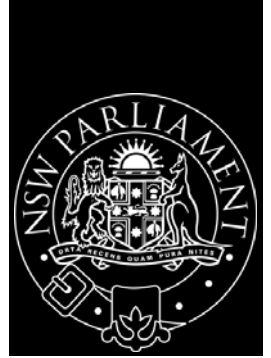


PARLIAMENT OF NEW SOUTH WALES



# Legislation Review Committee

## LEGISLATION REVIEW DIGEST

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No 1 of 2008

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22 February 2008

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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. Conveyancing Amendment (Mortgages) Bill 2007\*

- |     |   |
|-----|---|
| 13. | The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</i> |
|-----|---|

#### 2. Marine Parks Amendment Bill 2007

- |     |   |
|-----|---|
| 19. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987.</i> |
|-----|---|

#### 3. TAFE (Freezing of Fees) Bill 2007\*

- |    |   |
|----|---|
| 7. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987.</i> |
|----|---|

### SECTION B: Ministerial Correspondence — Bills Previously Considered

#### 4. Drug and Alcohol Treatment Bill 2007

- |    |   |
|----|---|
| 4. | The Committee thanks the Minister for Health for her reply. |
|----|---|



# Part One – Bills

## SECTION A: COMMENT ON BILLS

### 1. CONVEYANCING AMENDMENT (MORTGAGES) BILL 2007\*

|                       |  |
|-----------------------|--|
| Date Introduced:      | 6 December 2007  |
| House Introduced:     | Legislative Assembly   |
| Minister Responsible: | Mr Don Page MP   |
| Portfolio:            | Private Member, Member for Ballina,<br>Member of The Nationals |

#### Purpose and Description

1. This Bill amends the *Conveyancing Act 1919* to make further provision with respect to the duties of mortgagees and chargees.
2. It aims to ensure that when exercising a power of sale in respect of mortgaged or charged land, a mortgagee or chargee must take all reasonable care to sell the land for not less than its market value when it is sold.
3. This aims to increase the duty of care of financiers when they take possession of the assets of a defaulting borrower.
4. There is no cause of action to be taken against the purchaser's title on the ground that the mortgagee or chargee has committed a breach of any duty, but it is proposed that a person affected by the breach of duty has a remedy in damages against the mortgagee or chargee exercising the power of sale.
5. Proposed s 111A provides that in exercising a power of sale in respect of mortgaged or charged property a mortgagee or chargee must take all reasonable care to sell the land for not less than its market value when it is sold. This is the central principle of the Bill.
6. Proposed s 111A also states that an agreement or stipulation is void to the extent that it purports to relieve, or might have the effect of relieving, a mortgagee or chargee from a duty imposed by this section. Nothing in this proposed section affects the operation of any rule of law relating to the duty of the mortgagee or chargee to account to the mortgagor or charger. It applies to mortgages and charges whether made before or after the commencement of this section, but only to a sale in the exercise of a power arising upon or in consequence of a default **occurring after the commencement in this section**. Therefore, the proposed legislation is not retrospective.

## Background

7. The Commonwealth and State laws differ regarding the duty of care for financiers concerning the disposal of assets when they become mortgagee in possession. In NSW case law, the only requirement is that a selling mortgagee act with good faith and not wilfully or recklessly. This is a relatively low duty of care which may have the effect of sacrificing the mortgagor's interests when the property is sold. Under the Commonwealth Corporations Law, when exercising a power of sale in respect of property, the selling mortgagee must take all reasonable care to sell the property at not less than its market value or otherwise the best price that is obtainable in view of the circumstances in which the property is being sold. There is opportunity for financiers in NSW currently to sell the assets with a view to ensuring their own debt is covered but with little regard to any remaining equity held by the borrower.
8. The history of this Bill goes back to 2000 when Mr Don Page MP introduced similar legislation. A discussion paper was issued by the former Minister Kim Yeadon on the bill back then. Subsequently, the Government suggested amendments based on feedback from relevant stakeholders. Those amendments were agreed to and passed in the Legislative Assembly on 19 September 2002. The Bill was supported in the past by both sides of Parliament. Notice was then given to introduce the amended legislation in the Legislative Council. However, the legislation never passed that place because of prorogation of the Parliament for the 2003 election, so it never became law. This leads to the Bill being introduced again in its amended form.
9. Borrowers' equity must be protected if it is to be sold up by banks or other financiers. This Bill aims to give them more protection than they have under NSW case law. Some common ways for financiers or mortgagees not to fulfil their duty of care include failing to advertise the property at all or failing to advertise for a sufficient period, incorrectly describing the size of the property, failing to pursue prospective buyers interested in purchasing the property at a higher price and generally failing to promote the property to obtain the best possible price.
10. Queensland and Northern Territory legislation adopts the approach of this Bill. Under common law, the decision as to the timing of the sale is within a mortgagee's discretion. This Bill is not changing that position. The use of the words "when it is sold" in proposed subsection (1) after "market value" is intended to make it clear that the mortgagee's duty is to take care to obtain the market value of the land at the time it is sold, whenever that may be.

## The Bill

11. The object of this Bill is to amend the *Conveyancing Act 1919* to impose a duty on mortgagees and chargees, when exercising a power of sale in respect of mortgaged or charged land, to take all reasonable care to ensure that the property is sold for not less than its market value.

### 12. Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on a day 3 months after the date of assent, unless commenced sooner by proclamation.

**Clause 3** is a formal provision giving effect to the amendment to the *Conveyancing Act 1919* set out in Schedule 1.

**Clause 4** 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.

#### **Schedule 1 Amendment**

**Schedule 1** inserts proposed s 111A (Certain duties of mortgagees and chargees) into the *Conveyancing Act 1919* to give effect to the object of the Bill outlined above.

### **Issues Considered by the Committee**

- |  |
|--|
| <p>13. The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987</i>.</p> |
|--|

***The Committee makes no further comment on this Bill.***

## 2. MARINE PARKS AMENDMENT BILL 2007

Date Introduced: 7 December 2007  
House Introduced: Legislative Assembly  
Minister Responsible: Hon Verity Firth MP  
Portfolio: Minister Assisting the Minister for  
Climate Change Environment and  
Water (Environment)

### Purpose and Description

1. The object of this Bill is to amend the *Marine Parks Act 1997* (the *Principal Act*):
  - (a) to establish a review process for zoning plans for marine parks that includes public consultation, and
  - (b) to change the objectives of operational plans for marine parks and the process for making and reviewing those plans, and
  - (c) to clarify that sand dredging for beach nourishment within a marine park does not constitute mining, and
  - (d) to expand the regulation-making powers to enable regulation of aircraft in or over marine parks and the possession of animals, plants and materials taken from marine parks, and
  - (e) to require relevant marine park closures to be taken into consideration before consent or approval is given to the carrying out of development on land in a marine park, and
  - (f) to increase the penalties for certain offences under the Principal Act, and
  - (g) to make various changes in relation to the functions of the Marine Parks Advisory Council and the functions and membership of marine parks advisory committees, and
  - (h) to make other changes to improve the administration of the Principal Act and for the purposes of statute law revision.

### Background

2. According to the Agreement in Principle speech:

New South Wales has a comprehensive, world-class system of marine parks that play a crucial role in protecting our precious marine life for generations to come. Covering more than 345,000 hectares, or a third of the New South Wales coastline, our six marine parks are without doubt one of this Government's finest environmental achievements. Our marine parks protect wonderful examples of New South Wales's rich, varied and unique marine biodiversity. They include and protect estuarine and oceanic ecosystems, particular habitats such as rocky shores and reefs, sandy beaches and seafloor areas, island waters and seagrass beds, and

the entire range of marine life that depends on them. Marine parks also provide for a variety of ongoing sustainable activities such as tourism, fishing, boating, diving, and dolphin and whale watching.

At present there is no practical mechanism in place to review and amend the zoning plans which are the key management tool for marine parks. The purpose of this bill, therefore, is to establish a clear transparent process to carry out these reviews.<sup>1</sup>

## The Bill

### Amendment of Marine Parks Act 1997

#### Zoning plans for marine parks

3. The Bill proposes to insert Division 1A into Part 3 of the *Marine Parks Act 1997*. Division 1A sets out the various provisions relevant to zoning plans. Proposed 17B enables the regulations to make provision for the use and management of a marine park by means of a zoning plan. The zoning plan may relate to:
  - the classification of areas within a marine park such as sanctuary zones, habitat protection zones and general use zones;
  - the uses that are permitted or prohibited within such areas; and
  - the management of such areas.
4. Proposed s 17C requires the Marine Parks Authority in consultation with the advisory committee to cause a draft zoning plan to be prepared within 18 months of the declaration of a marine park and submitted to the relevant Ministers. The relevant Ministers are required, within three months, to either give public notice of the draft zoning plan and invite submissions, or, refer it back to the Authority for further consideration. The relevant Ministers are to consider any submissions made and any comments from the advisory committee for the marine park before a regulation setting out the zoning plan for the Marine Park may be submitted to the Governor.
5. The zoning plan is initially to be reviewed five years after the commencement of the first zoning plan, with subsequent reviews every 10 years: proposed s 17D.
6. The relevant Ministers may at any time recommend the making of a regulation to amend the zoning plan for a marine park, including following:
  - the publication of a critical habitat declaration, threat abatement plan or recovery plan under the *Threatened Species Conservation Act 1995*;
  - the publication of a critical habitat declaration, threat abatement plan or recovery plan under the *Fisheries Management Act 1994*;
  - the making of any instrument under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth in relation to species, ecological communities, places or activities that is relevant to the marine park;

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<sup>1</sup> V H Firth MP, Legislative Assembly *Hansard*, 7 December 2007.

- the making of a proclamation under the *Marine Parks Act 1997* varying the area of the marine park.

The Marine Parks Authority is, in consultation with the advisory committee, to prepare a draft zoning plan to amend a zoning plan. The requirements regarding the making of a zoning plan do not apply if the amendment is of a minor nature or is a consequence of specified circumstances.

### **Operational plans for marine parks**

7. The Bill proposes to insert a new s 24 into the *Marine Parks Act 1997* to specify that the objective of an operational plan for a marine park is 'to identify and define a scheme of the strategies, actions or activities that are proposed to be undertaken by the Authority (including arrangements with other agencies) to operate a marine park, consistent with the zoning plan for the marine park and the objects of this Act'.
8. The Marine Parks Authority is to prepare a draft operational plan for a marine park having regard to the zoning plan and objects of the *Marine Parks Act*, and to refer it to the advisory committee for consideration and advice. The authority is to adopt an operational plan as soon as practicable: proposed s 25. The operational plan may be amended or replaced by the Authority: proposed s 26.

### **Activities in marine parks**

9. The Act proposes to amend s 17 to enable regulations to be made concerning the possession of animals, plants or materials that have been taken from marine parks, and to also enable the regulation or prohibition of the use of aircraft over or within marine parks.
10. It also clarifies that the prohibition of mining in marine parks does not apply to or in respect of sand extraction for the purpose of beach nourishment: schedule 1[7].
11. The Bill proposes to amend s 20 to stipulate that a marine park closure may prohibit the carrying out of an activity unless the consent of the Marine Parks Authority or a permit issued by the Authority has been obtained.
12. It also proposes to amend s 19 to require a consent authority to consider any relevant marine park closures before determining a development application. Similar restrictions apply to a Minister or determining authority carrying out or granting an approval to carry out certain activities within a marine park.
13. The Bill proposes to amend s 20H to double the applicable penalty for failing to comply with a direction to remove any sunken or wrecked vessel, abandoned property, or anything unlawfully erected or placed in a marine park to 1000 penalty units in the case of a corporation and 200 penalty units in any other case.
14. It also empowers the Marine Parks Authority to take such steps as considered appropriate to repair, remedy, mitigate or prevent further damage to the environment if the Authority believes that significant environmental damage has been or is likely to be caused by removable property in a marine park.
15. The Bill doubles the maximum penalty that may be imposed in relation to an offence created by the regulations to 200 penalty units.

**Marine Parks Authority, Marine Parks Advisory Council and marine parks advisory committees**

16. The Bill proposes to amend s 33 of the *Marine Parks Act* to specify that the Marine Parks Advisory Council is to advise on various matters from a statewide perspective.
17. It inserts s 35AA to set out the functions of a marine parks advisory committee. Advisory committees are particularly required to advise on any of the following matters relevant to the marine park:
- provisions of an operational plan or zoning plan for the marine park;
  - the appropriate classification of areas within the marine park for the purposes of a proposed zoning plan for the marine park;
  - the conservation of marine biological diversity;
  - the ecologically sustainable use of the marine park and whether any particular use of the marine park is not ecologically sustainable;
  - the use and enjoyment of the marine park by members of the public;
  - the application of marine park closures.
18. The Bill amends s 35A to enable the relevant Ministers to appoint an officer or employee of a Government Department or a public or local authority as a marine park ranger for the purposes of the Act.

**Issues Considered by the Committee**

19. 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.***

### 3. TAFE (FREEZING OF FEES) BILL 2007\*

Date Introduced: 6 December 2007  
House Introduced: Legislative Assembly  
Member Responsible: Andrew Stoner MP

#### Purpose and Description

1. The purpose of the Bill is to freeze, at 2007 levels, fees for TAFE courses undertaken any time between 2008 and 30 June 2011.

#### Background

2. The NSW Government introduced TAFE fees in 2004. The fees were to be indexed to the consumer price index. However, fees are to increase by 9% in 2008.
3. The Bill proposes to freeze TAFE fees at 2007 levels until 2011. According to the Agreement in Principle speech, 'That is what students want, that is what industry would like to see because it will result in more enrolments and more graduations and it is what the TAFE Teachers Association and Teachers Federation want...'<sup>2</sup>

#### The Bill

4. The Bill proposes to define TAFE Commission as 'the Technical and Further Education Commission constituted by the *Technical and Further Education Commission Act 1990*: cl 3.
5. Clause 4 provides that the fees for courses provided by the TAFE Commission during 2008 or subsequently are not to exceed the fees payable as at 1 July 2007. For courses that are new in 2008 or in subsequent years, the relevant fee is to be that of the nearest equivalent 2007 course.
6. The Act is to be repealed on 1 July 2011: cl 5.

#### Issues Considered by the Committee

- |   |
|---|
| 7. 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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<sup>2</sup> A J Stoner MP, Legislative Assembly *Hansard*, 6 December 2007.



## SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

### 4. DRUG AND ALCOHOL TREATMENT BILL 2007

#### Ministerial Correspondence

Date Introduced: 30 May 2007  
House Introduced: Legislative Assembly  
Minister Responsible: The Hon Reba Meagher MP  
Portfolio: Health

#### Background

1. The Committee reported on this Bill in its Legislation Review *Digest* 1 of 2007.
2. The Committee resolved to write to the Minister for Health seeking clarification and response on the following:

##### Excessive punishment

1. *What are the reasons for not following the Standing Committee on Social Issues' recommendation for 14 days of treatment detention, which could then be reviewed and, if necessary, followed by a maximum period of 28 days?*
2. *How is the potential issue of the same person being subjected to repeated assessment and dependency certificate several times in a year to be addressed?*

##### Adjournments

3. *The Committee seeks your clarification on the circumstances for adjournments of proceedings by Magistrates, since the proposed legislation is only on a trial basis within a prescribed area and the maximum period of treatment detention if extended could already be lengthy.*

##### Privacy and power of entry without warrant

4. *Whether clause 10(5) should be amended to include the use by reasonable force, rather than by force?*
5. *Whether the power of entry without warrant unduly trespasses on the right to privacy and personal rights and liberties?*

##### Police assistance

6. *The Committee seeks your response and clarification as to whether the police officer's power of entry without warrant unduly trespasses on the right to privacy and personal rights and liberty.*

## Minister's Reply

3. By letter dated 24 January 2008, the Minister for Health replied to the Committee's concerns, with the following advice:

### Excessive punishment

#### In response to Item 1:

The Government originally envisaged a two-stage process with detention for an initial period of 7 days to 14 days and the option of orders being extended for another 14 days when there is clinical advice that this would benefit the person. The process in this bill is simpler, although it will still allow for the same outcome. The length of stay essentially is a clinical decision and is subject to review by the Magistrate. Clinicians will still have the option of discharging people at any time before the 28-day period is completed if they feel their withdrawal from drugs or alcohol has been managed, they are physically stabilised, and their discharge has been planned.

In addition, the independent Trial evaluation will cover consideration of the length of dependency certificates and length of time in care.

#### In response to Item 2:

Under section 9(3) of the *Drug and Alcohol Treatment Act 2007*, a repeat dependency certificate would only be issued if the accredited medical practitioner is satisfied the person is likely to benefit from treatment.

As the Standing Committee on Social Issues suggested in its Report on the *Inebriates Act 1912* (para 7.48), the Trial evaluation will cover consideration of repeat dependency certificates.

### Adjournments

#### In response to Item 3:

While this is primarily a matter for decision by the courts:

- Under s38 Magistrates may only adjourn proceedings if it is in the best interests of the person;
- Under s24, a person may be discharged at any time by an accredited medical practitioner.

### Privacy and power of entry without warrant

#### In response to Item 4:

The Committee is referred to the Government's Response to Recommendation 22 of the Standing Committee on Social Issues Report on the *Inebriates Act 1912* which foreshadowed that this section is modelled on provisions in place since 1990 (s27 *Mental Health Act 1990*) and re-made in 2007 (s23 *Mental Health Act 2007*).

The use of force by police is subject to a number of external constraints and potential inquiries by various oversight agencies including the Ombudsman.

The operation of the section will also be monitored as part of the evaluation of the Trial and the statutory review required under s57.

In response to Item 5:

The Committee is referred to the first [dot] point of the above response to Item 4. In addition, a Magistrate's order (or order from an authorised officer) is required before this power can be exercised.

Police assistance

In response to Item 6:

As foreshadowed in the Government's Response to Recommendation 8, and provided for in s3 of the Act, the legislation includes principles to protect human rights in all functions performed under it.

Section 23(3) refers to accredited medical practitioners seeking police assistance to apprehend a dependent person only if there are serious concerns about the safety of the person or other persons.

The police power of entry is also modelled on s21 of the *Mental Health Act 2007*.

## Committee's Response

|  |
|--|
| 4. The Committee thanks the Minister for Health for her reply. |
|--|



Minister for Health

LRCL 2272  
C08/61

MO7/7190

24 JAN 2008

Mr A Shearan MP  
Chair  
Legislation Review Committee  
Parliament of NSW  
Macquarie Street  
SYDNEY NSW 2000

RECEIVED

29 JAN 2007

LEGISLATION REVIEW  
COMMITTEE

Dear Mr Shearan *Alan*

I refer to your letter concerning the review and report of the Legislation Review Committee in relation to the then Drug and Alcohol Treatment Bill 2007. The delay in responding is regretted.

I have considered the matters raised by the Committee and I am pleased to provide the attached advice in relation to each issue.

To support the Committee's consideration of this advice, I have also attached a copy of the NSW Government's Response to the Report on the Inebriates Act 1912 (December 2006).

Thank you for bringing the Committee's concerns to my attention. Should you or the Committee require further information, please contact Mr David McGrath, Director, Mental Health and Drug and Alcohol Office, NSW Department of Health, on 9391 9278.

Yours sincerely

Reba Meagher MP  
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## Part Two – Regulations

### SECTION A: REGULATIONS FOR THE SPECIAL ATTENTION OF PARLIAMENT UNDER S 9(1)(B) OF THE *LEGISLATION REVIEW ACT 1987*

#### Outline of the Regulation/Issues

Rural Lands Protection (General) Amendment (Rates and Molong Rateable Land) Regulation 2007

#### Recommendation

That the Committee:

- 1) for the purposes of s 9(1A) of the *Legislation Review Act 1987*, resolve that
  - (a) this Regulation requires no further action, and
  - (b) write to the Minister and advise that the information provided with regard to the rate increases are reasonable.

|                   |   |
|-------------------|---|
| Persons contacted | <p>Sent email and two follow up emails to the Office of the Minister for Primary Industries.</p> <p>Damien and Jim (advisory staff) from the Office of the Minister for Primary Industries.</p> |
|-------------------|---|

#### Explanatory Note

The object of this Regulation is to amend the *Rural Lands Protection (General) Regulation 2001*:

- (a) to increase the minimum area of rateable land in the rural lands protection district of Molong from four hectares to 10 hectares, and
- (b) to increase the minimum general and animal health rates for certain rural lands protection districts.

This Regulation is made under the *Rural Lands Protection Act 1998*, including sections 60, 62 and 243 (the general regulation-making power).

The object of this Regulation is to increase certain fees payable to the Registrar-General under the *Strata Schemes (Freehold Development) Act 1973*.

#### Comment

5. The Minister replied in his letter that there are 47 Rural Lands Protection Boards in NSW that are established by the *Rural Lands Protection Act 1998* and they provide a range of services to the rural community.

6. The Minister explained that the primary source of income for the Boards comes from annual rate charges imposed on rural landholders. The rates are charged on the notional livestock carrying capacity of land. Minimum rates are imposed on the occupiers of smaller areas of land, and under section 62 of the Act the minimum rates are prescribed in the Regulations. The rates charged on larger properties are not so prescribed. A general rate is payable on all rateable land within a Board's district, and a supplementary animal health rate is payable if the landholder has kept at least 50 stock units (sheep equivalents) on the property.
7. The rates are charged from 1 January each year, and the amounts of the rates are reviewed annually. The Minister advised that most of the minimum rates prescribed in the *Rural Lands Protection (General) Amendment (Rates and Molong Rateable Land) Regulation 2007* represent only a CPI increase of 2.1% above the amounts prescribed in the previous Regulation. The 2.1% increase was for the 12 months ended 30 June 2007.
8. In his letter, the Minister informed that there were six Boards who were granted minimum rate increases above the CPI increase. These Boards are those referred to in the table below.

| Table of rate increases higher than CPI |          |  |
|---|----------|--|
| Board                                   | Increase | Comment  |
| Dubbo                                   | 5%       | Dubbo Board recommended a 5% increase in minimum rates for 2008.   |
| Gloucester                              | 6%       | Gloucester Board requested minimum general rate increase is 6.8%, and the minimum animal health rate increase is 8.8%. State Council recommended that an increase of 6% be granted for both rates. |
| Grafton                                 | 6%       | Grafton Board sought an increase in the minimum general and animal health rates of 6%.   |
| Mudgee-Merriwa                          | 5.1%     | Mudgee-Merriwa Board sought a 5.1% increase in its minimum general rate, and a 5.1% increase in its minimum animal health rate.  |
| South Coast                             | 8%       | South Coast Board sought a 8% increase in its minimum general rate, and a 8% increase in its minimum animal health rate.   |
| Tweed-Lismore                           | 4%       | Tweed-Lismore Board sought a 4% increase in its minimum general rate, and a 4% increase in its minimum animal health rate.   |

9. All of the rate increases were made after careful consideration of the advice from the Boards' governing body, the State Council of Rural Lands Protection Boards.

10. Included in the Regulation is an amendment to the Molong Board's minimum prescribed rating area. Each Board has a minimum rating area prescribed under section 60 of the Act. Molong Board formerly had a minimum prescribed rating area of four hectares. The Board requested that the area be increased to 10 hectares from 1 January 2008. The Minister advised that the effect of increasing the minimum prescribed rating area to 10 hectares is that fewer occupiers of smaller properties are now liable to pay rates in the Board's district.
11. The Committee notes the above information provided by the Minister with regard to the rate increases as reasonable, and writes to the Minister accordingly, and finds this Regulation requires no further action.

## Appendix 1: Index of Bills Reported on in 2008

|   | Digest<br>Number |
|---|------------------|
| Conveyancing Amendment (Mortgages) Bill 2007* | 1                |
| Marine Parks Amendment Bill 2007              | 1                |
| TAFE (Freezing of Fees) Bill 2007*            | 1                |



## Appendix 2: Index of Ministerial Correspondence on Bills

| Bill   | Minister/Member   | Letter sent | Reply received | Digest 2007 | Digest 2008 |
|--|---|-------------|----------------|-------------|-------------|
| APEC Meeting (Police Powers) Bill 2007                                 | Minister for Police   | 03/07/07    |                | 1           |             |
| 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    | 28/01/08       | 1           | 1           |
| Guardianship Amendment Bill 2007                                       | Minister for Ageing,<br>Minister for<br>Disability Services         | 29/06/07    | 15/11/07       | 1,7         |             |
| Mental Health Bill 2007  | Minister Assisting<br>the Minister for<br>Health (Mental<br>Health) | 03/07/07    |                | 1           |             |
| Statute Law (Miscellaneous) Provisions Bill 2007                       | Premier   | 29/06/07    | 22/08/07       | 1,2         |             |
| Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007 | Minister for Police   | 03/07/07    |                | 1           |             |

## Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2008

|   | (i)<br>Trespasses<br>on rights | (ii)<br>Insufficiently<br>defined<br>powers | (iii)<br>Non<br>reviewable<br>decisions | (iv)<br>Delegates<br>powers | (v)<br>Parliamentary<br>scrutiny |
|---|--------------------------------|---|---|-----------------------------|----------------------------------|
| TAFE (Freezing of Fees) Bill 2007*            |                                |   |   |                             |                                  |
| Marine Parks Amendment Bill 2007              |                                |   |   |                             |                                  |
| Conveyancing Amendment (Mortgages) Bill 2007* |                                |   |   |                             |                                  |

### Key

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