a number of eligibility criteria. Police officers who are eligible for promotion under this system will then be ranked and their names entered on the promotions list in order of that ranking. Promotions will then be appointed from the top of the list.
5. The Bill allows for the regulations to set out the matters relating to the promotion list, such as the requirements for placement on a promotion list, how police officers are to be ranked on that list, the appointment of persons from a promotion list and the review and appeal to apply to decisions made about promotions and appointments.
6. The new system will run in tandem with the existing system until 2008. This will allow for the 12 months period necessary for promotions lists to be established. Police

³³ Mr Tony Stewart MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 30 August 2006.

officers will continue to have the opportunity to apply for promotion under the existing system in the meantime.

Issues Considered by the Committee

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

Review rights to be in subordinate legislation: Schedule 1[5], Proposed s. 79

7. The Bill provides for regulations to make provision for:
- review or assessment of requirements for placement on a promotion list and of ranking on a promotion list; and
 - appeals against a decision to suspend or remove the person from a promotion list, or to refuse a person the right to participate or continue to participate in any part of the process to obtain placement on a list, on integrity grounds.

8. The second reading speech stated that

The new system provides for a right of review of the decision that an applicant has failed to successfully complete a promotion qualification as to the applicant's mark and removal from a promotion list. This replaces the previously existing right of appeal to GREAT [Government and Related Employees Appeals Tribunal]. The review mechanism will be incorporated into the regulations following recommendations by the Promotions Implementation Steering Committee as to the appropriate review mechanism and procedures.

It is expected that the review will take the following form:

- review by two independent markers of examinations, taken as part of the eligibility for promotions process; and
- review or re-mark of the officer's eligibility program results by an independent marker; and
- a requirement that all officers be notified that they may apply for a review or re-mark within seven days of receiving their results.

It is expected that the proposed review processes should be consistent with the Board of Studies NSW processes for marking and re-marking. An independent standing review panel will also be created to review eligibility marks and rankings on all promotion lists. The panel will be able to take into account special considerations in appropriate circumstances. All review processes will be completed within 14 days of application during which time no appointments will be made.

9. In relation to review of the decision by the Commissioner to suspend or remove a person from the promotions process on the basis of an integrity matter,³⁴ the second reading speech stated that:

The Act previously allowed for an applicant for promotion, who was prevented from being promoted due to an integrity matter, to appeal to GREAT. The Act now provides

³⁴ Under the Bill, the Commissioner has the duty to make enquiries from relevant people as to the integrity of a person seeking selection to complete an eligibility program for placement on the promotion list. If the Commissioner receives information about the person's integrity which causes the Commissioner to form the opinion that the person is not a suitable person to remain on the list or be placed on the list, the Commissioner may suspend or remove the person from a promotion list or any part of a process relating to placement on a promotion list.

for the regulations to establish a mechanism for review relating to a decision to suspend or remove someone from the promotions process on the basis of an integrity matter. The review mechanism will be incorporated into the regulations following recommendations by the Promotions Implementation Steering Committee as to the appropriate review mechanism and procedures.³⁵

10. The Bill preserves the existing right of appeal to GREAT in respect of any appointments made under the existing system.

11. The Committee is of the view that a fair promotions and appointments process should include an adequate system of review and appeal of decisions related to that process. The Bill allows for a process of review and appeal to be established by regulation and the second reading speech makes clear that it is the Government's intention that the regulations will so provide.

12. However, given the importance of a proper review and appeal mechanism for a fair promotions and appointments process, the Committee refers to Parliament the question of whether, to avoid an undue delegation of legislative power, such matters should be provided for in the primary legislation.

The Committee makes no further comment on this Bill.

³⁵ Second Reading Speech.

7. POLICE INTEGRITY COMMISSION AMENDMENT BILL 2006

Date Introduced:	29 August 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carl Scully MP
Portfolio:	Police

Purpose and Description

1. The Bill's object is to amend the *Police Integrity Commission Act 1996* [the PIC Act] to:
 - provide for a system of investigation, referral and oversight of complaints about certain members of NSW Police who are not police officers;
 - enable criminal proceedings in respect of certain summary offences under that Act to be brought within the period of 3 years of their commission; and
 - confirm that the conduct of former officers of the Police Integrity Commission [PIC] may be investigated by the Inspector of PIC.
2. The Bill also makes consequential amendments to the *Independent Commission Against Corruption Act 1988* [the ICAC Act].

Background

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

On 21 February 2005, Cabinet approved the transfer of jurisdiction to investigate civilian members of NSW Police from the Independent Commission Against Corruption (ICAC) to the Police Integrity Commission (PIC). This transfer of jurisdiction occurred by amending the definition of *police officer* under the *Police Integrity Commission Act 1996* to include all employees of NSW Police.

This has, however, resulted in some unexpected anomalies within the legislation. For example by virtue of the amendment to the definition of *police officer* section 10(6) which governs the involvement of police officers in carrying out investigations on behalf of or at the direction of the Commissioner, applies to administrative employees, although it is certain that the intention of the section was that only qualified police officers be able to undertake investigations.

Administrative employees hold no special office, nor exercise any special powers. The Police Integrity Commission was therefore of the view that administrative employees of NSW Police should not be equated to sworn police officers for all purposes under the Act.

Following amendment to the definition of police officer, both the Police Integrity Commission and NSW Police requested that the Act be further amended to remove the anomaly created by the definition of police officer and to establish a more robust

system for the investigation, referral and oversight of complaints against unsworn members of NSW Police.³⁶

The Bill

Dealing with corrupt conduct of administrative officers

4. The Bill confers on PIC the following additional functions:
 - the prevention of corrupt conduct of administrative officers;³⁷
 - the detection or investigation, or oversight of other agencies in the detection or investigation of, corrupt conduct of administrative officers [proposed new s 13A].
5. The Bill also provides for the making of complaints to PIC concerning such corrupt conduct, and the duty to report it to PIC [proposed new Part 4A]; and it enables certain public officials to make complaints to PIC about the conduct of administrative officers [proposed amended s 135].
6. The reference to “oversight” in proposed s 13A(1) is a reference to the provision by PIC of guidance, relying on a system of guidelines prepared by PIC, and progress reports and final reports furnished to PIC, rather than the provision of detailed guidance in the planning and execution of such detection and investigation [proposed s 13A(3)]. Any such oversight is to be achieved by agreement, although it is the duty of members of NSW Police to co-operate with PIC in the exercise of its oversight functions, and any other of PIC’s functions [see proposed s 13A(4)].

Investigations concerning former officers of PIC

7. The Bill confirms that the Inspector of PIC may investigate the conduct of former officers of PIC [proposed new s 93A].

Time for instituting certain criminal proceedings

8. Currently, criminal proceedings in respect of offences under s 104(3) – relating to obstruction of PIC or the PIC Inspector - must be commenced within 6 months from the time at which they were allegedly committed [see s 179 of the *Criminal Procedure Act 1986*].
9. The Bill amends s 141 to enable criminal proceedings for such offences, and a range of other offences under the PIC Act, to be brought within the period of 3 years after their commission.³⁸

³⁶ Hon P C Scully MP, Minister for Police, Legislative Assembly *Hansard*, 29 August 2006.

³⁷ The Bill defines “an administrative officer” as any member of NSW Police other than a police officer [proposed amended s 4(1)], and “corrupt conduct of an administrative officer” as any conduct of an administrative officer that is corrupt conduct for the purposes of the ICAC Act [proposed new s 5A].

³⁸ These other offences are provided for in the following provisions:

- s 25 (failure to provide information to PIC, or providing false information, when requested to do so by notice);
- s 52 (publication of evidence etc despite a direction not to do so given by PIC);
- s 53 (publication of evidence given at private hearing of PIC without authorisation);

Savings and transitional provisions

10. The amendments concerning the detection and investigation of corrupt conduct of administrative officers or former administrative officers extend to conduct that occurred (or is alleged to have occurred) *before* the commencement of the amendments, unless the conduct has already been the subject of a complaint made before that commencement.
11. However, the amendment made to s 141 only applies to offences committed (or alleged to have been committed) after the commencement of the amendment [proposed amended Sch 3 to the PIC Act].

Amendment of ICAC Act

12. The Bill provides that the Commissioner of Police is not under a duty to report to ICAC any matter that concerns or may concern corrupt conduct of a police officer or administrative officer, unless the Commissioner suspects on reasonable grounds that the matter also concerns or may concern corrupt conduct of *another* public official [proposed amended s 11].
13. The Bill also limits the functions of ICAC in relation to the conduct of police officers and administrative officers [see proposed amended s 13].

Issues Considered by the Committee

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|--|
| 14. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>. |
|--|

The Committee makes no further comment on this Bill.

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- s 54 (disclosures prejudicing investigations being made by PIC);
 - s 56 (unauthorised divulging of information acquired by reason of, or in the course of, exercising functions under the PIC Act); and
 - s 106 (failure to comply with a summons issued by PIC).

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

8. COMMISSION FOR CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2005

Ministerial Correspondence

Date Introduced:	15 November 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Reba Meagher MP
Portfolio:	Youth

Background

1. The Committee reported on the Bill in its *Digest* No 15 of 2005.
2. Under new s 41 in the Bill, the Commission may, by notice in writing served on an employer, require the employer to comply with certain obligations.³⁹ The Commission may serve a notice on an employer if it is of the opinion that the employer has failed to so comply. A person who fails, without reasonable excuse, to comply with such a notice is guilty of an offence, with a maximum penalty of 50 penalty units (currently \$5,500), imprisonment for 6 months, or both.
3. In any proceedings for an offence against this section, the onus of proving that a person had a reasonable excuse lies with the defendant.
4. The Committee considered that a *legal burden* of proof should not be placed on a defendant without special justification.
5. On 25 November 2005 the Committee wrote to the Minister, seeking her advice as to the need to place a legal, rather than an evidential, burden of proof on defendants.

Minister's Reply

6. On 25 August 2006 the Committee received the Minister's reply, in which she stated:

I consider it in the public interest that a legal rather than an evidential burden of proof is placed upon defendants under section 41(7) of the Act. Employers who fail to comply with their background checking duties under the Act are potentially putting children at risk. It is in the public interest to protect children within organisations.

In addition, employers are provided with a number of legal safeguards under section 41 of the Act. The Commission may first write to an employer requiring compliance with their obligations under sections 37, 39 or 40 of the Act. Where an employer is

³⁹ These sections detail an employer's obligations with respect to background checking duties, duties to report completed relevant employment proceedings and to notify applicants rejected on the grounds of estimates of risk arising from background checking.

found not to be complying they will then be served with an enforcement notice, which must set out reason for the notice being given and will be given a minimum period of 28 days to comply with the notice. It is only after these requirements are fulfilled by the Commission that legal action is required.

Committee's Response

7. The Committee thanks the Minister for her reply.
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PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

25 November 2005

Our Ref: LRC 1631

The Hon Reba Meagher MP
Minister for Community Services and Minister for Youth
Level 37 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Commission for Children and Young People Amendment Bill 2005

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee considered the above Bill on 25 November 2005. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 15 of 2005*.

Proposed s 41(1) provides that the Commission may, by notice in writing served on an employer, require the employer to comply with obligations under s 37, s 39 or s 40 within the period specified in the notice. A person who fails, without reasonable excuse, to comply with a notice in force under proposed s 41 is guilty of an offence, with a maximum penalty of 50 penalty units (currently \$5,500), imprisonment for 6 months, or both. In any proceedings for an offence against s 41, the onus of proving that a person had a reasonable excuse lies with the defendant.

The Committee notes that, under the common law and the Commonwealth *Criminal Code*, a defendant normally only bears an *evidential burden* in relation to a defence, ie, the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist. The Committee considers that a *legal burden* of proof, as provided for in the Bill, should not be placed on a defendant without special justification.

The Committee seeks your advice as to the need to place a legal, rather than an evidential, burden of proof on defendants.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Allan Shearan'.

Allan Shearan MP
Chairman



Minister for Community Services
Minister for Youth


RECEIVED

25 AUG 2006

LEGISLATION REVIEW
COMMITTEE

22 AUG 2006

Mr Allan Shearan MP
Chairman
Legislation Review Committee
Parliament of New South Wales
Macquarie St
SYDNEY NSW 2000


Dear Mr Shearan

I am writing regarding the Committee's concerns about the Commission for Children and Young People Amendment Bill 2005 which was considered by the Committee on 25 November 2005. I apologise for the delay in responding to the Committee.

Section 41(7) remains in the Commission for Children and Young People Amendment Act 2005, as assented to by Parliament on 7 December 2005. Having regard to the aims of the Act, I consider it in the public interest that a legal, rather than an evidential, burden of proof is placed on defendants under section 41(7) of the Act. Employers who fail to comply with their background checking duties under the Act are potentially putting children at risk. It is in the public interest to protect children within organisations.

In addition, employers are provided with a number of legal safeguards under section 41 of the Act. The Commission may first write to an employer requiring compliance with their obligations under sections 37, 39 or 40 of the Act. Where an employer is found not to be complying they will then be served with an enforcement notice, which must set out reasons for the notice being given and will be given a minimum period of 28 days to comply with the notice. It is only after these requirements are fulfilled by the Commission that legal action may be taken.

Yours sincerely

Reba Meagher, MP
Minister for Community Services
Minister for Youth

Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Phone: 02 9228 3555
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Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Conveyancing (Sale of Land) Amendment (Smoke Alarms) Regulation 2006	28/04/06	2387	25/08/06	
Gaming Machine Amendment (Payment of Prize Money) Regulation 2006	19/05/06	3088	25/08/06	
Photo Card Amendment (Fee and Penalty Notice Offences) Regulation 2006	23/06/06	4673	25/08/06	
Photo Card Regulation 2005	09/12/05	10042	28/04/06 25/08/06	21/08/05

Appendix 1: Index of Bills Reported on in 2006

	Digest Number
Air Transport Amendment Bill 2006	2
Apiaries Amendment Bill 2006	10
Appropriation Bill 2006	9
Appropriation (Budget Variations) Bill 2006	6
Appropriation (Parliament) Bill 2006	9
Appropriation (Special Offices) Bill 2006	9
Careel Bay Protection Bill 2006*	2
Channel 7 Former Epping Site Protection Bill 2006*	10
Child Protection (International Measures) Bill 2006	2
Children and Young Persons (Care and Protection) Bill 2006	7
Children (Detention Centres) Amendment Bill 2006	8
Civil Liability Amendment Bill 2006	7
Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill 2006	8
Constitution Amendment (Governor) Bill 2006	7
Conveyancers Licensing Amendment Bill 2006	7
Correctional Services Legislation Amendment Bill 2006	8
Courts Legislation Amendment Bill 2006	4
Courts Legislation Further Amendment Bill 2006	8
Crimes and Courts Legislation Amendment Bill 2005	1
Crimes Amendment (Murder of Police Officers) Bill 2006*	7
Crimes Amendment (Organised Car and Boat theft) Bill 2006	4
Crimes Legislation Amendment (Gangs) Bill 2006	10
Crimes (Serious Sex Offenders) Bill 2006	5
Crimes (Sentencing Procedure) Amendment Bill 2006	5
Crimes (Sentencing Procedure) Amendment (Gang Leaders) Bill 2006*	3
Deer Bill 2006	10
Duties Amendment (Abolition of State Taxes) Bill 2006	9
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	8
Education Amendment (Financial Assistance to Non-Government Schools) Bill 2006	9
Education Legislation Amendment (Staff) Bill 2006	6
Electricity Supply Amendment (Protection of Electricity Works) Bill 2006	6

	Digest Number
Environmental Planning and Assessment Amendment Bill 2006	2
Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Bill 2006	4
Fair Trading Amendment Bill 2006	8
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	2
Firearms Amendment (Good Behaviour Bonds) Bill 2006*	2
Fisheries Management Amendment Bill 2006	2
Freedom of Information Amendment (Open Government-Disclosure of Contracts) Bill 2005	1
Independent Commission Against Corruption Amendment (Operations Review Committee) Bill 2006	5
Industrial Relations Amendment Bill 2006	3
Interpretation Amendment Bill 2006	8
James Hardie (Civil Liability) Bill 2005	1
James Hardie (Civil Penalty Compensation Release) Bill 2005	1
James Hardie Former Subsidiaries (Winding up and Administration) Bill 2005	1
Judicial Officers Amendment Bill 2006	6
Jury Amendment (Verdicts) Bill 2006	5
Land Tax Management Amendment (Tax Threshold) Bill 2006	2
Law Enforcement (Controlled Operations) Amendment Bill 2006	3
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	1
Legal Profession Amendment Bill 2006	5
Liquor Amendment (2006 FIFA World Cup Hotel Trading) Bill 2006	8
Local Government Amendment (Miscellaneous) Bill 2006	6
Local Government Amendment (Waste Removal Orders) Bill 2006	8
Motor Accidents Compensation Amendment Bill 2006	3
Motor Accidents (Lifetime Care and Support) Bill 2006	3
Motor Vehicle Repairs (Anti-steering) Bill 2006*	4
National Parks and Wildlife (Adjustment of Areas) Bill 2006	2
Parliamentary Electorates and Elections Amendment Bill 2006	10
Pharmacy Practice Bill 2006	7
Pipelines Amendment Bill 2006	7
Police Amendment (Death and Disability) Bill 2005	1
Police Amendment (Police Promotions) Bill 2006	10
Police Integrity Commission Amendment Bill 2006	10
Protection of the Environment Operations Amendment (Waste Reduction) Bill 2006	3

	Digest Number
Public Sector Employment Legislation Amendment Bill 2006	3
Royal Rehabilitation Centre Sydney Site Protection Bill 2006*	3
Security Industry Amendment (Patron Protection) Bill 2006*	7
Smoke-free Environment Amendment (Removal of Exemptions) Bill 2006*	4
Snowy Hydro Corporatisation Amendment (Parliamentary Scrutiny of Sale) Bill 2006	9
Snowy Hydro Corporatisation Amendment (Protect Snowy Hydro) Bill 2006	9
State Property Authority Bill 2006	7
State Revenue and Other Legislation Amendment (Budget Measures) Bill 2006	9
State Revenue Legislation Amendment Bill 2006	8
Statute Law (Miscellaneous Provisions) Bill 2006	8
Summary Offences Amendment (Display of Spray Cans) Bill 2006	7
Superannuation Legislation Amendment Bill 2006	8
Sydney Cricket and Sports Ground Amendment Bill 2006	8
Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006	9
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006	6
Transport Administration Amendment (Travel Concession) Bill 2006	9
University of Technology (Kuring-gai Campus) Bill 2006*	8
Valuation of land Amendment Bill 2006	7
Water Management Amendment (Water Property Rights Compensation) Bill 2006	5
Workers Compensation Legislation Amendment Bill 2006	4
Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill 2005	1
Young Offenders Amendment (Reform of Cautioning and Warning) Bill 2006*	8

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2005	Digest 2006
Children (Detention Centres) Bill 2006	Minister for Juvenile Justice	02/06/06	27/06/06		8, 9
Commission for Children and Young People Amendment Bill 2005	Minister for Community Services	25/11/05	25/08/06	15	10
Companion Animals Amendment Bill 2005	Minister for Local Government	25/11/05	15/12/05		1
Confiscation of Proceeds of Crime Amendment Bill 2005	Attorney General	10/10/05	23/11/05	11	1
Correctional Services Legislation Amendment Bill 2006	Minister for Justice	02/06/06			8
Crimes Amendment (Road Accidents) Bill 2005	Attorney General	10/10/05	12/12/05	11	1
Crimes Legislation Amendment (Gangs) Bill 2006	Minister for Police	05/09/06			10
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05	19/04/06	6	5
Crimes (Serious Sex Offenders) Bill 2006	Minister for Justice	28/04/06			5
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	Attorney General	02/06/06	02/08/06		8,9
Education Legislation Amendment (Staff) Bill 2006	Minister for Education and Training	09/05/06	23/05/06		6,8
Fair Trading Amendment Bill 2006	Minister for Fair Trading	02/06/06			8
Local Government Amendment (Waste Removal Orders) Bill 2006	Minister for Local Government		09/06/06		8,9
Motor Accidents Compensation Amendment Bill 2006 and Motor Accidents (Lifetime Care and Support) Bill 2006	Minister for Commerce	24/03/06	26/04/06		3,5
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/05	12/01/06		2
State Revenue Legislation Amendment Bill 2005	Treasurer	20/06/05	03/01/05	8	1
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005	Attorney General	25/11/05	16/05/06	15	7
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006	Minister for Gaming and Racing	09/05/06	24/05/06		6,8
Transport Administration Amendment (Public Transport Ticketing Corporation) Bill 2005	Minister for Transport	25/11/05 28/04/06	05/04/06	15	5
Vocational Education and Training Bill 2005	Minister for Education and Training	04/11/05	28/11/05	13	1

Bill	Minister/Member	Letter sent	Reply received	Digest 2005	Digest 2006
Water Management Amendment Bill 2005	Minister for Natural Resources	25/11/05		15	

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2006

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Careel Bay Protection Bill 2006*	R				
Channel 7 Former Epping Site Protection Bill 2006*	R				
Children (Detention Centres) Amendment Bill 2006	R, C				
Correctional Services Legislation Amendment Bill 2006	R, C				
Crimes Amendment (Murder of Police Officers) Bill 2006*	R				
Crimes Legislation Amendment (Gangs) Bill 2006	R,C				
Crimes (Sentencing Procedure) Amendment Bill 2006	R				
Crimes (Serious Sex Offenders) Bill 2006	R, C				
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	R, C				
Education Legislation Amendment (Staff) Bill 2006	R, C	R, C	R, C	R, C	R, C
Electricity Supply Amendment (Protection of Electricity Works) Bill 2006	R				
Environmental Planning and Assessment Amendment Bill 2006	R				
Fair Trading Amendment Bill	R, C				
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	N				
Fisheries Management Amendment Bill 2006	R				
Jury Amendment (Verdicts) Bill 2006	R				

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Law Enforcement (Controlled Operations) Amendment Bill 2006	R				
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	R				
Local Government Amendment (Waste removal Orders) Bill 2006	R		R		
Motor Accidents (Lifetime Care and Support) Bill 2006	R, C		R, C	R	R
Motor Accidents Compensation Amendment Bill 2006	R, C		R, C		
Motor Vehicles Repairs (Anti-steering) Bill 2006	R				
Parliamentary Electorates and Elections Amendment Bill 2006	R				
Pipelines Amendment Bill 2006			R		R
Police Amendment (Police Promotions) Bill 2006				R	
Royal Rehabilitation Centre Sydney Site Protection Bill 2006*	R				
Security Industry Amendment (Patron Protection) Bill 2006*	R				
Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006				R	
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006		R, C			
Transport Administration Amendment (Travel Concession) Bill 2006				R	
University of Technology (Kuring-gai Campus) Bill 2006*	R				

Key

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

Appendix 4: Index of correspondence on regulations reported on in 2006

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2006
Centennial Park and Moore Park Trust Regulation 2004	Minister for Tourism and Sport and Recreation	29/04/05	19/01/06	1
Companion Animals Amendment (Penalty Notices) Regulation 2005	Minister for Local Government	12/09/05	21/12/05	1
Electricity (Consumer Safety) Regulation 2006	Minister for Fair Trading	28/04/06	20/06/06	9
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005	Minister for Planning	12/09/05	24/12/06	3
Health Records and Information Privacy Regulation 2006	Minister for Health	28/04/06	27/06/06	9
Hunter Water (General) Regulation 2005	Minister for Utilities	04/11/05	09/01/06	1
Motor Accidents Compensation Regulation 2005	Minister for Commerce	28/04/06	24/07/06	9
Protection of the Environment Operations (Waste) Regulation 2005	Minister for the Environment	04/11/05	29/11/05	1
Stock Diseases (General) Amendment Regulation 2005	Minister for Primary Industries	12/09/05	07/02/06	1
Photo Card Regulation 2005	Minister for Roads	26/04/06 25/08/06	21/08/06	9
Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Minister for Roads		03/08/06	9
Workers Compensation Amendment (Advertising) Regulation 2005	Minister for Commerce	12/09/05	28/11/05	1