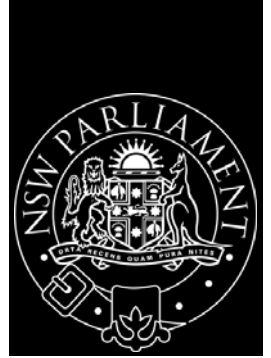


PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 3 of 2007

12 October 2007

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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 2007

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 2007

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 2007

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 2007

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

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Anti-Discrimination Amendment (Breastfeeding) Bill 2007

Issue: Schedule 1 [1]: Section 24 What constitutes discrimination on the ground of sex; Schedule 1 [3]: Section 35 Pregnancy, childbirth and breastfeeding

- | | |
|-----|--|
| 8. | The Committee notes that this provides women who have to breastfeed from having their personal rights and liberties unduly trespassed by being treated less favourably on the ground of a characteristic (breastfeeding) that appertains generally to persons of that sex. The Committee also notes the evidence that suggests increasing levels of breastfeeding will bring benefits for the health of the community. In 2003, the World Health Organisation and the United Nations International Children's Emergency Fund endorsed their Global Strategy for Infant and Young Child Feeding, which looked at the need to provide facilities and needs for breastfeeding women in employment and outside the home. |
| 10. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |

2. Channel 7 Former Epping Site Protection Bill 2007*

Retrospectivity: Clause 5

- | | |
|-----|--|
| 9. | The Committee will always be concerned to identify the retrospective effects of legislation which may have an adverse impact on a person. |
| 10. | The Committee notes that legislatively revoking a declaration duly made under law trespasses on a person's right to order his or her affairs in accordance with the current law. |
| 11. | The Committee asks Parliament to consider whether providing for the revocation of declarations made under s 75B of the <i>Environmental Planning and Assessment Act 1979</i> regarding the former Channel 7 site unduly trespasses on personal rights and liberties. |

3. Christian Israelite Church Property Trust Bill 2007

- | | |
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| 6. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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4. Crimes Amendment Bill 2007

Issue: Commencement by proclamation

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|-----|--|
| 13. | The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power. |
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5. Housing Amendment (Community Housing Providers) Bill 2007

Issue: Commencement by proclamation – clause 2

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| 7. | The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power. |
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6. Liquor Amendment (Small Bars And Restaurants) Bill 2007*

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| 19. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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7. Liquor Amendment (Special Events Hotel Trading) Bill 2007

- | | |
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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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8. Partnership Amendment (Venture Capital) Bill 2007

- | | |
|----|--|
| 8. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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9. Trade Measurement Legislation Amendment Bill 2007

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|-----|--|
| 12. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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Part One – Bills

SECTION A: COMMENT ON BILLS

1. ANTI-DISCRIMINATION AMENDMENT (BREASTFEEDING) BILL 2007

Date Introduced: 26 September 2007
House Introduced: Legislative Assembly
Minister Responsible: Mr Barry Collier MP
Portfolio: Parliamentary Secretary

Purpose and Description

1. The Bill amends the *Anti-Discrimination Act 1977* with respect to discrimination on the ground of breastfeeding.

Background

2. The *Anti-Discrimination Act 1977* provides that discrimination on the basis of a characteristic that appertains generally to persons of a particular sex is discrimination on the ground of sex. The Bill provides that breastfeeding is a characteristic that appertains generally to women. Discrimination on the ground of sex is unlawful in work, education, provision of goods and services (including in restaurants and cafes), provision of accommodation and in registered clubs.
3. Thirty years ago, NSW Parliament moved to make discrimination unlawful on the grounds of race, sex and marital status in the areas of employment, provision of goods, services and accommodation, and race discrimination in education. The Anti-Discrimination Act now applies to discrimination on other grounds such as age, religion, disability, carers' responsibilities, pregnancy, homosexuality and transgender status. Discrimination on these grounds is unlawful in the areas of employment, State education, goods and services, accommodation and registered clubs.

The Bill

4. The object of this Bill is to remove doubt that discrimination on the ground of breastfeeding constitutes unlawful discrimination on the ground of sex. The Bill also defines *breastfeeding* as including the act of expressing breast milk. The Bill makes it clear that a person is not to be treated as having unlawfully discriminated against a man on the ground of sex because that person grants a woman's rights or privileges in connection with breastfeeding.
5. Outline of provisions:
Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Anti-Discrimination Act 1977* set out in Schedule 1.

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

6. Schedule 1 Amendments:

Schedule 1 [1] removes doubt that discrimination on the ground of breastfeeding constitutes unlawful sex discrimination. Discrimination on the ground of sex includes treating a person less favourably on the ground of a characteristic that appertains generally to persons of that sex and the amendment declares breastfeeding to be a characteristic that appertains generally to women. The amendment also provides that breastfeeding includes the act of expressing breast milk.

Schedule 1 [2] makes a consequential amendment to a provision about direct discrimination. Direct discrimination occurs only when the circumstances of the persons between whom discrimination occurs are the same or *not materially different*. The purpose of the amendment is to make it clear that the mere fact that the discrimination occurs between a man and a nursing mother does not of itself make the circumstances materially different.

Schedule 1 [3] provides that a person (including an employer) is not to be treated as having unlawfully discriminated against a man on the ground of sex by reason only of the fact that the person grants a woman rights or privileges in connection with breastfeeding.

Schedule 1 [4] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [5] provides that the amendments made by the proposed Act do not apply to or in respect of anything done or omitted to be done before the commencement of the amendments.

Issues Considered by the Committee

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

Issue: Schedule 1 [1]: Section 24 What constitutes discrimination on the ground of sex; Schedule 1 [3]: Section 35 Pregnancy, childbirth and breastfeeding

7. Schedule 1, Clause 1 amends Section 24 to remove doubt that discrimination on the ground of breastfeeding constitutes unlawful sex discrimination. By a similar reasoning, Schedule 1, Clause 3 amends Section 35 to provide that a person (including an employer) will not have their personal rights and liberties trespassed with being treated as having unlawfully discriminated against a man on the ground of sex by reason only of the fact that the person grants a woman rights or privileges in connection with breastfeeding.

8. **The Committee notes that this provides women who have to breastfeed from having their personal rights and liberties unduly trespassed by being treated less favourably on the ground of a characteristic (breastfeeding) that appertains generally to persons of that sex. The Committee also notes the evidence that suggests increasing levels of breastfeeding will bring benefits for the health of the community. In 2003, the World Health Organisation and the United Nations International Children's Emergency Fund endorsed their Global Strategy for Infant and Young Child Feeding, which looked at the need to provide facilities and needs for breastfeeding women in employment and outside the home.**
9. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.
10. **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.

2. CHANNEL 7 FORMER EPPING SITE PROTECTION BILL 2007*

Date Introduced: 27 September 2007
House Introduced: Legislative Assembly
Member Responsible: Greg Smith MP

Purpose and Description

1. The purpose of the Bill is to protect the former Channel 7 site at Epping by: making Parramatta City Council the consent authority for any application to carry out development on the site; prohibiting excessive development on the site; and requiring community consultation in relation to the carrying out of development on the site.

Background

2. A declaration has been made by the Minister for Planning under s 75B of the *Environmental Planning and Assessment Act 1979* that the development of the former Channel 7 site is a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies. Part 3A specifies that the development of major infrastructure and other projects to which the Part applies is to be approved by the Minister.

The Bill

3. Clause 4 of the Bill establishes that Parramatta City Council is to be the consent authority regarding any development on the former Channel 7 site at Epping.
4. Clause 5 specifies that a declaration cannot be made under s 75B of the *Environmental Planning and Assessment Act 1979* that the development of the former Channel 7 site is a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies. Part 3A is concerned with major infrastructure and other projects.
5. Part 3 of the Bill makes it clear that development of the former Channel 7 site can only be carried out following the obtaining of development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (cl 6).
6. Parramatta City Council is required by Part 4 of the Bill to prepare and implement a concept plan for the former Channel 7 site. In doing so, it must consult with the Community Consultative Forum (consisting of six residents of the City of Parramatta) which is established under Part 5 of the Bill. Part 5 of the Bill is concerned with community consultation in general and requires the local community to be properly informed regarding any proposed development of the site.

Issues Considered by the Committee

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

Retrospectivity: Clause 5

7. Clause 5(3) of the Bill revokes any declaration made under s 75B of the *Environmental Planning and Assessment Act 1979* that the carrying out of development on the former Channel 7 site is a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies. This clause is to apply to declarations made before the commencement of the Bill, should it pass.
8. This revocation could cause loss to persons who have acted on the basis of the declaration.

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| <ol style="list-style-type: none">9. The Committee will always be concerned to identify the retrospective effects of legislation which may have an adverse impact on a person.10. The Committee notes that legislatively revoking a declaration duly made under law trespasses on a person's right to order his or her affairs in accordance with the current law.11. The Committee asks Parliament to consider whether providing for the revocation of declarations made under s 75B of the <i>Environmental Planning and Assessment Act 1979</i> regarding the former Channel 7 site unduly trespasses on personal rights and liberties. |
|---|

The Committee makes no further comment on this Bill.

3. CHRISTIAN ISRAELITE CHURCH PROPERTY TRUST BILL 2007

Date Introduced: 26 September 2007
House Introduced: Legislative Assembly
Minister Responsible: The Hon David Campbell MP
Portfolio: Minister for Police; Minister for the Illawarra

Purpose and Description

1. The purposes of the Bill are to: constitute the Christian Israelite Church Property Trust, a statutory corporation to hold property on behalf of the Christian Israelite Church; specify the functions of the Christian Israelite Church Property Trust; and vest in the Christian Israelite Church Property Trust property held in trust for the Church.

Background

2. According to the Agreement in Principle speech, the current trust structure applying to the Christian Israelite Church requires the redrafting of title deeds every time a trustee either dies or leaves.¹ The Bill is intended to improve the capacity of the Christian Israelite Church to manage its finances and property.

The Bill

3. Part 2 of the Bill sets out the Constitution and functions of the Christian Israelite Church Property Trust. Clause 7 provides that the Trust's functions are:
 - to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, the Church,
 - to acquire property by gift, devise or bequest and to agree to and carry out the conditions of the gift, devise or bequest,
 - to borrow or lend money for the purposes of the Church,
 - to mortgage, charge or otherwise encumber trust property,
 - to make gifts or donations of property held by it for the purposes of the Church,
 - to enter into any guarantee or indemnity that may assist the Trust or the Church in the exercise of its functions,

¹ B J Collier MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 26 September 2007.

- to do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for or incidental to the exercise of its functions under this Act.
4. The Bill, amongst other things, also enables the Christian Israelite Church Property Trust to: hold property (cl 10); invest trust funds in accordance with the terms of any trust (cl 11); make advances (cl 12); and permit trust property to be used and managed for the purposes of a scheme of co-operation (cl 13).
 5. Part 3 of the Bill enables the vesting of property in the Christian Israelite Church Property Trust that is currently held in trust for the Christian Israelite Church.

Issues Considered by the Committee

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| 6. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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The Committee makes no further comment on this Bill.

4. CRIMES AMENDMENT BILL 2007

Date Introduced: 25 September 2007
House Introduced: Legislative Assembly
Minister Responsible: Hon David Campbell MP
Portfolio: Minister for Police

Pursuant to a suspension of Standing Orders, the Bill passed all stages of Parliament on 26 September 2007. Under s 8A(2), the Committee is not precluded from reporting on a Bill because it has passed a House of the Parliament or become an Act.

Purpose and Description

1. The purpose of the Bill, amongst other things, is to amend the *Crimes Act 1900* to: increase penalties for the reckless infliction of grievous bodily harm; replace 'malicious' as a fault element of offences; and modernise blackmail offences.

Background

2. There have been a number of recent cases of people throwing rocks at, or dropping them on, moving vehicles. The Bill proposes to increase the maximum penalties for the offence of recklessly inflicting grievous bodily harm, the offence with which such persons are usually charged.
3. The Bill also proposes to replace the fault element of 'maliciously' throughout the *Crimes Act 1900* with what are seen as the more modern fault elements of 'recklessly' or 'intentionally'. The term 'maliciously' has been the subject of judicial criticism. For example, Dixon CJ of the High Court of Australia noted in relation to the term 'maliciously' that 'Few words have caused more trouble both at common law and in the interpretation of statutes where it occurs'.² Further, Hunt J noted in *R v Coleman* that:

the definition of 'maliciously' in s 5 is not a happily drafted one.... It is to be hoped that the legislature will soon take the opportunity to remove completely from the criminal statutes the concept of 'malice', which calls for a meticulous analysis and fine and impractical distinctions to be made by the jury (for which task such a body is quite ill-suited) and which in the end does not include certain states of mind at least equally blameworthy with those which it does include.³

Hunt J then highlighted that 'maliciously' was increasingly being replaced in statutes in Victoria and the United Kingdom with such phrases as 'intentionally or recklessly'.

4. The Criminal Law Review Division of the Attorney General's Department published a discussion paper in 2005 that raised the issue of replacing the term 'maliciousness' as used in the *Crimes Act 1900*. According to the Agreement in Principle speech, the

² *Vallance v The Queen* (1961) 108 CLR 56 at 59, per Dixon CJ.

³ *R v Coleman* (1990) 19 NSWLR 467 at 472, per Hunt J.

response to the discussion paper was generally favourable in relation to the replacement of the word 'maliciously' with 'recklessly' or 'intentionally or recklessly'.⁴

The Bill

5. The Bill proposes to make a number of amendments to the *Crimes Act 1900*.
6. Schedule 1[1] proposes to amend the definition of 'grievous bodily harm' to include 'any grievous bodily disease (in which case a reference to the infliction of grievous bodily harm includes a reference to causing a person to contract a grievous bodily disease)'. Causing a person to contract a grievous bodily disease is currently a separate offence under s 36 of the *Crimes Act 1900*. The Bill proposes to delete s 36.
7. One of the major changes proposed by the Bill is to remove the term 'maliciously' from the *Crimes Act*. 'Maliciously' is currently defined in s 5 of the Act as:

Every act done of malice, whether against an individual or any corporate body or number of individuals, or done without malice but with indifference to human life or suffering, or with intent to injure some person or persons, or corporate body, in property or otherwise, and in any such case without lawful cause or excuse, or done recklessly or wantonly, shall be taken to have been done maliciously, within the meaning of this Act, and of every indictment and charge where malice is by law an ingredient in the crime.

'Maliciously' is either omitted or replaced with the term 'intentionally or recklessly' in various offences throughout the *Crimes Act*. Subsequent amendments are made to numerous offences throughout the Act to accommodate this change.

8. The Bill increases the maximum penalty for a number of offences including:
 - the reckless causing of grievous bodily harm – from seven to ten years, and from 10 to 14 years where the offence is committed in company: schedule 1[7];
 - causing a dog to inflict grievous bodily harm – from seven to ten years: schedule 1[8];
9. The Bill proposes to extend the offences of breaking and entering in sections 112 and 113 of the *Crimes Act 1900* so that it applies to all dwelling-houses and other buildings. This is to replace the current lengthy list of buildings to which the offences apply, which has been described as 'lengthy, old-fashioned, and potentially contains gaps'.⁵
10. The Bill proposes to insert Part 4B into the *Crimes Act*. Part 4B is concerned with blackmail and is designed to modernise the current blackmail and extortion offences. It also extends the offences to influencing the exercise of public duties. The changes are largely based on the Model Criminal Code.

⁴ B J Collier MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 25 September 2007.

⁵ B J Collier MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 25 September 2007.

Issues Considered by the Committee

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

Issue: Commencement by proclamation

11. Clause 2 of the Bill provides that sections 1-6, Schedule 1[7], Schedule 2 and Schedule 3.1 are to commence on the date of assent. The remainder of the Bill commences on a day or days to be appointed by proclamation.
12. The Committee notes that providing for parts of an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence that Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.
13. **The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.**

The Committee makes no further comment on this Bill.

5. HOUSING AMENDMENT (COMMUNITY HOUSING PROVIDERS) BILL 2007

Date Introduced:	25 September 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Matthew Brown MP
Portfolio:	Minister for Housing

Purpose and Description

1. The purpose of the Bill is to provide for: the appointment of a Registrar of Community Housing; the registration of community housing providers; and the giving of assistance to registered community housing providers so as to support the provision of housing for people on a very low, low or moderate income.

Background

2. The Bill forms part of the NSW Government's strategy for growing the community housing sector by improving the ability of community housing providers to partner with other community groups and private investors, and thus increase affordable housing options in NSW. According to the Agreement in Principle speech:

This bill will give the community housing sector the certainty it requires to partner with other not-for-profit organisations, local government and the private sector on affordable housing projects. The lemma Government is committed to laying the foundations for a community housing sector that is diverse, responsive, viable, sustainable and capable of growing into the future. This bill will give legislative recognition to community housing providers by protecting the Government's investment in community housing, protecting the interests of community housing tenants, encouraging investment from the private sector and improving the capacity of the sector to deliver more housing to people in need in New South Wales.⁶

The Bill

3. The Bill proposes to insert Part 9A into the *Housing Act 2001*. Part 9A would enable the Minister to appoint a person as the Registrar of Community Housing. The Registrar's functions are set out in proposed s 67B and include:
 - maintenance of a register of community housing providers;
 - assessment of the suitability of organisations to be registered as community housing providers;
 - investigation of complaints and other matters regarding registered community housing providers;
 - provision of information to persons regarding community housing;

⁶ The Hon M J Brown MP, Legislative Assembly *Hansard*, 25 September 2007.

- provision of advice to the Minister in relation to community housing;
 - advising on matters to be included in a regulatory code for registered community housing providers; and
 - any other function conferred or imposed on the Registrar by statute.
4. Proposed sections 67C to 67H provide for the registration of community housing providers. A body corporate may apply to the Administrative Decisions Tribunal for review of the Registrar's decision to either refuse to register the body corporate as a registered community housing provider or to cancel the registration of the body corporate as a registered community housing provider.
5. The Bill would enable the New South Wales Land and Housing Corporation to assist registered community housing providers (proposed s 67I) so long as it is consistent with the objects of the *Housing Act 2001* and if it is deemed a prudent action. Such assistance may take the form of the provision of funding, land or other property to a community housing provider, and/or entering a partnership with a community housing provider, amongst other things. A community housing provider is only to be given assistance if it is registered and if the assistance is the subject of a community housing agreement.

Issues Considered by the Committee

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

Issue: Commencement by proclamation – clause 2

6. Clause 2 of the Bill specifies that it is commence on proclamation. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence that Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.

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| <p>7. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power.</p> |
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The Committee makes no further comment on this Bill.

6. LIQUOR AMENDMENT (SMALL BARS AND RESTAURANTS) BILL 2007*

Date Introduced:	27 September 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Private Member - Ms Clover Moore MP
Portfolio:	Member for Sydney; Independent

Purpose and Description

1. This Bill amends the *Liquor Act 1982* to enable on-licences to be granted for small venues that operate predominantly as bars and to change the basis on which licensed restaurants are authorised to sell and supply liquor; and for related purposes.

Background

2. This Bill aims to encourage a new night economy of smaller, lower impact and boutique style bars, that has less impact on neighbouring amenity, and similar to other cities such as Melbourne and Perth, European, US and Asian cities like Paris, Florence, San Francisco and Shanghai.
3. Western Australian Labor Government introduced small bar licences as part of their liquor reform in 2006 where the reforms were said to encourage 'a more vibrant, lower risk, family friendly, café style drinking culture'. This is in line with the aims of this Bill. However, the NSW Premier has said publicly that he would not support the introduction of these licences unless they are accompanied by social impact assessments. The *Liquor Act 1982* does not require social impact assessments for nightclub licences but they are required for hotel licences and retail off-licences with a fee of up to \$6,600.
4. The Western Australian Government had commissioned the Allen Consulting Group to report on the effectiveness of liquor licensing in other Australian jurisdictions when they were preparing to reform their liquor licensing. The report found that according to the NSW Department of Gaming and Racing, the quality of social impact assessments was generally poor and the quality and availability of research for the process was found to be difficult for both applicants and assessors.
5. The NSW liquor is discussed as being more restrictive, expensive and complex than any other system in Australia. It is proposed that this Bill does not require social impact assessments for small bars as such assessments are also not required for restaurants. Small bars will not have gaming machines or sell takeaway liquor. Limiting the clientele group to a maximum of 120 people will ensure the responsible service of alcohol will be better managed. Small bars will require development

approval from the local consent authority. Such development applications for small bars will include conditions to minimise amenity impacts.

6. The Facebook group We Want Funky Little Pubs in Sydney has over 4,500 members in support of this Bill. In The Sydney Morning Herald, 27 September 2007, the former Prime Minister Keating said, “The pub culture in Sydney is stultifyingly bad. It’s raucous and it’s noisy in the Klondike-like saloons. All that’s missing is Lola Montez. The idea that you have to go into these swills to get a drink, and not in some more beguiling place, is a shame”.
7. The other aim is to promote tourism and business. It is estimated that a third to a half of hotel guests stay in the central business district for business and they conduct face to face meetings in conducive surroundings. This Bill aims to allow for market diversity and the ability of licensees to identify and respond to the changing needs of the market – whether as a pub/hotel, as a gaming venue with associated dining, lounge, entertainment or bar, or as a café/bar or lounge of European style in the cosmopolitan street culture that is popular with tourists and visitors.
8. In the agreement in principle speech, Ms Moore MP, stated that this Bill is supported by the Sydney Chamber of Commerce and the Property Council. Sydney Chamber of Commerce said the Sydney CBD should offer a variety of drinking venues to cater for the tastes of all patrons. The Property Council said it promotes vibrancy in the city by encouraging work and recreation and strengthening the economy.
9. Professor John Niewenhuysen recommended reforms to Victorian’s liquor laws in the 1980’s. He said in a discussion paper that the economic benefits of liquor licensing reform in Victoria showed a 24.6% increase in restaurant employees between 1999 and 2004 after Victoria introduced liquor reforms in the 1990s. In NSW, during the same period, there was only a 17.7% increase. The number of liquor outlets increased by 96% in Victoria between 1998 and 2006, compared with a 34% in NSW, however, he pointed out that the increase has not increased per capita consumption. Victoria’s increase in venues reflects a greater choice in the style and type of premises such as smaller bars in the laneways of Melbourne’s CBD.

The Bill

10. The object of this Bill is to amend the *Liquor Act 1982*:
 - (a) to enable a new class of on-licence (referred to as a *small bar licence*) to be granted for premises where the predominant activity is the sale or supply of liquor for consumption on the premises and where the number of patrons is limited to 120, and
 - (b) to replace the primary purpose test in relation to a licensed restaurant (that the premises must operate at all times as a restaurant) with a requirement that a licensed restaurant operates predominantly (but not exclusively) as a restaurant and tables and chairs are provided for at least 70% of its patrons.
11. The amendments relating to the granting of small bar licences are designed to allow low-impact venues to operate as licensed bars without having to operate as a business in respect of which the sale of liquor is ancillary to some other purpose or activity (which is the requirement that currently applies to other classes of on-licences).

12. The amendments relating to the basis on which restaurants can operate as licensed premises will allow liquor to be sold and consumed in a restaurant without patrons necessarily having to consume a meal. As a consequence, it will no longer be necessary for restaurants to have a dine-or-drink authority to be able to sell liquor to patrons who are not actually consuming (or intending to consume) a meal.

13. Outline of main provisions:

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

Clause 3 is a formal provision that gives effect to the amendments to the *Liquor Act 1982* set out in Schedule 1.

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

14. Schedule 1 Amendments

Amendments relating to small bars:

Schedule 1 [3] enables the Licensing Court to grant a small bar licence that authorises the licensee to sell liquor for consumption on the premises only. Schedule

1 [2] defines the new class of on-licence and Schedule 1 [4] distinguishes small bar licences from other existing classes of on-licences (eg those that relate to restaurants, theatres or cinemas or that authorise the sale of liquor at functions).

Schedule 1 [6] specifies certain requirements that will apply to small bar licences. The predominant activity carried out on the licensed premises must be the sale or supply of liquor for consumption on the premises. This requirement does not prevent other activities from being carried out on the premises, such as the provision of entertainment or food, so long as the premises operate predominantly as a place where people go to have a drink. Another special requirement for small bars is that they are restricted to a maximum of 120 patrons. Schedule 1 [5] provides that a contravention of these requirements is a breach of the conditions of the small bar licence.

Schedule 1 [14] specifies the general trading hours for small bars and enables these trading hours to be varied by the court in any particular case. An application for variation of trading hours for a small bar will need to be advertised under the regulations and local councils and the police will be able to apply for the revocation of any variation of trading hours that has been granted by the court. Schedule 1 [20] provides that the fee for a variation of the trading hours for a small bar is \$100.

Schedule 1 [18] provides that the court must not grant an application for a small bar licence unless the premises have proper facilities to operate as a licensed bar and have sufficient sanitary facilities (eg toilets). The sanitary facilities may be located away from the licensed premises in certain circumstances. Schedule 1 [24] makes it clear that any sanitary facilities for a small bar that are located away from the licensed premises are, when it comes to law enforcement officers exercising their power to enter and inspect licensed premises, taken to be part of the licensed premises concerned. Schedule 1 [30] enables regulations to be made in relation to the sanitary facilities that are required to be provided for small bars.

Schedule 1 [19] provides that the fee for the grant of a small bar licence by the court is \$500.

15. Amendments relating to licensed restaurants:

At present under the Act, it is a condition of a restaurant licence that the primary purpose of the premises is to be a restaurant. Accordingly, licensed restaurants (even those with a dine-or-drink authority) must at all times be operated consistently with this primary purpose. As a result, licensed restaurants generally cannot sell or supply liquor except with, or ancillary to, a meal consumed at a table.

Schedule 1 [7] replaces the primary purpose test for restaurants with a requirement that the predominant activity carried out on the licensed premises must be the preparation and serving of meals. Another new requirement for licensed restaurants will be that tables and chairs must be provided for at least 70% of the restaurant's patrons. As a result of these changes, licensed restaurants will no longer require the authority conferred by a dine-or-drink authority in order to sell or supply liquor to patrons who are not eating (or intending to eat) a meal. Accordingly, the amendments made by Schedule 1 [8]–[12], [15]–[17], [21], [22], [25]–[29] and [31] remove any connection under the Act between restaurant licences and dine-or-drink authorities, as well as removing various provisions relating to the primary purpose test for restaurants. Dine-or-drink authorities will continue to be relevant only in the case of nightclub licences.

Schedule 1 [13] repeals section 23AE of the Act which currently allows a person in a restaurant to consume liquor away from a table so long as there is a seat at a table for the person. The section will be redundant once licensed restaurants are no longer required to operate exclusively as places where people are required to eat. For the same reason, Schedule 1 [23] repeals section 88 of the Act which currently provides for an authorisation to sell or supply liquor in the reception area of a licensed restaurant.

Schedule 1 [1] removes definitions that are no longer required as a result of the above amendments.

Schedule 1 [32] makes it clear that the amendments made by the proposed Act extend to existing restaurant licences and to pending restaurant licence applications.

16. Standard trading hours for small bars will be: 7 am to 11 pm on Mondays to Thursdays; 7 am to 1 am on Fridays and Saturdays; and 10 am to 11 pm on Sundays. On restricted trading days, the standard trading hours will be noon to 10 pm. On New Year's Eve, small bars will be allowed to trade until 2 am the next day. Small bars can apply to the Licensing Court to have their trading hours extended and the court has to be satisfied that extending trading hours would not result in neighbourhood disturbance.
17. The Bill works within the current process of the *Liquor Act 1982* and maintains the current role of the Licensing Court for granting licences.

Issues Considered by the Committee

18. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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| 19. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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The Committee makes no further comment on this Bill.

7. LIQUOR AMENDMENT (SPECIAL EVENTS HOTEL TRADING) BILL 2007

Date Introduced:	25 September 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Graham West MP
Portfolio:	Gaming and Racing, Sport and Recreation

The Bill passed all stages of Parliament on 27 September 2007. Under s 8A(2), the Committee is not precluded from reporting on a Bill because it has passed a House of the Parliament or become an Act.

Purpose and Description

1. The Bill amends the *Liquor Act 1982* to extend hotel trading hours on certain dates during the finals of the 2007 Rugby World Cup.

Background

2. The Government has moved an amendment to the original Bill in Committee at the Legislative Council. The amendment removed the regulation-making power from the original Bill, by removing section 24AA, which would have allowed the Minister to extend hotel trading hours for future special events of regional, State or national significance. The Opposition in the Legislative Assembly had voted against the Bill in its original form but the Opposition gave support to the amended version.
3. In its original Bill, the amending section 24AA, was debated in the Legislative Assembly where that section was seen as removing Parliament's scrutiny and the right to give consideration to trading hours and instead, placing it at the discretion of the Minister.
4. The amended Bill now states that it is to provide solely for the extended trading hours in hotels during the telecast of the quarterfinals, semi-finals and the final of the Rugby World Cup.
5. The hotel industry approached the Government with a request that standard hotel trading be extended during the Rugby World Cup. The closure of hotels part way through matches will create difficulties for licensees when asking patrons to leave and in dispersing them from the immediate areas. The forced exit onto the streets of hotel patrons who have been watching the match may place a strain on local transport and security. This could be made worse when patrons are disgruntled at leaving the hotel part way through a match.
6. The extended trading hours will not overrule any imposed trading restrictions or other conditions that apply to an individual hotel licence. Restrictions on neighbourhood noise or disturbance, imposed by the Liquor Administration Board, such as lockouts and restricted entry will still apply. The Bill will not overrule planning approvals

administered by local councils. Licensees still have to comply with laws relating to the responsible service of alcohol.

7. The Liquor Act had been amended in the past to allow hotel trading until 1am for stage one of the Federation Internationale de Football Association (FIFA) World Cup matches between 10 June 2006 and 19 June 2006.

The Bill

8. The object of this Bill is to amend the *Liquor Act 1982* to extend the trading hours of hotels on certain days during the 2007 Rugby World Cup.
9. The extended hotel trading hours in relation to the 2007 Rugby World Cup are until 1 am on the mornings following Saturday 6 and Sunday 7 October 2007 (hotels are normally required to close at midnight on Saturdays and 10 pm on Sundays), and from 5 am on the mornings of Sunday 7, Sunday 14 and Sunday 21 October 2007 (hotels normally cannot open until 10 am on a Sunday). These extended trading times coincide with the times when some of the final matches of the World Cup will be played.
10. In the case of the mornings of Sunday 7 October and Monday 8 October, the 1 am closing time (which is the anticipated finishing time of the matches being played at that time) will, if the relevant match is still in progress because of extra time or some other reason, be extended until the completion of the match. However, any such extended trading past 1 am will only apply if the hotel is actually showing live coverage of the match to its patrons.
11. The extended hotel trading permitted by the proposed Act will only apply to the sale or supply of liquor for consumption in hotels only. It does not apply to takeaway sales, or to registered clubs.
12. Outline of the provisions:

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

Clause 2 provides that the proposed Act commences, or is taken to have commenced, on 6 October 2007.

Clause 3 is a formal provision that gives effect to the amendment to the *Liquor Act 1982* set out in Schedule 1.

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

Schedule 1 amends the *Liquor Act 1982* in the manner described in the above overview.

Issues Considered by the Committee

13. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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

The Committee makes no further comment on this Bill.

8. PARTNERSHIP AMENDMENT (VENTURE CAPITAL) BILL 2007

Date Introduced:	25 September 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Minister for Police; Minister for the Illawarra

Purpose and Description

1. The purpose of this Act is to amend the *Partnership Act 1892* to enable early stage venture capital limited partnerships (including those proposed) to be registered as incorporated limited partnerships.

Background

2. Commonwealth legislation was recently amended by the *Tax Laws Amendment (2007 Measures No 2) Act 2007* (Cth) to accommodate early stage venture capital limited partnerships in its concessional venture capital tax regime. The *Venture Capital Act 2002* (Cth) was also amended to recognise early stage venture capital limited partnerships established as limited partnerships under State law.
3. Part 3 of the *Partnership Act 1892* does not currently enable an application to be made for the registration of an early stage venture capital limited partnership (actual or proposed) as an incorporated limited partnership. At present, applications for registration as an incorporated limited partnership can only be made in relation to a venture capital limited partnership or an Australian venture capital fund of funds.
4. According to the Agreement in Principle speech, the Bill:

provides for amendments to the *Partnership Act 1892* to complement changes to Commonwealth laws to create a new type of tax-exempt venture capital investment vehicle. These amendments will clear the way for investors in Australian innovations to receive tax-free returns, making New South Wales even more attractive for business investment.⁷

The Bill

5. The Bill enables early stage venture capital limited partnerships (including those proposed) to be registered as incorporated limited partnerships under the *Partnership Act 1892*.
6. Schedule 1[1] proposes to amend s 53D(3)(a)(ii) to enable an early stage venture capital limited partnership to apply for registration.

⁷ B J Collier MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 25 September 2007.

7. Schedule 1[3] proposes to amend s 67A(3)(k) so that a limited partner in an incorporated limited partnership is not to be regarded as taking part in the management of the business of the partnership merely because the limited partner or a person acting on behalf of the limited partner takes or participates in any action for the purpose of registering or maintaining the registration of the partnership or a general partner in the partnership under Part 2 of the *Venture Capital Act 2002* (Cth) as an early stage venture capital limited partnership.

Issues Considered by the Committee

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

9. TRADE MEASUREMENT LEGISLATION AMENDMENT BILL 2007

Date Introduced: 25 September 2007
House Introduced: Legislative Assembly
Minister Responsible: The Hon Linda Burney MP
Portfolio: Fair Trading

Purpose and Description

1. This Bill amends the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989* to adopt changes to maintain uniform trade measurement legislation agreed between the States and Territories; and for other purposes.

Background

2. In 1990, an agreement between the Commonwealth and most of the States and Territories was signed to enact uniform trade measurement legislation. In 1995, the Trade Measurement Advisory Committee (TMAC) was formed by the Ministerial Council on Consumer Affairs. One of its functions was the ongoing review of trade measurement legislation nationally. TMAC has recommended amendments to the uniform legislation of a technical nature and to improve the administration of the legislation. The amendments have been adopted by Queensland (*Consumer Credit and Trade Measurement Amendment Act 2006*).
3. The NSW amendment bill is based on the model prepared by Queensland, the lead jurisdiction for the uniform legislation.
4. The Trade Measurement Act applies to all measurements made for trade purposes and aims to promote fair trading and consumer protection in relation to transactions conducted by measure or weight. The Trade Measurement Administration Act provides for the administrative arrangements needed under the legislation and includes dealing with the employment and authority of government trade measurement inspectors, the setting of fees and charges for licensees who conduct certification of measuring instruments for their owners, as well as proceedings for offences. Both of these are subject to the uniform trade measurement agreement.
5. The proposed amendments in this Bill have come from a review of the uniform legislation conducted by the TMAC. Stakeholders have been consulted and either support the proposed amendments or have no concerns with them.
6. It is proposed that the amendments will commence on a date to be proclaimed in order to allow for the making of associated amendments to the regulations, as well as allowing stakeholders, instrument owners, certifiers, public weighbridge operators and government inspectors to be given with updated information about the implementation.

The Bill

7. The object of this Bill is to amend the *Trade Measurement Act 1989* of New South Wales (*the Principal Act*) and the *Trade Measurement Administration Act 1989* of New South Wales to adopt the amendments concerned.

8. Outline of main provisions

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

Clause 3 is a formal provision that gives effect to the amendments to the *Trade Measurement Act 1989* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Trade Measurement Administration Act 1989* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

9. Schedule 1 Amendment of Trade Measurement Act 1989

Schedule 1 [1] and [2] amend the definition of *class 4 measuring instrument* to improve the clarity of the definition.

Schedule 1 [3] inserts definitions of *firewood, pack* (for the purpose of deciding who packs or has packed an article as a pre-packed article), *use* (in relation to the use of a measuring instrument for trade) and *weighbridge suitability statement* (in relation to a public weighbridge licence) into the Principal Act.

Schedule 1 [4] amends the definition of *sell* so that it includes anything else (not already included in the definition) that is a sale.

Schedule 1 [5] amends section 7 (Measuring instruments used for trade must be marked) to make it clear that a person who complies with a written notice issued as a result of the person's use of a measuring instrument in contravention of section 7 may not be prosecuted for an offence against the section.

Schedule 1 [6] makes a minor amendment to section 7A to ensure the uniformity of trade measurement legislation.

Schedule 1 [7] amends section 7B by utilising the defined term *approved pattern* (which is used throughout the Principal Act) and removing superfluous information.

Schedule 1 [8] amends section 8 (Unjust measurement) to make it clear that a person who complies with a written notice issued as a result of the person's use of a measuring instrument in contravention of section 8 may not be prosecuted for an offence against the section.

Schedule 1 [10] also amends section 9 (which holds the supplier of an incorrect measuring instrument guilty of an offence) by inserting a new subsection which provides that (subject to

the defence in section 9 (3) (b)) it does not matter whether the person who used the measuring instrument purchased it or took it on lease, hire or loan for trade.

Schedule 1 [11] substitutes section 23 to provide more certainty as to when a person using a measuring instrument is guilty of an offence for misleading another party about the measurement and price calculation of an article or not correctly determining the price by reference to the correct measurement of the article. In particular, the proposed new section 23 makes it clear that it does not matter whether the person using the measuring instrument is going to sell the article or the article will be sold by another person.

Schedule 1 [12] inserts proposed section 25A into the Principal Act. This section addresses the sale of firewood by volume. Until now, the provisions have been silent on a method of calculating the quantity of firewood when it is sold by volume. The proposed new section applies section 23 to firewood sales and requires that a volume of firewood stated for sale must be at least the volume that is worked out when the firewood is stacked with as few gaps as practicable. However, there is no requirement that the firewood must actually be stacked in this manner before sale.

Schedule 1 [13] amends section 44 so that the licensing authority may grant a public weighbridge licence for a single weighbridge (rather than granting a general weighbridge licence).

Schedule 1 [14] amends section 44 to require a licence granted to a partnership to state the names of all the partners and any registered business name and to provide that each partner stated in the licence is taken to be a holder of the licence.

Schedule 1 [16] amends section 45 to make it clear that the grounds for refusing an application for a licence apply to each member of a partnership and also to require the licensing authority to refuse an application for a public weighbridge licence if the weighbridge is not suitable for use as a public weighbridge.

Schedule 1 [17] amends section 50 to provide that a public weighbridge licence is subject to a condition that the weighbridge must not be operated unless the licence has a weighbridge suitability statement (being a statement that the weighbridge is suitable for use as a public weighbridge). This replaces the current condition that the weighbridge must not be operated unless it is the subject of a "current certificate". A condition that the weighbridge suitability statement is in force only until the end of the period for which the fee payable in relation to the statement has been paid (or the period as extended under proposed section 52A) and a condition that the weighbridge mentioned in the licence be located at the place stated in the licence are also introduced.

Schedule 1 [19] inserts proposed sections 52A and 52B into the Principal Act. Proposed section 52A provides that a licensee may continue to operate a public weighbridge under the licence in certain circumstances even though the weighbridge suitability statement has expired. Proposed section 52B sets out the action that may be taken if the administering authority decides a public weighbridge is no longer suitable for use as a public weighbridge.

Schedule 1 [21] inserts proposed sections 54A, 54B, 54C and 54D into the Principal Act. Proposed section 54A applies if a licensee moves a weighbridge from the location at which it was inspected before the issue of a weighbridge suitability statement to another location at

the place stated in the licence. It requires the surrender of the licence after such a relocation (to ensure that the weighbridge is reinspected). Proposed section 54B allows a partnership to apply to the licensing authority to amend the licence if there is a change to the membership of the partnership. Proposed section 54C allows for the continuation of a licence in certain circumstances where the membership of a partnership holding the weighbridge licence has been changed. Proposed section 54D allows a licensee under a servicing licence to apply for an amendment to a condition of the licence which specifies the class or classes of measuring instruments which may be certified by the licensee.

Schedule 1 [22] amends section 56 to clarify that if a ground for disciplinary action under that section exists in relation to one or more of the members of a licensed partnership, it applies to the licensed partnership.

Schedule 1 [23] amends section 59 to provide a right of review in relation to an amendment of a licence as well as the existing right of review of a refusal of an application for a licence.

Schedule 1 [24] amends section 59 to provide a right of review in relation to a decision to cancel a licence because the weighbridge mentioned in the licence is no longer suitable as a public weighbridge.

Schedule 1 [25] amends section 80 to enable regulations to be made in relation to weighbridge suitability statements.

Schedule 1 [26] amends section 80 to enable regulations to be made in relation to the approval of forms for use under the Principal Act.

Schedule 1 [27] inserts a new Part IX (proposed sections 82 and 83) into the Principal Act. The new Part contains transitional provisions consequent on the enactment of the proposed Act. Proposed section 82 provides that a certificate issued by the administering authority for the purposes of section 50 (1) (a) of the Principal Act (to the effect that the weighbridge is suitable for use as a public weighbridge), immediately before the commencement of the proposed Act, is taken to be a weighbridge suitability statement, expiring when the certificate would otherwise have expired. Proposed section 83 deals with licensees who, immediately before the commencement of the proposed Act, operate more than one public weighbridge. Proposed section 83 provides that each public weighbridge is taken to be licensed under a separate public weighbridge licence on that commencement. However, a separate periodic licence fee is not payable until the day the periodic licence fee is payable under section 52.

10. Schedule 2 Amendment of Trade Measurement Administration Act 1989

Schedule 2 [1] amends section 13 to enable regulations to be made for the imposition, collection and recovery of fees for providing weighbridge suitability statements and duplicates of such statements.

Schedule 2 [2] amends section 13 to clarify that a prescribed fee for a public weighbridge licence and a weighbridge suitability statement may be a combined fee for the same period.

Issues Considered by the Committee

11. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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

Part Two – Regulations

SECTION A: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
<p>Environmental Planning and Assessment Amendment (Designated Development) Regulation 2007</p> <ul style="list-style-type: none">• Letter dated 3 July from the Committee to the Minister for Planning• Letter dated 10 September from the Minister for Planning to the Committee.	<p>01/03/07 page 1169</p>

1. Environmental Planning and Assessment Amendment (Designated Development) Regulation 2007



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

3 July 2007

Our Ref:LRC

The Hon Frank Sartor MP
Minister for Planning
Level 34, Governor Macquarie Tower
1 Farrer Place,
SYDNEY NSW 2000

Frank

Dear Minister

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (DESIGNATED DEVELOPMENT) REGULATION 2007

Pursuant to its obligations under s 9(1A) of the *Legislation Review Act 1987*, the Committee has resolved to review and report to Parliament on the above Regulation. The Committee has reported its consideration in its *Legislation Review Digest No 1 of 27 June 2007*.

The Committee resolved to write to you for response on the following matter of concern.

The Court of Appeal (*Residents Against Improper Development Incorporated & Anor v Chase Property Investments Pty Ltd* [2006] NSWCA 323 (23 November 2006) held at 179, that "it would be contrary to the intent of the legislation now in force to hold that an activity which falls within one of the categories listed in Pt 1 of Schedule 3 should necessarily lose that character because it only forms part of a greater development or is not the main purpose of the development in respect of which the application has been made".

The Committee expresses concerns that the proposed regulation might appear contrary to the intent and spirit of the *Environmental Planning and Assessment Act 1979* with regard to environmental protection and management, to hold that an activity that the Parliament considered to have potential for environmental harm (in Schedule 3) should lose that character if it formed part of a greater development or is not the main purpose or just ancillary of that development.

The Committee notes the business impact of simplifying the assessment process and reducing red tape on private industry, commerce and agricultural ventures in order to promote water recycling initiatives.

The proposed regulation also amends Schedule 3, Clause 29 to remove minor sewage treatment works and sewage storage systems, and deals with ancillary development, which is not capable of independent use and so should not trigger the designated development requirements. This also reduces the red tape and simplifies the assessment process for industry.

The potential effect of this proposed regulation could restrict the circumstances in which an environmental impact statement (EIS) for a sewage treatment plant is required, and that even when the circumstances fit, the need for an EIS could be waived if the sewage treatment plant is ancillary to some other development and is not to be carried out independently of that other development.

Developments requiring on-site sewage disposal are likely to be located in remote or sensitive environmental areas where sewerage infrastructure does not currently exist, and they have the potential to contaminate groundwater and pose other health risks.

While the Committee is conscious of balancing the issues of business impact, the need to reduce red tape, and to promote water recycling, there is also the need to protect sensitive environmental areas and public health interests.

Accordingly, the Committee seeks your response as to whether a regulation specifically dealing with sewer mining to encourage water recycling initiatives may be worthy of consideration as an alternative to this proposed regulation.

Thank you for your attention to this matter. The Committee looks forward to receiving your response. If you should have any further queries, please contact Carrie Chan, Senior Committee Officer, on 9230 2108 or email: Carrie.Chan@parliament.nsw.gov.au

Yours sincerely



Allan Shearan MP
Chair

Environmental Planning and Assessment Amendment (Designated Development) Regulation 2007



NEW SOUTH WALES

The Hon Frank Sartor MP

Minister for Planning
 Minister for Redfern Waterloo
 Minister for the Arts

RECEIVED

11 SEP 2007

LEGISLATION REVIEW
COMMITTEE

Mr Allan Shearan MP
 Chair
 Legislation Review Committee
 Parliament of New South Wales
 Macquarie Street
 SYDNEY NSW 200

D07/2991

Dear Mr Shearan

10 SEP 2007

I refer to your letter of 3 July 2007 in which you advise the Legislation Review Committee (LRC) has resolved to review and report to Parliament on the *Environmental Planning and Assessment Amendment (Designated Development) Regulation 2007* (amending regulation).

To assist the LRC in its consideration of this matter, I attach at Appendix A a submission outlining the background to the introduction of the amending regulation and its intended purpose.

I confirm that the amending regulation was made to:

- give effect to water recycling initiatives identified in the Government's Metropolitan Water Strategy; and
- to reinstate the Government's long established policy that developments that are properly characterised in accordance with established planning principles as falling within the categories of designated development will be designated development, provided they are not ancillary to other development for the purpose of that characterisation.

For the reasons outlined in the attached submission, I believe the amending regulation is consistent with the objects of the *Environmental Planning and Assessment Act 1979*, and is an appropriate response to the need to balance social, economic and environmental considerations in providing for the proper planning for the State.

I therefore do not consider that the LRC's proposal that a regulation specifically dealing with sewer mining/water recycling would be an appropriate alternative to the amending regulation.

Yours sincerely

Frank Sartor

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Appendix 1: Index of Bills Reported on in 2007

	Digest Number
Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007*	2
Anti-Discrimination Amendment (Breastfeeding) Bill 2007	3
Anti-Discrimination Amendment (Offender Compensation) Bill 2007	1
APEC Meeting (Police Powers) Bill 2007	1
Appropriation Bill 2007; Appropriation (Parliament) Bill 2007; Appropriation (Special Offices) Bill 2007; Payroll Tax Bill 2007; State Revenue and Other Legislation Amendment (Budget) Bill 2007	1
Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007	2
Biofuel (Ethanol Content) Bill 2007	2
Births, Deaths and Marriages Registration Amendment Bill 2007	1
Brothels Legislation Amendment Bill 2007	2
Channel 7 Former Epping Site Protection Bill 2007*	3
Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007	1
Children (Criminal Proceedings) Amendment (Publication of Names) Bill 2007	2
Christian Israelite Church Property Trust Bill 2007	3
Climate Futures Bill 2007*	2
Commission for Children and Young People Amendment (Parliamentary Joint Committee) Bill 2007	1
Constitution Amendment (Speaker) Bill 2007	2
Crimes (Administration of Sentences) Amendment (Assistance in Foreign Criminal Matters) Bill 2007	2
Crimes Amendment Bill 2007	3
Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007	1
Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007	2
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	1
Drug and Alcohol Treatment Bill 2007	1
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2007	1
Educational Support for Dyslexic Children Bill 2007*	2
Electricity Supply Amendment (Offences) Bill 2007	2
Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007	2
Fair Trading Amendment (Funeral Goods and Services) Bill 2007	1
Government Publicity Control Bill 2007*	2
Government Schools (Infrastructure Register) Bill 2007*	2
Guardianship Amendment Bill 2007	1

	Digest Number
Housing Amendment (Community Housing Providers) Bill 2007	3
Human Cloning and Other Prohibited Practices Amendment Bill 2007	1
Industrial and Other Legislation Amendment (APEC Public Holiday) Bill 2007	1
Judicial Officers Amendment Bill 2007	1
Liquor Amendment (Small Bars and Restaurants) Bill 2007*	3
Liquor Amendment (Special Events Hotel Trading) Bill 2007	3
Mental Health Bill 2007	1
Motor Dealers Amendment Bill	2
National Parks and Wildlife Amendment (Leasing and Licensing) Bill 2007	2
Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007*	2
Partnership Amendment (Venture Capital) Bill 2007	3
Police Superannuation Legislation Amendment Bill 2007	1
Private Health Facilities Bill 2007	1
Professional Standards Amendment (Mutual Recognition) Bill 2007	1
Protection of the Environment Operations Amendment (Waste) Bill 2007	2
Renewable Energy (New South Wales) Bill	2
Royal Rehabilitation Centre Sydney Site Protection Bill 2007*	2
Rural Communities Impacts Bill 2007*	1
Security Industry Amendment (Patron Protection) Bill 2007*	2
Senator's Elections Amendment Bill 2007	1
Standard Time Amendment (Daylight Saving) Bill 2007	2
Statute Law (Miscellaneous Provisions) Bill 2007	1
Superannuation Legislation Amendment Bill 2007	2
Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill 2007	1
Trade Measurement Legislation Amendment Bill 2007	3
Transport Administration Amendment (Portfolio Minister) Bill 2007	1
Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2007*	2
University of Technology (Kuring-gai Campus) Bill 2007*	2
War Memorial Legislation Amendment (Increased Penalties) Bill 2007	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2006	Digest 2007
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07			1
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	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	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	1	
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 & Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006	Premier	26/09/06	17/10/06	13,15	
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	5	
Crimes (Serious Sex Offenders) Bill 2006	Minister for Justice	28/04/06		5	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07			1
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07			1
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	Attorney General	02/06/06	02/08/06	8,9	
Education Legislation Amendment Bill 2006	Minister for Education and Training	10/11/06		16	
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	07/06/06	8,12	
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07			1
Local Government Amendment (Waste Removal Orders) Bill 2006	Minister for Local Government		09/06/06	8,9	

Bill	Minister/Member	Letter sent	Reply received	Digest 2006	Digest 2007
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07			1
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	1	
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07		1,2
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005	Attorney General	25/11/05	16/05/06	7	
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07			1
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	5	
Vocational Education and Training Bill 2005	Minister for Education and Training	04/11/05	28/11/05	1	
Water Management Amendment Bill 2005	Minister for Natural Resources	25/11/05	05/09/06	11	

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2007

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentar y scrutiny
Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007*	N, R				
Anti-Discrimination Amendment (Offender Compensation) Bill 2007	N, R				
APEC Meeting (Police Powers) Bill 2007	N, R, C		N, R		
Biofuel (Ethanol Content) Bill 2007	N, R			N, R	
Brothels Legislation Amendment Bill 2007	N, R		N, R	N, R	
Channel 7 Former Epping Site Protection Bill 2007*	N, R				
Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007	N				
Climate Futures Bill 2007*	N, R				
Crimes Amendment Bill 2007				N, R	
Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007	N, R				
Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007	N			N, R	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	N			N, C	
Drug and Alcohol Treatment Bill 2007	R, N, C			N, R	
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2007			N		
Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007				N	
Guardianship Amendment Bill 2007	N, C, R		N	N, C	
Housing Amendment (Community Housing Providers) Bill 2007				N, R	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentar y scrutiny
Human Cloning and Other Prohibited Practices Amendment Bill 2007	N, R				
Mental Health Bill	N, R, C	N, C	N, C	N, R	
Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007*	N				
Renewable Energy (New South Wales) Bill	N			N	
Security Industry Amendment (Patron Protection) Bill 2007*	N				
Statute Law (Miscellaneous Provisions) Bill 2007	N			N, C	
Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill 2007	N, R, C			N, C, R	
University of Technology (Kuring-gai Campus) Bill 2007*	N, R			N, R	
War Memorial Legislation Amendment (Increased Penalties) Bill 2007	N, 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 2007

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2006
Environmental Planning and Assessment Amendment (Designated Development) Regulation 2007	Minister for Planning	03/07/07	10/09/07	2, 3