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TABLE OF CONTENTS

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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) makers 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.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (DEVELOPMENT CONSENTS) BILL 2003

Introduced: 17 October 2003
House: Legislative Assembly
Minister: The Hon C Knowles
Portfolio: Infrastructure and Planning

Matters for comment raised by the Bill

Trespasses on rights	Insufficiently defined powers	Non - reviewable decisions	Delegates powers	Parliamentary scrutiny
✓		✓	✓	

Purpose and Description

1. The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*:

   (a) to enable the Minister for Infrastructure and Planning to extend the period within which work must be commenced before development consent for certain State significant development lapses; and

   (b) to provide for the voluntary surrender of development consents.

Background

2. A **State significant development** is defined by s 76A(7) of the *Environmental Planning and Assessment Act 1979* (the Act) as:

   (a) development:

      (i) that is declared by a State environmental planning policy or a regional environmental plan to be State significant development, and

      (ii) that may be carried out with development consent, or

   (b) particular development, or a particular class of development:

      (i) that, under an environmental planning instrument, may be carried out with development consent, and

      (ii) that, in the opinion of the Minister, is of State or regional environmental planning significance, and

      (iii) that is declared by the Minister, by notice in the Gazette, to be State significant development, or

   (c) development that is proposed to be carried out in accordance with a development application that the Minister has directed, under section 88A, to be referred to the Minister for determination, or

(d) prohibited development in respect of which a direction by the Minister under section 89 is in force.

3. According to the Minister's second reading speech, State significant development tends to be bigger, more complex, and more capital intensive than local developments.[1]

4. The genesis for the amendment enabling the Minister to extend the period within which work must be commenced before development consent for certain State significant development lapses, according to the Minister's second reading speech,[2] lies in the fact that:

> State significant development projects typically require a number of licences, permits and approvals in addition to any development consent; and these consents, licenses, permits and approvals are all vulnerable to legal proceedings…they may even prevent the physical commencement of the development before the consent lapses; and if this occurs, companies are currently required to apply further resources in lodging a fresh development application for the project, even if they are successful in the legal proceedings.

The Bill

Extension of lapsing period for consent for State significant development

5. Section 95 of the Act provides that, except for a staged development, a development consent lapses five years after the date from which it operates. Consent does not lapse, however, if work commences prior to the date the consent would ordinarily lapse.[3]

6. This Bill proposes to enable an applicant, or any person entitled to act on a development consent for State significant development, other than staged development, to apply to the Minister for Infrastructure and Planning (as the consent authority) for one or more extensions of the lapsing period of up to three years in total [proposed s 95B(2)].

7. The period of extension must be commensurate to the period of delay in commencing work, but the total period of the consent, incorporating the period of extension, must not be longer than eight years from the date from which the consent operates [proposed s 95B(6)].

8. The Minister may grant an extension, if it is shown:

   (a) that the development consent may lapse because there is, has been or may be, delay in physically commencing building, engineering or construction work, or use, of all or part of the land to which the consent applies that arises from or is related to one or more relevant legal proceedings, and

   (b) there is otherwise good cause [proposed s95B(8)].

9. ***Relevant legal proceeding***, in relation to land to which a development consent applies, means an ineffective legal proceeding that:

[1] The Hon Craig Knowles MP, NSW, *Parliamentary Debates (Hansard)* Legislative Assembly, 17 October 2003.
[2] The Hon Craig Knowles MP, NSW, *Parliamentary Debates (Hansard)* Legislative Assembly, 17 October 2003.
[3] Section 95(4) *Environmental Planning and Assessment Act 1979.*

(a) was brought with respect to work to be carried out on, use of or any other activity on the land or any claim or right in respect of a native title right or interest in the land, and

(b) was commenced, whether before or after the commencement of this section, by a person other than the applicant or any other person entitled to act on the consent [proposed s95B(9)].

10. ***Ineffective legal proceeding*** means a legal proceeding under the Act or any other law of this State or the Commonwealth (whether written or unwritten) that:

(a) has been instituted but has not been heard or has commenced to be heard but has not been determined, or

(b) has been determined without the court or tribunal concerned making the order or giving the approval or remedy sought by the person who commenced the proceeding or by the court or tribunal finding wholly or partly against the person [proposed s95B(9)].

Proposed Section 104A: Voluntary surrender of development consent

11. Proposed s 104A provides that a development consent may be surrendered, subject to and in accordance with the regulations, by any person entitled to act on the consent.

12. Under the Bill, a development consent may be surrendered notwithstanding that:

- an appeal had been lodged in the Land and Environment Court, either by an applicant or objector;[4] and
- the consent has ceased to be, or does not become, effective as a result of the lodging of such an appeal.[5]

13. There is currently no express provisions under the Act for the voluntary surrender of a development consent.

14. Under the Bill, the voluntary surrender of a development consent is effected when the consent authority notifies the party seeking to surrender the consent that it is satisfied:

- that so much of the development as has been carried out has been carried out in compliance with any condition of the consent, or any agreement with the consent authority relating to the consent that is relevant to that part of the development; and
- that the surrender will not have an adverse impact on any third party or the locality [proposed clause 97(4)].

Issues Arising Under s8A

Clause 2, Commencement

15. This Act is to commence by proclamation.

[4] as provided for in s97 and s98 *Environmental Planning and Assessment Act 1979* respectively.
[5] as provided for in s8(2) *Environmental Planning and Assessment Act 1979.*

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

17. **The Committee has written to the Minister seeking his advice as to the reason for commencement by proclamation and the likely commencement date of the Act.**

Proposed Section 95B(6) - Right of Appeal

18. Proposed s95B (extension of lapsing period for consent for State significant development) includes a provision that:

> (6) There is no appeal against the determination of an application under this section.

19. This precludes the review of the merits of the determination. It appears insufficient, however, to preclude judicial review, as it has been held that a legislative intention to effectively preclude judicial review of a particular class of decisions should be expressed sufficiently clearly.[6]

20. The Minister's decision to deny an application for an extension may result in a development consent lapsing. This can require the lodgement of a fresh development application, and the expenditure of the resources necessary for doing so, by a person wishing to undertake a State significant development. Consequently, the rights, liberties and obligations of the applicant are subject to a non-reviewable decision.

21. The Committee considers that, in the present instance, the right to have a decision reviewed does not outweigh the policy consideration in ensuring an expeditious decision making process and accepts that an allocation of public resources to such a review would not be a justifiable expenditure of public funds.

22. **The Committee considers that, in general, all decisions of an administrative nature should be subject to review.**

23. **The Committee recognises, however, that in some instances policy considerations will dictate that an appeal is neither necessary or practical.**

24. **The Committee is satisfied in this case that the operation of the proposed s 95B(6) does not unduly subject rights, liberties or obligations to a non-reviewable decision.**

Schedule 1[6] - Retrospectivity

25. The proposed Schedule 6, Part 14, Clause 65 provides that the proposed s104A (voluntary surrender of development consents) extends to a development consent

[6] *Darling Casinos Ltd v NSW Casino Control Authority* (1997) 143 ALR 55.

granted *before* the commencement of the Bill. Consequently, the Bill has a retrospective effect.

26. Proposed clause 97(2)(d) of the Regulation stipulates that a voluntary surrender of a consent requires the consent of the owner of the land. Proposed clause 97(4)(a) provides that a surrender of consent takes effect if the consent authorities gives notice that the surrender will not have an adverse impact on any third party or the locality.

27. **The Committee will always be concerned with any retrospective effect of legislation which impacts on personal rights.**

28. **However, given that a voluntary surrender requires the consent of the owner of the land, and only take effect if the consent authority gives notice that third parties or the locality will not be adversely impacted, the Committee does not consider that this retrospective provision unduly trespasses on personal rights.**

The Committee makes no further comment on this Bill.

2. FUNERAL FUNDS AMENDMENT BILL 2003

Introduced: 15 October 2003
House: Legislative Assembly
Minister: Hon R Meagher MP
Portfolio: Fair Trading

Matters for comment raised by the Bill

Trespasses on rights	Insufficiently defined powers	Non - reviewable decisions	Delegates powers	Parliamentary scrutiny
✓			✓	

Purpose and Description

1. The *Funeral Funds Act 1979* (the Act) regulates the operation of funeral contribution funds (where a member makes regular payments which contribute to a funeral service or provide a cash benefit towards the cost of the service) and pre-paid funeral funds (where the consumer enters into a pre-paid contract for a specific service). Specifically, the Act aims to protect pre-payments made by consumers for funeral services through the registration of funeral funds.

2. The Bill's object is to amend the Act:

   (a) to remove the current exemptions from the application of the Act so that all persons carrying on funeral fund businesses are required to be registered under the Act;

   (b) to update the requirements for registration of a funeral fund;

   (c) to provide for reporting by funds to the Director-General and to members of funds;

   (d) to provide for actuarial investigations of funds;

   (e) to provide power for the Director-General to impose disciplinary measures on funds;

   (f) to provide for appeals to the Supreme Court against decisions of the Director-General, including decisions to refuse registration, to register funds subject to conditions, to cancel registration of a fund and to impose disciplinary measures on a fund;

   (g) to allow the Director-General to appoint an independent actuary to assist the Director-General in performing his or her functions under the Act;

   (h) to remove the cap on the maximum level of a benefit that may be paid through a funeral contribution fund;

   (i) to remove the requirement that a funeral benefit business open and maintain a bank, building society or credit union account in New South Wales;

   (j) to remove the cap on the management expenses that may be charged by a fund; and

   (k) to make other miscellaneous amendments, including omitting redundant provisions and updating terminology used in the Act to reflect current industry practice.

Background

3. The Act was originally introduced to control and regulate contributory and pre-arranged funeral funds, in the wake of major industry failures in the 1970s.[7] The Act requires funeral funds to be registered and to meet certain prudential and fair trading standards.

4. It is estimated that pre-payments held by the funeral industry in New South Wales currently exceed $160 million.[8]

5. The Act distinguishes between funeral contribution funds and prearranged funds. In a *contributory scheme*, small payments are made on a regular basis until the contributor's death. The funeral service may or may not be carried out by a funeral director associated with the fund.

6. A *prearranged fund* allows many of the expenses to be met and arrangements to be made in advance, with the consumer paying for the cost of a funeral service in a lump sum or by way of large instalments. The consumer pays for the services at the current price, and, in return, is guaranteed the delivery of that particular funeral service, whenever it may be needed, at no extra cost.

7. The Department of Fair Trading[9] reviewed the operation of Act, in line with the National Competition Policy agenda. The Review concluded that the funeral fund industry continues to require close prudential scrutiny:

> The Review has found that there are significant market failures in the funeral fund industry relating to information asymmetry that justify government intervention. Submissions for both consumers and industry participants support the retention of [the Act]. They suggest that [the Act] has increased consumer confidence, enabled an expansion of the market and addressed the market failures that led to the earlier fund collapses.[10]

8. Although the Final Report was released in April 2002, legislative implementation of the Review's recommendations was delayed due to uncertainty about the applicability of the Commonwealth's financial services reform legislation to funeral funds operating in New South Wales. However, a Regulation introduced by the Commonwealth in March 2003 has reduced ambiguity in relation to the coverage of funeral benefits.

The Bill

9. Schedule 1[2] inserts a new s 3 into the Act. It specifies that the objects of the Act are:

[7] These failures led to a 1977 Prices Commission Inquiry.
[8] NSW Department of Fair Trading, *National Competition Policy Review of the Funeral Funds Act 1979 Final Report*, at 5.
[9] Now the Office of Fair Trading in the Department of Commerce.
[10] NSW Department of Fair Trading, *National Competition Policy Review of the Funeral Funds Act 1979 Final Report*, at 5.

- to protect pre-payments[11] made by consumers for funeral services through the registration of funeral funds;
- to ensure that funeral services agreed to be supplied under a pre-paid contract are supplied as agreed;
- to achieve accountability for money paid by a purchaser of funeral services that have an indefinite delivery date; and
- to properly manage money paid and other valuable consideration given for funeral services in the long term to provide agreed benefits to the purchaser and the anticipated payment to the supplier of funeral services.

Reporting

10. Schedule 1[22] of the Bill introduces a requirement on funeral contribution funds to report annually to their members, in order to reduce uncertainty for members and their families about the precise nature of an entitlement to be paid. Regular reporting to consumers aims to ensure that members are aware of any changes in fund management, and make it easier for members to contact the fund with any questions about their entitlement.

11. The Bill does not extend these reporting requirements to pre-arranged funds, because there is no scope for the entitlement to vary with this type of fund. A member is assured of the delivery of a funeral service at no extra cost, regardless of how much time elapses between the agreement and the delivery of the service.

12. In the Second Reading Speech, the Minister acknowledged that "producing such statements on an annual basis creates an additional cost for industry", but this was considered to be outweighed by the benefits to consumers.[12]

Exemptions

13. The Act previously included a series of exemptions. The Review of the Act found that these exemptions created market inequalities, by providing an advantage to those funds that were not subject to the Act's prudential and other regulatory requirements. It also meant that consumers had more limited forms of redress, if they have a problem with an exempt fund.

14. Although some exemptions were originally granted to avoid legislative duplication, the Review concluded that exemptions should not be provided on this basis alone and that all funds should be subject to registration and its associated accountabilities.[13]

[11] In the interests of clarity, Schedule 1 [1] of the Bill provides that, throughout the Act as amended, the term "pre-paid" is to be substituted for "pre-arranged".

[12] Hon R P Meagher, *NSW Parliamentary Debates (Hansard)*, Legislative Assembly, 15 October 2003.

[13] Thus, e.g., Schedule 1[18] inserts a new Division 1A into Part 3 of the Act to provide for the registration of previously exempt persons carrying on the business of a funeral contribution fund.

Issues Arising Under s 8A(1)(b)

Inappropriate delegation of legislative power

15. Clause 2 of the Bill provides that the amending Act commences on a day or days to be appointed by proclamation.

16. The Office of the Minister for Fair Trading has informed the Committee that the delayed commencement date is due to the need to undertake consultations on the Regulations to be made under the amended Act. The Minister's Office advises that it is anticipated that the amended Act, and any Regulations required to give effect to it, will be operational some months into 2004.

17. **The Committee notes that providing the amending Act to commence on proclamation delegates to the Government the power to commence an Act on whatever day it chooses after assent or not to commence the Act at all. Having regard to the extensive changes to the operation of funeral funds in New South Wales made by the Bill, the Committee considers that allowing time to undertake consultation regarding the regulations is an appropriate reason to delay commencement.**

Trespasses unduly on personal rights

Schedule 1 [57]: Retrospective transitional provisions

18. Clause 124 of the Bill allows regulations to be made that commence on the date of assent of the relevant Act, even if the regulations are made after that date. However, cl 124(3) specifically provides that any retrospective provision does not operate so as:

    (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

    (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

19. **The Committee notes that the power to make retrospective regulations provided by the Bill cannot operate in a manner prejudicial to, or impose any liabilities on, any person other than the State or any of its authorities.**

20. **In the circumstances, the Committee is of the opinion that the power does not unduly trespass on individual rights or comprise an inappropriate delegation of legislative power.**

The Committee makes no further comment on this Bill.

3. HAIRDRESSERS BILL 2003

Introduced:	17 October 2003
House:	Legislative Assembly
Minister:	The Hon J Della Bosca MLC
Portfolio:	Commerce

Matters for comment raised by the Bill

Trespasses on rights	Insufficiently defined powers	Non - reviewable decisions	Delegates powers	Parliamentary scrutiny
			✓	

Purpose and Description

1. The object of this Bill is to prohibit unqualified people from acting as hairdressers. At present, Part 6 of the *Shops and Industries Act 1962* requires hairdressers to be licensed and prevents people from employing or engaging unlicensed hairdressers. The scheme under Part 6 also provides that only the TAFE Commission can run hairdressing courses.

2. By repealing Part 6 of that Act, this Bill removes the licensing system and the prohibition on employing or engaging unlicensed hairdressers, and allows other trainers to provide training in hairdressing.

3. However, the Bill continues to prevent unqualified people from hairdressing by specifying the qualifications required to act as a hairdresser for fee, gain or reward. All hairdressers must complete a "Certificate III in Hairdressing" qualification. This is the nationally accepted standard trade qualification for the industry and involves four years of study and practical experience.

4. This Bill arises as a result of the departmental review of Part 6 of the *Shops and Industries Act 1962*, conducted in the context of a National Competition Policy review.

Background

5. In the Second Reading Speech[14] the Parliamentary Secretary said that the hairdressing industry has been regulated since 1936. The current licensing and training framework and the definition of "hairdressing" date from 1950.

6. The current licensing regime, governed by Part 6 of the *Shops and Industries Act*, requires a person to hold a license in order to act as a hairdresser for fee, gain or reward. To hold a license, a person must have completed a prescribed course of training, which can only be provided by the NSW TAFE Commission.

7. The review of Part 6, conducted in the context of a National Competition Policy, determined that there is sufficient justification for retaining regulation at the point of entry to the hairdressing profession to ensure competency and to protect public health standards.

[14] Mr Graham West MP, *Parliamentary Debates (Hansard)* Legislative Assembly, 17 October 2003.

However, it determined that there is no justification for keeping the old licensing regime which is administered by the Office of Industrial Relations and which requires applicants to pay several fees to different agencies. The Minister also stated that there is no policy justification for TAFE to continue to have a monopoly on training for the sector and private hairdressing colleges should be lawfully permitted to operate in NSW.

The Bill

8. *Clause 3* prohibits an unqualified person from acting as a hairdresser for fee, gain or reward.

9. Clause 4 provides that an individual is ***qualified to act as a hairdresser*** if the individual has the qualifications required by the proposed section. An individual who has what is known as a Certificate III in Hairdressing is qualified to act as a hairdresser. That certificate forms part of the National Hairdressing Training Package developed by the National Wholesale, Retail and Personal Services Industry Training Council and endorsed by the National Training Quality Council (established by the Australian National Training Authority).

10. Under clause 4, an individual who held a licence under Part 6 of the *Shops and Industries Act 1962* is taken to be qualified under the proposed Act, as are hairdressers from interstate or overseas who have their qualifications recognised.

11. *Clause 5* states that the qualification requirement in clause 3 does not apply to apprentices, individuals who act as hairdressers in the practice of their profession as a legally qualified medical practitioner, nurse, physiotherapist or other health care professionals. Individuals who acts as a hairdresser when providing care for elderly or disabled people and anyone else acting as a hairdresser in circumstances prescribed by regulation are also excluded from the operation of clause 3.

12. *Clause 7* creates the offence of not complying with a notice to produce information or documentation showing qualifications within the period specified in the notice. The maximum penalty is 20 penalty units (currently $2200).

    An offence under the Act may be dealt with summarily before a Local Court. Only the Minister may institute proceedings for such an offence [cl 8].

13. *Clause 11* repeals the *Hairdressing Regulation* 1997 as a consequence of the repeal of Part 6 (the licensing requirements) of the *Shops and Industries Act.*

14. *Clause 12* provides that the Minister is to review the Act five years after its date of assent, in order to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

Issues Arising Under s8A

Clause 2 – Commencement by proclamation

15. Addressing the commencement of this Bill, the Minister said in his Second Reading Speech that the Bill would not commence until industry parties have had time to

apply to the NSW Industrial Relations Commission for award adjustment necessitated by the abolition of the present licensing system.

16. **The Committee notes that providing the Act to commence on proclamation delegates to the Government the power to commence an Act on whatever day it chooses after assent or not to commence the Act at all.**

17. **The Committee considers that allowing members of the industry time to adjust their awards is an appropriate reason to delay the commencement for a brief period.**

The Committee makes no further comment on this Bill.

4. INDUSTRIAL RELATIONS AMENDMENT (PUBLIC VEHICLES AND CARRIERS) BILL 2003

Introduced: 17 October 2003
House: Legislative Assembly
Minister: The Hon J Della Bosca MLC
Portfolio: Industrial Relations

Matters for comment raised by the Bill

Trespasses on rights	Insufficiently defined powers	Non - reviewable decisions	Delegates powers	Parliamentary scrutiny
✓			✓	

Purpose and Description

1. Chapter 6 of the *Industrial Relations Act 1996* provides for a modified industrial relations system for certain drivers of public vehicles and carriers of goods who are engaged under contracts of bailment or carriage that are not contracts of employment.

2. The objects of this Bill are:

   (a) to extend the application of Chapter 6 to contracts of bailment in relation to taxi-cabs and private hire vehicles regardless of where the bailee plies for hire or transports passengers, and

   (b) to continue indefinitely to exclude the application of Part IV of the *Trade Practices Act 1974* (the ***Trade Practices Act***) of the Commonwealth and the *Competition Code of New South Wales* (the ***Competition Code***) from certain things done in relation to contract determinations and agreements made or approved by the Industrial Relations Commission under Chapter 6.

3. A *contract of bailment* in this context typically refers to the situation in which a driver pays a fee to the owner of a taxi or private hire vehicle for use of the vehicle to ply for hire or transport passengers.

Background

Exemption from Part IV, Commonwealth *Trade Practices Act 1974*

4. In his second reading speech, the Parliamentary Secretary noted that:

> Chapter 6 of the Industrial Relations Act provides for a modified industrial relations system for drivers of public vehicles and carriers of goods who are engaged under contract that are not contracts of employment. Chapter 6 recognises that whilst these drivers are not employees in the true sense, nevertheless they share many of the characteristics of employees, and deserve protection from exploitation.[15]

[15] Mr Bryce Gaudry MP, Parliamentary Secretary, *Parliamentary Debates (Hansard)* Legislative Assembly,17 October 2003.

5. Chapter 6 could contravene Part IV of the *Trade Practices Act* regarding restrictive trade practices, but for s 51(1)(b) of that Act which provides an exemption from the Part for:

> anything done in a State, if the thing is specified in, and specifically authorised by:
>
> (i) an Act passed by the Parliament of that State; or
>
> (ii) regulations made under such an Act;

6. Section 310A specifically authorises Chapter 6 for the purposes of s 51 of the *Trade Practices Act*. However, s 310A(4) provides that the section will cease to have effect 2 years after the date of its commencement, ie, on 14 December 2003.

7. According to the Parliamentary Secretary, a review completed by the Employment Studies Centre of the University of Newcastle has recommended that Chapter 6 should receive permanent exemption from Part IV of the *Trade Practices Act*.

Contracts of bailment for taxi-cabs and private hire vehicles

8. Contracts of bailment in relation to taxi-cabs and hire vehicles are currently defined in the Act to only include contracts in a transport district established under the *Transport Administration Act 1988*. This leaves contracts outside the Sydney, Newcastle and Wollongong areas unregulated by the Act.

9. According to the Parliamentary Secretary,

> the Government's view is that there is no good reason for taxi drivers and private hire vehicle operators in regional areas to be denied access to the Chapter 6 provisions.

The Bill

10. The Bill removes the references to transport districts from the definition of "contract of bailment" (s 307) so that it provides to all such contracts in New South Wales [Schedule 1 [1] – [3]].

    It also removes the sunset clause from provision s 310A [Schedule 1[4]]. That section conveys the exemption from Part IV of the *Trade Practices Act*. This amendment thereby makes the exemption have continuing effect.

11. Schedule 1 [5] of the Bill adds the proposed Act to the list of Acts in regards to which transitional regulations may be made.

12. Schedule 1 [6] provides for the retrospective exemption from Part IV of the *Trade Practices Act* if the proposed Act commences after the current exemption has expired under s 310A(4),

Issues Arising Under s8A(1)(b)

13. The Bill commences on assent.

Schedule 1 [5] & [6]: Retrospective transitional provisions

14. The Bill adds the proposed Act to those listed in Schedule 4, clause 2 of the principal Act. That clause allows regulations to be made that commence on the date of assent of the relevant Act, even if the regulations are made after that date. However, the clause specifically provides that any retrospective provision does not operate so as:

    (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

    (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

15. **The Committee notes that the power to make retrospective regulations cannot operate in a manner prejudicial to, or impose any liabilities on, any person other than the State or an authority of the State.**

16. **In the circumstances, the Committee considers this power does not unduly trespass on individual rights or comprise an inappropriate delegation of legislative power.**

17. Schedule 1 [6] of the Bill provides for the retrospective exemption from Part IV of the Trade Practices Act if the current exemption expires before the proposed Act commences. This provision avoids any period of uncertainty regarding the validity of the provisions if the commencement of the proposed Act is delayed.

18. Such a provision has the potential to unduly trespass on personal rights if the retrospective application covered an extended period, during which a person could reasonably act on the assumption that the Act was subject to Part IV.

19. However, as the proposed Act is to commence on assent, there should not be any extended delay in commencement following Parliament passing the Bill.

20. **In the circumstances, the Committee considers that this retrospective provision does not unduly trespass on personal rights.**

The Committee makes no further comment on this Bill.

5. POLICE ASSOCIATION EMPLOYEES (SUPERANNUATION) AMENDMENT BILL 2003

Introduced:	15 October 2003
House:	Legislative Assembly
Minister:	The Hon J. Watkins MP
Portfolio:	Police

Matters for comment raised by the Bill

Trespasses on rights	Insufficiently defined powers	Non - reviewable decisions	Delegates powers	Parliamentary scrutiny

Purpose and Description

1. The object of this Bill is to amend the *Police Association Employees (Superannuation) Act 1969* to allow the SAS Trustee Corporation (STC) to certify that an employee of the Police Service Association is unfit for service having regard to the medical advice of either:

   - two members of the Police Medical Board; or
   - any one or more medical practitioners nominated by the SAS Trustee Corporation

Background

2. For an employee of the Police Services Association who is under sixty years of age and a member of the Police Superannuation Scheme[16] to access an allowance under that scheme, he or she must be certified by two members of the Police Medical Board to be incapable, from infirmity of body or mind, to perform his or her duties as an employee of the Association.[17]

3. The Police Medical Board was established by Section 15A of the *Police Regulation (Superannuation) Act 1906* (the 1906 Act). Although still in existence, the Police Medical Board presently consists of only one member.

4. The purpose of this Bill is to allow employees of the Police Association to be certified medically unfit without the need to appoint another Member to the Police Medical Board.

5. Under the 1906 Act, which applies to members of the Police Force who are members of the Police Superannuation Scheme, a person can be certified medically unfit by either:

   (a) 2 members of the Police Medical Board, or

   (b) any one or more medical practitioner nominated by STC.

[16] The Police Superannuation Scheme was established as a superannuation scheme for salaried NSW Police Officers and their families. The Scheme closed to new members as of 1 April 1988.

[17] s3(8) *Police Association Employees Act 1969.*

6. According to the Second Reading Speech:

> The STC prefers the flexibility of nominating practitioners with specialist expertise in the type of illness that is the subject of any claim for early retirement on medical grounds. The Police Medical Board was not able to provide the same standard of specialist assessment. As a result, the Police Medical Board is no longer used for medical assessments and the appointment of board members has lapsed, which means that there are no longer two members of the board who can provide advice as to whether a Police Association employee is incapable of performing his or her duties. That means that officers who are incapable of performing their duties are unable to access their annual superannuation allowance.[18]

7. According to the Second Reading speech, this amendment is required as a result of a recent situation in which a long-serving employee of the Association was forced to cease duties due to a medical condition, but was unable to access his superannuation allowance.

8. It was noted that such an amendment would ordinarily be effected by the Statute Law Review Program, but given the immediate need of the Police Association employee in question, the Bill cannot wait until later in the parliamentary session.

The Bill

9. This Bill brings the 1969 Act into line with the 1906 Act and ensures consistency between the two related pieces of legislation.

Issues Arising Under s8A(1)(b)

Clause 2, Commencement

10. The Committee notes that this Act is to commence on assent.

The Committee makes no further comment on this Bill.

[18] Gaudry MP, Mr Bryce, *NSW Parliamentary Hansard* 15 October 2003, page 94.

6. PRIVACY AND PERSONAL INFORMATION PROTECTION AMENDMENT BILL 2003

Introduced: 17 October 2003
House: Legislative Assembly
Minister: The Hon Bob Debus MP
Portfolio: Attorney General

Matters for comment raised by the Bill

Trespasses on rights	Insufficiently defined powers	Non - reviewable decisions	Delegates powers	Parliamentary scrutiny
✓			✓	✓

Purpose and Description

1. The object of this Bill is to amend the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* to transfer the Privacy Commissioner's functions under that Act to the Ombudsman.

2. The Bill also makes consequential amendments to a number of other Acts and regulations to remove references to the Privacy Commissioner and to generally replace those references with references to the Ombudsman.

Background

3. The Second Reading Speech stated that the "Government believes that conferring the functions of the Privacy Commissioner on the Ombudsman will further enhance privacy protection in NSW. Privacy protection, complaints handling and accountability within public sector agencies will be improved for a number of reasons."

4. The Second Reading Speech also stated that the Ombudsman has the capacity to further improve privacy outcomes because of her high public profile and expertise in public administration. According to the Attorney General, this capacity is also due to the fact that the "Ombudsman's recommendations are afforded considerable respect by agencies and the public generally" and the fact that the Ombudsman has well-recognised "expertise in handling complaints and improving standards of administration".

5. The Second Reading Speech also announced that the resources of Privacy NSW would be transferred to the Ombudsman to ensure adequate resources are available for the performance of this new role.

The Bill

6. The Second Reading Speech said that the Bill transfers the Privacy Commissioner's functions under the *Privacy and Personal Information Protection Act* (the Privacy Act) and the *Health Records and Information Privacy Act* (Health Records Act) to the Ombudsman. In so far as the Bill restricts itself to that aim, it is merely transferring powers and duties from one independent statutory body to another.

7. However, there are a number of provisions of the Bill which effectively give several of the present functions of the Privacy Commissioner under those Acts to the responsible Ministers.

8. The changes are made in Schedule 1, clauses 3, 13, 14 and Schedule 2, clauses 2, 2.7[12], [13] and [15].

9. Schedule 1 amends the *Privacy and Personal Information Protection Act 1998* (Privacy Act) and Schedule 2.7 amends the *Health Records and Information Privacy Act 2002* (Health Records Act).

10. Both Acts *currently* allow public sector agencies (and in the case of the Health Records Act, private sector persons) to seek a temporary exemption from compliance with privacy principles and codes of practice from the Privacy Commissioner. Before making a direction to grant the exemption, the Privacy Commissioner must be satisfied that the public interest in the organisation or person complying with the principle or code of practice are outweighed by the public interest in the Commissioner making the direction.

11. Clauses 13 of Schedule 1 transfers to the Minister the power of the Privacy Commissioner to direct that a public sector agency be temporarily exempt from complying with an information protection principle or a privacy code of practice under section 41 of the Privacy Act. The amendment confers on the Minister a statutory obligation to consult with the Ombudsman before making such a direction.

12. The Second Reading Speech stated that, "these modifications are consistent with the role of the Ombudsman to recommend, rather than direct, a course of action."

13. A mirror amendment is made to section 62 of the Health Records Act. The amendment transfers to the Minister the function of granting temporary exemptions under that Act [Schedule 2.7, clauses 12 and 13]. The amendments provide that the Minister is not to make such a direction unless the Minister has consulted with the Ombudsman and the Minister administering the *Privacy and Personal Information Protection Act* (currently the Attorney General), and has taken into account any submissions made by them.

14. The Minister must also be satisfied that the public interest in the organisation complying with the principle or code of practice is outweighed by the public interest in the Minister making the direction.[19]

15. The Second Reading Speech justified this amendment to section 62 by stating that it is the "Minister [who] is best placed to determine the scope of such exemptions, following consultation."

[19] Under the current provision, the Privacy Commissioner must make a similar assessment.

Issues Arising Under s.8A

Schedule 1, clause 13 & Schedule 2.7, clauses 12 & 13: Unduly trespasses on individual rights

16. The right to privacy is a fundamental right recognised explicitly in the Universal Declaration of Human Rights [art.14] and the International Covenant on Civil and Political Rights [art. 17]. Australia is a party to both of these treaties and has implemented, at the national and state levels, laws to protect individuals' privacy rights.

17. The increasing volume of personal data collected by government agencies and technological advances for storing and using that data (e.g. through data matching) have the potential to trespass on an individual's right to privacy. Consequently, any diminution of the observance of privacy protection principles could significantly impact on the right to privacy for people in NSW.

18. In his second reading speech on the *Privacy and Personal Information Bill 1998*, the then Attorney General acknowledged the importance of the Act in controlling how the Government handles personal information, saying that:

> [t]he government is itself one of the main collectors and users of personal information. I consider that effective safeguards in relation to that information are a vital part of the government's compact with the community.

19. To ensure an objective assessment of public interest considerations regarding exemptions, the Acts currently require that the Privacy Commissioner first obtain the approval of the Minister and be satisfied that granting the exemption is, on balance, in the public interest. This ensures that exemptions are only given when in the public interest as determined by both a political representative and an independent statutory office holder. The ability to grant exemptions clearly has the potential to undermine the safeguards to privacy Parliament has placed in the legislation.[20]

20. The amendments have the effect of conferring the power to exempt on the Minister alone. This limits the scope of protection afforded under the legislation. The Minister will also have to weigh the two competing public interests, compliance with information protection principles, and the particular public interest in giving the exemption.

21. The problem inherent in this proposal is that any public interest that competes with the "right to privacy" ought to be calculated on a *completely disinterested* basis. For example, medical information may help identify or locate a missing person, and there is plainly a public interest in release of what would otherwise be confidential material.

[20] Privacy and health privacy codes of practice made under the Privacy and Health Records Act respectively, may also exempt a public sector agency, class of public sector agency, or, in the case of the Health Records Act, an individual, from the requirement to comply with aspects of these Acts. Codes of practice may be made for the purpose of protecting the privacy of individuals and may regulate the collection, use and disclosure of, and the procedures for dealing with, personal information held by public sector agencies or a private sector person. Codes are made by the agency and the Privacy Commissioner in consultation with the Minister. If the Minister decides to make a code, it is published in the Gazette. The Bill does not alter this procedure, other than to confer on the Ombudsman the role currently played by the Privacy Commissioner in the making of codes.

But the very existence of the Privacy Act and the Health Records Act acknowledges that private information is widely held, and may have a powerfully destructive effect if misused, including being disseminated into the public arena.

22. Ministerial control over what until now has been controlled by an independent statutory body raises the possibility of political considerations entering into the process of granting temporary exemptions.

23. In addition, granting the Minister sole power to grant exemptions from compliance with these Acts may raise a conflict of interest. Given that the government is the largest collector and holder of personal information, the potential for such a conflict to arise is real.

24. These concerns are made all the starker where information is held in respect of those for whom the State has special responsibilities, for example children as wards of the state, the mentally infirm, and prisoners. Such persons are peculiarly dependant on the State for their welfare, and have little opportunity for redress if the State withdraws the shield of its protection.

25. Further, the proposals in the Bill provide no realistic restraint on the relevant Minister in the decision making process. The Ombudsman is required to be consulted, but there is no requirement for tabling of the decision in Parliament.[21] Given the potential trespass on a person's right to privacy, and the "genie out of the bottle" immediacy of such a trespass, Parliamentary scrutiny could only be of very little value. The real issue is whether it is at all appropriate for this function to be left solely in the control of the government.

26. **The Committee notes that the Bill removes any involvement of an independent body in determining whether to grant exemptions under section 41 of the *Privacy and Personal Information Protection Act 1998* and section 62 of the *Health Records and Information Privacy Act 2002*.**

27. **The Committee further notes that the granting of such exemptions can significantly undermine the safeguards to privacy in the Act and should only be given in the public interest. The Committee also notes that giving the function of granting exemptions to the Minister alone may give rise to a situation of potential conflict of interest.**

28. **The Committee refers to Parliament the question of whether these amendments unduly trespass on individual rights.**

Clause 2 – Commencement by proclamation: Inappropriate delegation of legislative powers

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

[21] The current practice of the Privacy Commissioner is to publish determinations made under s 41 of the Privacy Act on the website of Privacy NSW. However, there is no legislative requirement to publish the making of s 41 determinations. Codes of Practice are published in the Gazette.

30. **The Committee has resolved to write to the Attorney General to ask for an indication of the likely date for commencement of this Bill.**

Insufficiently subjects the exercise of legislation power to parliamentary scrutiny

31. Although an exemption from the operation of either the Privacy or Health Records Acts effectively narrows the scope of application (and therefore the extent of protection of privacy rights in NSW), there is no requirement for the Minister to report the making of determinations under sections 41 or 62 of the Privacy and Health Records Acts to Parliament. By contrast, all Codes of Practice made by the Minister are published in the Gazette.

32. The Committee is of the view that, given the effect an exemption may have on the enjoyment of a person's right to privacy, it is appropriate that there be a requirement for public reporting of exemption determinations made under these Acts.

33. **The Committee refers to Parliament the question of whether, in the absence of any public reporting requirements, the making of a determination to exempt an agency or individual from complying with any part of the Privacy Act or the Health Records Act represents an exercise of legislative power with insufficient parliamentary scrutiny.**

The Committee makes no further comment on this Bill.

7. ROYAL BLIND SOCIETY (CORPORATE CONVERSION) BILL 2003

Introduced:	17 October 2003
House:	Legislative Assembly
Minister:	The Hon R J Debus MP
Portfolio:	Attorney General

Matters for comment raised by the Bill

Trespasses on rights	Insufficiently defined powers	Non - reviewable decisions	Delegates powers	Parliamentary scrutiny
✓		✓		

Purpose and Description

1. The object of the Bill is to amend the *Royal Blind Society of New South Wales Act 1901* (the Act):

   - to provide that membership of the Royal Blind Society of New South Wales (the Society) is to be limited to the current members of the council of the Society (the council) and such other persons admitted to membership after applying to the council for membership; and
   - to authorise the Society to apply to be registered as a public company limited by guarantee under the *Corporations Act 2001* (Cth) (the Corporations Act).

Background

2. The Society is an organisation incorporated under the Act to promote the interests of blind and vision-impaired persons, and to provide services to assist such persons.

3. Currently, there are three classes of members of the Society:

   - honorary life members;
   - life members; and
   - ordinary members.

4. A person becomes an *honorary life member* if the council confers such membership. A person becomes a *life member* simply by making a donation of at least $1000 to the Society. A person becomes an *ordinary member* until 30 June next following the date of a donation, or the conclusion of the next annual general meeting following that date (whichever is the later), simply by donating at least $10, but less than $1000, to the Society.

A national organisation

5. In 2002, the Society entered into negotiations with the Royal Victorian Institute for the Blind, and Vision Australia Foundation, to establish one national organisation for people who are blind or vision impaired.

6. The Society's present status as a body corporate under New South Wales' legislation poses legal difficulties for participation in the proposed national body.

7. The Society considered that converting to a company under the Corporations Act would better meet the needs of the organisation, and wrote to the Government requesting amendments to the Act to assist with the conversion process.

8. On 17 July 2003, the Society held a Special General Meeting to enable members to consider the following resolution:

> That Royal Blind Society of New South Wales proceeds to convert to a public company limited by guarantee registered under the *Corporations Act 2001* (Cth) and that as part of that process, the membership base of the Royal Blind Society of New South Wales is changed but continues to be available to anyone on application.

9. The motion was carried by a majority of votes of members voting in person or proxy, 484 in favour and 28 against.[22]

10. The Government has introduced the Bill to facilitate the Society's request to amend the Act.

11. The most recent example of this type of procedure being implemented in New South Wales was the corporate conversion of the Australian Gas Light Company (AGL) under the *AGL Corporate Conversion Act 2002*.

The Bill

Registration resolutions

12. Part 2 of the Bill deals with registration resolutions. A registration resolution is defined in cl 5 as a resolution passed in accordance with cl 5 by the members of the Society at a general meeting of the Society, that:

    (a) resolves that the Society be registered as a public company limited by guarantee under the *Corporations Act 2001* of the Commonwealth, and

    (b) approves a constitution for the Society on its registration as a public company.

13. Pursuant to cl 6 of the Bill, within one month of the passing of the registration resolution, application may be made to the Supreme Court for an order that the resolution was invalid, due to procedural irregularity.[23] Any such application must be made by at least three members of the Society who were eligible to vote at the meeting at which the resolution was passed.

14. An order declaring the resolution invalid will not be made if the irregularity was simply the result of an accidental omission or non-receipt of a notice under the Act, and if no substantial injustice has resulted from the irregularity [cl6 (6)].

[22] http://www.rbs.org.au/happen/index.html.

[23] *Procedural irregularity* is defined in cl 6(10) of the Bill as:
(a) any defect, irregularity or deficiency of notice or time, and
(b) any miscalculation of voting entitlements.

Registration as a public company

15. Clause 7 of the Bill provides that the Society may apply to the Australian Securities and Investments Commission (ASIC) to be registered as a public company limited by guarantee under Part 5B.1 of the Corporations Act, once a compliance certificate has been issued by the Attorney General.

16. Clause 11 of the Bill authorises the Society to continue to use its existing name after it is registered. This is necessary, as a Corporations Act company is normally required to include the word "limited" in its name, and is normally not allowed to use the word "royal" in its name.[24]

Objects of the Society

17. The Society's objects are set out in s 2B of the Act. They are:

- to promote in New South Wales and elsewhere the interests of blind and vision-impaired persons generally; and
- to provide (directly or indirectly) services to assist blind and vision-impaired persons to develop and use their abilities fully and to achieve their aspirations for participation in general community life.

18. The current s 2B does not specifically allow the society to undertake commercial ventures when providing assistance to blind and vision-impaired people. Accordingly, Sch 1[1] of the Bill provides that the new s 2B shall read:

(1) The objects of the Society are:

(a) to provide assistance to blind or vision-impaired persons to access, and fully participate in, all facets of life, and

(b) to remove barriers that prevent blind or vision-impaired persons from enjoying equal access, opportunities or participation within the community.

(2) The Society may pursue these objects in the State or outside the State.

(3) The Society may enter into commercial ventures or other arrangements in pursuance of these objects.

(4) This section has effect despite anything in section 2.

19. The change made by the Bill to the Act's objects clause will facilitate the Society's participation in the proposed national association. Clause 9 of the Bill notes that, under s 601BM of the Corporations Act, the registration of the Society under that Act does *not* create a new legal entity.[25]

[24] See s 5G(6) of the *Corporations Act 2001* (Cth).

[25] Section 601BM of the *Corporations Act 2001* (Cth) provides that the registration of a body as a company under Part 5B.1 of that Act does not:
(a) create a new legal entity, or
(b) affect the body's existing property, rights or obligations (except as against the members of the body in their capacity as members), or
(c) render defective any legal proceedings by or against the body or its members.

20. A number of miscellaneous provisions have been included in the Bill to facilitate the registration process, e.g., giving relief from State tax for the registration process: cl 15.

Membership

21. It was noted in the Second Reading speech that the Society believes that "the majority of its donors are not aware that they become members of the organisation when they donate funds to the society".[26]

22. Schedule 1[2] amends the Act so that the members of the Society will be the current members of the council, together with anyone over 18 years of age who is admitted to membership after lodging an application form and paying a $10 annual membership fee.

Regulations

23. The general power to make regulations under the amended Act is contained in cl 13 of the Bill. Schedule 2 of the Bill amends Sch 4 of the *Subordinate Legislation Act 1989* (SLA), so that any such regulations are "excluded instruments" under the SLA, and are not subject to the statutory rule-making requirements set out in the SLA.

Issues Arising Under s8A(1)(b)

Trespasses unduly on personal rights

Schedule 3 Part 1: Retrospective transitional provisions

24. Schedule 3 Part 1 of the Bill allows regulations to be made that commence on the date of assent of the relevant Act, even if the regulations are made after that date. However, Sch 3 1(3) specifically provides that any retrospective provision does not operate so as:

    (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

    (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

25. **The Committee notes that the power to make retrospective regulations provided by the Bill cannot operate in a manner prejudicial to, or impose any liabilities on, any person other than the State or one of its authorities.**

26. **In the circumstances, the committee considers that the power does not unduly trespass on individual rights or comprise an inappropriate delegation of legislative power.**

[26] Mr B J Gaudry MP, Parliamentary Secretary, *NSW Parliamentary Debates (Hansard)*, 17 October 2003.

Schedule 3 Part 2: Loss of membership

27. The Committee notes that the Bill terminates the membership of all members – other than those on the council – including honorary life members (Sch 3 2(1)) The Bill also disentitles those whose membership has been so terminated to compensation or damages for this loss of membership (Sch 3 2(3)).[27]

28. On its face, this is a significant trespass on personal rights. However, membership of the Society was obtained by either charitable donation or free grant.

In addition, the Attorney General's Department has informed the Committee that considerable support for the proposed changes was expressed by life members in the response to a mail-out to all members, undertaken prior to the Special General Meeting.

29. **The Committee notes that automatic loss of membership may trespass on the rights of existing life members of the Society.**

30. **Having regard to the nature of membership of the Society, the Committee does not, however, regard this as constituting an undue trespass on personal rights.**

Clause 8: Makes rights, liberties or obligations unduly dependent on non-reviewable decisions

31. Pursuant to cl 8(3), a certificate issued by the Attorney General under that clause certifying that the Society has complied with the requirements of the Act cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.

32. The Committee notes that this would appear to operate as a form of "ouster clause", whereby the jurisdiction of a court is ousted from any examination of the legality of the registration process.

33. **The Committee will always be concerned if a Bill purports to oust the jurisdiction of the courts.**

34. **However, given the practical and procedural nature of the matters to which the Attorney General is certifying, the Committee does not consider that this is an instance in which personal rights are made unduly dependent on non-reviewable decisions.**

The Committee makes no further comment on this Bill.

[27] Schedule 3 2(4) of the Bill provides that nothing in cl 2 prevents a person who has ceased to be a member of the Society by operation of cl 2(1) from being admitted as a member under s 5 of the amended Act.

8. SYDNEY WATER AMENDMENT (WATER RESTRICTIONS) BILL 2003

Introduced: 15 October 2003
House: Legislative Assembly
Minister: The Hon F Sartor MP
Portfolio: Energy and Utilities

Matters for comment raised by the Bill

Trespasses on rights	Insufficiently defined powers	Non - reviewable decisions	Delegates powers	Parliamentary scrutiny
✓	✓		✓	

Purpose and Description

1. The object of this Bill is to facilitate the enforcement of water restriction offences:

   (a) by providing that each person who is an owner or occupier of land on which a water restriction offence occurs is taken to have committed the offence if the identity of the actual offender cannot be ascertained at the relevant time; and

   (b) by empowering persons who are authorised to issue penalty notices for water restriction offences to enter land for the purposes of investigating suspected offences.

2. Under the Bill, a ***water restrictions offence*** means:

   > an offence of using water contrary to a notice by the Minister under the regulations regulating or restricting the use of water [proposed s 53A].

Background

3. According to the Minister's second reading speech, this Bill will improve the effectiveness of the enforcement of water restrictions. The Minister stated that:

   > Under the law as it now stands, if an authorised water inspector finds that a sprinkler has been left on, but nobody is present at the premises at the time of the offence, it is generally not possible to issue a penalty notice for that offence.[28]

4. The Minister further stated that:

   > Another key to the effective enforcement of mandatory water restrictions is the ability of authorised persons to properly investigate possible breaches of the restrictions wherever they occur on a person's property. For this reason, the bill provides persons authorised to enforce water restrictions with a clear power to enter onto land to investigate possible breaches of water restrictions and to take photographs of the offence.

5. **Pursuant to a suspension of Standing Orders, the Bill passed all stages in the Legislative Assembly on 15 October 2003. 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.**

[28] The Hon Frank Sartor MP, Minister for Energy and Utilities, *Parliamentary Debates (Hansard)*, NSW Legislative Assembly, 15 October 2003.

The Bill

6. Proposed s 53B makes provision for attributing liability for a water restriction offence when the authorised person who witnessed the commission of the offence cannot identify the offender at the relevant time.

   Subject to that section, each person who was an owner and each person who was an occupier of the land at the relevant time is taken to be guilty of the offence [53B(1)].

7. If a penalty has been recovered from any person in relation to an offence, no further penalty may be recovered from any other person [53B(2)].

8. The owner of the land is not taken to be guilty if he or she:

   - provides a statutory declaration indicating either the name and address of the person who the owner has reasonable grounds to believe committed the offence or was an occupier of the land [53B(3)(a)], or
   - satisfies the relevant person or court that the owner did not commit the offence and did not know, and could not with reasonable diligence have ascertained, the name and address of the occupier [53B(3)(b)].

9. The occupier of the land is not taken to be guilty if he or she:

   - provides a statutory declaration indicating the name and address of the person who the occupier has reasonable grounds to believe committed the offence [53B(4)(a)], or
   - satisfies the relevant person or court that the occupier did not commit the offence and did not know, and could not with reasonable diligence have ascertained, the name and address of the person who committed the offence [53B(4)(b)].

10. Proposed s 53C provides that the statutory declarations made under s 53B alleging a named person was the occupier of the land at the time of a water restriction offence or committed such an offence are admissible as evidence in proceedings against that person for the offence.

11. Proposed s 53D empowers authorised persons to enter land and take photographs for the purposes of investigating an offence if they reasonably suspect that a water restriction offence is being committed.

    This can only be done if the authorised person enters the land at a reasonable time and produces identification, if requested to do so by the occupier of the land.

12. The authorised person may not:

    - enter any dwelling or enclosed structure,
    - use any force, or
    - remain on the land for a longer period than is reasonably necessary in the circumstances.

13. Under the Bill, the penalty notice amount for most water restriction offences is set to $220. The maximum penalty for water restriction offences under cl 17 of the Sydney Water Regulation 2000 is 5 penalty units ($550) for an individual or 50 penalty units ($5,500) for a corporation.

14. Other provisions of the Bill include:

- increasing the maximum penalty for an offence against s 48 of the Act (which deals with water theft) from 100 penalty units ($11,000) to 200 penalty units ($22,000) for a person, or from 200 penalty units ($22,000) to 400 penalty units ($44,000) for a corporation,
- amending the *Sydney Water Regulation 2000* to provide for penalty notices to be issued for offences under s 48 of the Act, and
- amending the *Land and Environment Court Act 1979* to confer jurisdiction on the Land and Environment Court to hear and dispose of offences against the *Sydney Water Act 1994*.

15. Under the Bill, an "***authorised person***" means a person appointed in writing by the Minister for the purposes of s 50 of the Act.

16. "***Occupier***" of land is defined to "include any person occupying the land under a lease."

Issues Arising Under s 8A(1)(b)

Clause 2 – Commencement by proclamation

17. The committee notes that, while this has been treated as an urgent Bill, it is to commence on proclamation.

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

19. **The Committee has resolved to write to the Minister to ask for an indication of the likely date for commencement of this Bill.**

Proposed section 53A: Definition of authorised person

20. The Bill provides that "***authorised person*** has the same meaning as in section 50." Sub-section 50(9) provides that "In this section, ***authorised person*** means a person appointed in writing by the Minister as an authorised person for the purposes of this section".

Neither the Bill nor the Act provides any limits on, or qualifications for, the persons whom may be authorised by the Minister.

21. The Committee is of the view that, when legislation conveys on persons administrative powers that can significantly affect personal rights, it should include appropriate limits on who may be authorised to exercise those powers. This may include limiting it to a defined group of persons or persons holding a specified office or rank or possessing some qualification or attribute. Given that the bill gives authorised persons the power to enter private land after dark and make allegations regarding water restriction offences which can result in persons being deemed to be guilty, the Committee is of the view that the power should only be given to persons of appropriate experience, training and qualifications and with sufficient accountability for their actions.

22. In commenting on a Bill which would allow "a person authorised in writing by the Minister to be an officer" under the Commonwealth *Migration Act 1958*, the Senate Scrutiny of Bills Committee commented:

> The Committee often draws attention to provisions which delegate power to anyone who fits the all-embracing description of 'a person'. ... As a general rule, the Committee would prefer that potential appointees be required to have some qualifications or attributes before they are eligible for appointment.[29]

23. **The Committee has written to the Minister to seek his advice as to why there are no requirements regarding the qualifications or attributes of persons who may be appointed as authorised persons for the purposes of the Bill.**

24. **The Committee refers to Parliament the question of whether an unfettered discretion to appoint authorised persons under the Bill makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers.**

Proposed section 53B(1)

Trespasses on personal liberties

25. Proposed s 53B(1) interferes with the personal rights and liberties of owners and occupiers of land on which a water restriction offence is committed by providing that they are guilty of the offence, *by virtue of their status as owners or occupiers*, unless they take steps to show that someone else was responsible for the conduct.

26. Traditionally, the responsibility for proving all the elements of a criminal offence has fallen on the prosecution (consistent with the presumption of innocence). The Committee notes that the presumption of innocence and the principle that the prosecution bears the onus of proof of an offence remain vital to the maintenance of personal rights and liberties. Erosion of such principles should only be allowed when the loss of these fundamental rights is clearly outweighed by the public interest.

27. Under proposed s 53B the burden of proof is effectively reversed. Although it is increasingly common for legislation to reverse the burden of proof in relation to the issue of whether the accused had a culpable state of mind (*mens rea*), it is quite unusual to require the accused to show that they did not engage in prohibited acts (*actus reus*).

[29] Senate Scrutiny of Bills Committee, *Alert Digest No 6 of 1999.*

28. Placing the onus on the accused in relation to the prohibited acts component of a criminal offence is not unprecedented in New South Wales. For example, a similar presumption of guilt for vehicle owners operates in relation to certain road traffic offences.[30]

29. The Committee notes, however, that car owners can generally exercise greater control over who drives their car than owners and occupiers of land can exert over who has access to the land which they own or occupy. Therefore, the former are in a better position to identify the actual offender and avoid legal responsibility. Consequently, the burden imposed on land owners and occupiers is greater.

30. The trespass on personal liberties by proposed s 53B(1) is moderated by ss 53B(3) and 53B(4), which establish procedures by which owners and occupiers, who would otherwise be caught by s 53B(1), can avoid liability. Some of these 'exceptions' effectively delegate to owners and occupiers de facto responsibility for investigation and identification of the person who committed the offence. This represents a significant departure from standard criminal law enforcement practices and a substantial burden on owners and occupiers (especially the latter).

Owners' avoidance of liability: proposed Section 53B(3)

31. Owners can avoid guilt which would otherwise be attributed under the Bill by:

- swearing a statutory declaration identifying the person they reasonably believe to be the occupier [proposed s 53B(3)(a)(ii)];
- proving on the balance of probabilities that they did not commit the offence and that they could not with reasonable diligence have ascertained who the occupier was [proposed s 53B(3)(b)]; or
- swearing a statutory declaration identifying the person they reasonably believe to have committed the offence [proposed s 53B(3)(a)(i)].

32. The burden of avoiding liability will therefore usually be relatively light, given that in most cases it should be relatively simple to identify the occupier. Where the occupier cannot be identified, such as when the premises are unoccupied, the owner will have the more onerous burden of proving innocence or swearing as to the identity of the person whom they reasonably believe to have committed the offence.

Occupiers' avoidance of liability: proposed Section 53B(4)

33. Occupiers can avoid guilt which would otherwise be attributed under the Bill by:

- swearing a statutory declaration identifying the person they reasonably believe to have committed the offence proposed s 53B(4)(a)], or

[30] Such provisions deem the owner of a vehicle (*Roads Act* 1993, s 244; *Sydney Olympic Park Authority Act* 2001, s 78) or the responsible person (*Road Transport (General) Act* 1999, ss 43, 7) to be guilty of specified offences, such as camera-detected traffic light and speeding offences and parking and toll offences, unless:

- they can show that the vehicle in question was stolen or illegally taken; or
- they provide a statutory declaration identifying the person who was in charge of the vehicle at the relevant time; or
- they can show that they did not know, and could not with reasonable diligence have discovered the identity of that person.

- showing that they did not commit the offence and could not with reasonable diligence have discovered the name and address of the person who did [proposed s 53B(4)(b)].

34. This is a far more onerous burden than that borne by owners.

35. It is also unclear whether an owner or occupier can avoid liability for an offence if the person he or she believes to have committed the offence is incapable of being held criminally responsible, such as a child below the age of criminal responsibility.

Nor is it clear what would be considered "reasonable diligence" in trying to identify an offender.

36. The Committee also notes that "occupier of land" is defined to extend beyond lessees. This leaves open the possibility of persons *other than* owners or tenants being exposed to being presumed liable.

37. **The Committee notes that the Bill reverses the onus of proof for owners and occupiers in relation to water restriction offences. The Bill deems such persons guilty unless they can prove their innocence or provide evidence regarding the matters set out in the Bill.**

38. **The Committee further notes that the burden of avoiding liability for those otherwise deemed guilty is greater than that provided by similar deeming legislation for traffic offences.**

39. **The Committee refers to Parliament the question of whether this trespass on personal rights is undue given the object of facilitating the enforcement of water restrictions.**

Proposed section 53D

Privacy

40. The power of authorised persons to enter land under proposed s 53D trespasses on personal rights to privacy. This is particularly so, given that the entry power extends to "land used for residential purposes" [proposed s 53D(1)], where the perceived sanctity of private property is especially strong. While the concept of private property has undergone considerable modification by Parliament so far as rights of land *use* are concerned, particularly with the development of planning and environmental law, the right to exclude others from entering private land is still seen as the key distinguishing feature of private property.

41. This right is also expressed in Article 17 of the International Covenant on Civil and Political Rights:

> 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence…

Comparison with existing laws regarding entry to land

42. At common law, the general position is that, in the absence of consent, police powers of entry are restricted to making an arrest, preventing a serious indictable offence,

arresting an offender running from an affray or preventing a murder [*Plenty v Dillon* (1991) 171 CLR 635].

Under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (not yet proclaimed), the power of entry is to be extended to include a general power to enter premises (including a dwelling house and its surrounds) where the police believe, on reasonable grounds, that a breach of the peace is being committed or is likely to be committed, in order to end or prevent it. Even when compared with these expanded powers, the entry powers under proposed s 53D are broader, given that it is unlikely that a water restriction offence would be regarded as a breach of the peace.

43. Other legislation imposes restrictions on the use of land and other natural resources in the interests of conservation or environmental protection. In general, such legislation distinguishes between different types of premises when it comes to granting rights of entry for enforcement purposes, and adopts a more guarded approach where residential premises are concerned.

44. Under the *Local Government Act 1993* (LGA) and the *Environmental Planning and Assessment Act 1979* (EPAA), the general position is that authorised officers can only enter premises after giving written notice, and only at any reasonable hour *in the daytime* or any hour when business is in progress or usually carried out [LGA s 191(2); EPAA s 118A(3)]. Notice need not be given, however, where entry is sought because a serious risk to health or safety is reasonably likely, or "if entry is required urgently" [LGA s 193; EPAA s 118C(3)]. These are general rights of inspection: officers do not have to possess a reasonable suspicion that an offence is being committed.

45. Under NSW legislation concerned with the prevention of pollution, prior notice is not required before entry. The only restrictions relate to the time of entry. Where, for example, an authorised officer reasonably suspects that pollution is being or is likely to be caused, entry can be made at any time [*Protection of the Environment Operations Act 1997*, s 196].

However, greater restrictions are applied under all three pieces of legislation where entry is sought to those parts of premises being used for residential purposes, which would arguably extend to private gardens. So far as relevant here, the position is that unless the occupier consents, a search warrant must be obtained [LGA s 200; EPAA s 118J; PEOA s 197].

46. Under the *Native Vegetation Conservation Act 1997* (NVCA), there is a general power to enter land *at any time* to determine whether an offence is being or has been committed [NVCA s 61(1)]. However, residential premises can only be entered with consent [NVCA s 61(3)].

Entry powers in the Bill

47. Proposed s 53D in the Bill allows entry on to residential land for the purpose of investigation on the basis of reasonable suspicion without a search warrant. It also allows entry to be made during the night, provided that this is "reasonable" [proposed

s 53D(2)(a)], and to this extent goes even further than some of the provisions outlined above in relation to *non*-residential premises.

48. There are, however, other aspects of the rules governing entry under proposed s 53D which significantly confine its ambit of operation:

(i) it only allows entry on to land (gardens, etc), not dwellings, sheds or garages [proposed s 53D(3)(a)];

(ii) the entry must be for no longer than is reasonably necessary [proposed s 53D(3)(c)];

(iii) the provision only allows entry where there is reasonable suspicion that an offence is being committed *at that time*. It does not allow entry for the purpose of gathering evidence of an offence that was committed at an earlier time; and

(iv) the power to enter must be exercised at a reasonable time, although there would be an argument that if an authorised person reasonably believed that an offence was being committed, then this would be a reasonable time to enter even if it was during the dead of night [proposed s 53D(2)(a)].

49. The need for the power of entry under proposed s 53D is dictated by the nature of the offences which it is to be used to enforce. Unlike offences committed under the existing legislation discussed above, the relevant conduct for offences relating to unlawful use of water in gardens can usually be terminated as quickly as it takes to turn off a tap, and potentially incriminating evidence of past wrongdoing can be explained away as stemming from lawful use. The 'element of surprise' afforded by the entry powers is likely to be regarded as essential by the persons authorised to effectively and efficiently enforce the water restrictions.

50. Another factor to be considered is that if authorised persons did not have the power of entry, the legislation would have the potential to interfere with personal rights and liberties in an arbitrary and discriminatory manner by only exposing to criminal liability those owners and occupiers whose land is visible from public areas.

Without this power, it is likely that water restriction offences could only be enforced against owners and occupiers of secluded land if evidence was provided, or investigation facilitated, by neighbours.

Personal safety

51. It is inevitable that exercise of the entry powers in proposed s 53D without forewarning or notice will cause some owners and occupiers considerable distress, particularly if they find a "stranger" in their backyard, possibly taking photos [proposed s 53D(1)(b)].

More generally, the practical operation of the entry powers may lead some members of the community to perceive a reduction in their right to feel safe in their own home and on their private property.

52. The ability to exercise the power of entry during the night is especially problematic in this respect. On the one hand, there will be a significant gap in the enforcement of

the legislation if it is difficult to enforce it at a time when there is the strongest temptation to breach it (under the cover of darkness).

53. On the other hand, community freedoms are threatened, and practically diminished, by the fear and anxiety that such entries (or the prospect of such entries) could arouse. There is the potential for harm, including violence, if occupiers act on the mistaken but reasonable belief that wrongdoers are invading their private property.

54. The legislation provides that an authorised person exercising the power of entry only has to produce identification to the occupier of the land [proposed s 53D(2)(b)].

A range of people have an interest in verifying the bona fides of a person entering private land, including visiting grandparents, babysitters, gardeners, concerned neighbours and the lessor/owner. It is doubtful whether any of these persons would have the right to see identification under the Bill. This could exacerbate feelings of insecurity and the possibility of conflict.

55. **The Committee notes that the Bill significantly trespasses the right to privacy by allowing authorised persons to enter private land at any reasonable time on the person's reasonable suspicion of a water restriction offence being committed. The Committee further notes the limitation on the duration and purposes of such entry. The Committee also notes the difficulties of enforcement that the lack of such powers of entry would create.**

56. **The Committee notes that the Bill does not limit entry onto private land to daylight hours or require authorised persons to produce identification to anyone other than occupiers.**

57. **The Committee refers to Parliament the question of whether this power of entry unduly trespasses on personal rights.**

The Committee makes no further comment on this Bill.

9. CONSULTATION DRAFT BILL — CRIMINAL APPEAL AMENDMENT (DOUBLE JEOPARDY) BILL 2003

1. The Committee has prepared a draft report on the consultation draft of the *Criminal Appeal Amendment (Double Jeopardy) Bill 2003*.

2. As the consultation draft Bill has not been introduced into Parliament, the draft report has not been included in this Digest.

3. The Committee has provided its Draft Report on the *Criminal Appeal Amendment (Double Jeopardy) Bill 2003* to the Premier and the Attorney General.

4. Copies of the Committee's Draft Report are available on the Parliament's website at www.parliament.nsw.gov.au/lrc/digests or from the Committee on request. To obtain a copy please contact the Committee's secretariat on 9230 2899.

SECTION B: RESPONSES TO PREVIOUS DIGESTS

1. MINISTERIAL CORRESPONDENCE — POWERS OF ATTORNEY BILL 2003

Introduced: 5 September 2003
House: Legislative Assembly
Minister: The Hon Bob Debus MP
Portfolio: Attorney-General

Background

1. The Committee reported on the *Powers of Attorney Bill 2003* in Legislation Review Digest No 2 of 16 September 2003.

2. The Committee noted that the bill was to commence by proclamation. The Committee is of the view that, in some circumstances, providing for an Act to commence by proclamation is an inappropriate delegation of legislative power to the Government.

3. In the case of this bill, the Committee was of the view that the stated need for a public and professional education campaign on the changes made by the Bill was an appropriate reason to commence the bill by proclamation. Nonetheless, the Committee wrote to the Attorney General on 12 September 2003 (below) to ask for an indication of the likely commencement date for the Bill, allowing for an appropriate education campaign to take place.

Minister's Reply

4. In his reply dated 7 October 2003 (below), the Attorney General stated that he anticipates commencement to take place no later than early February 2004.

Committee's Response

5. **The Committee thanks the Minister for his reply.**

The Committee makes no further comment on this Bill.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

12 September 2003

Our Ref: CP3666/LRC399

The Hon R J Debus MP
Attorney General
Level 36 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Attorney

POWER OF ATTORNEY BILL 2003

The Committee has considered this Bill and notes that it is to commence by proclamation.

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

In this case, the Committee notes that commencement of this Bill by proclamation is necessary to allow time to educate the public and the legal profession about the changes it introduces. The Committee considers education of the public and the legal profession about this Bill to be necessary and sufficient reason to defer commencement of the Bill. However, the time required to prepare and deliver an education campaign of this nature would be finite and it is not apparent to the Committee why the discretion to commence this Bill should be indefinite.

We would appreciate it if you would advise us as to some time frame within which the Act will commence after assent, allowing for an appropriate education campaign to be conducted.

Yours sincerely

FAXED 12/9/03

Barry Collier MP
Chairperson

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NEW SOUTH WALES
ATTORNEY GENERAL

The Hon Barry Collier, MP
Chairperson
Parliament of NSW
Legislation Review Committee
Macqauire Street
SYDNEY 2000

07 OCT 2003

Dear Mr Collier

I refer to your request for an indication of the likely commencement date for the Powers of Attorney legislation, which is currently before the Parliament.

I can advise that the legislation will be commenced following a period of community and professional education about it. At this stage I anticipate that commencement will not be later than early February 2004.

Yours faithfully

BOB DEBUS

RECEIVED
13 OCT 2003
LEGISLATION REVIEW
COMMITTEE

Level 25, 59 - 61 Goulburn Street, SYDNEY, N.S.W. 2000. Tel: (02) 9995 -6521 Fax: (02) 9995-6550

Part Two – Regulations

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

Regulation	Gazette reference		Information sought
	Date	Page	
Aboriginal Land Rights Amendment (Rate Exemptions) Regulation 2003	04/07/03	6805	20/08/03
Child and Young Persons (Savings and Transitional) Amendment (Out-of-Home Care) Regulation 2003 and Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003	11/07/03	7021 7054	20/08/03
Inclosed Lands Protection Regulation 2002	06/12/02	10370	29/05/03 16/09/03
Landlord and Tenant (Rental Bonds) Regulation 2003	29/08/03	8434	24/10/03
Pawnbrokers and Second Hand Dealers Regulation 2003	29/08/03	8698	24/10/03
Radiation Control Regulation 2003	29/08/03	8534	24/10/03
Road Transport (General) (Penalty Notice Offences) Amendment (Interlock Devices) Regulation 2003 and Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	29/08/03	8434	24/10/03

Appendix 1: Index of Bills Reported on in 2003

	Digest Number
Child Protection Legislation Amendment Bill 2003	2
Commonwealth Powers (De Facto Relationships) Bill 2003	2
Community Relations Commission and Principles of Multiculturalism Amendment Bill 2003	3
Crimes Amendment (Protection of Innocent Accused) Bill 2003	2
Criminal Procedure Amendment (Sexual Offence Evidence) Bill 2003	1
Defamation Amendment (Costs) Bill 2003	3
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2003	2
Education Amendment (Computing Skills) Bill 2003	2
Environmental Planning and Assessment Amendment (Development Consents) Bill 2003	4
Evidence Legislation Amendment (Accused Child Detainees) Bill 2003	3
Funeral Funds Amendment Bill 2003	4
Gaming Machines Amendment (Miscellaneous) Bill 2003	3
Hairdressers Bill 2003	4
Industrial Relations Amendment (Public Vehicles and Carriers) Bill 2003	4
Local Government Amendment (No Forced Amalgamations) Bill 2003	2,3
Police Association Employees (Superannuation) Amendment Bill 2003	4
Powers of Attorney Bill 2003	2,4
Prevention of Cruelty to Animals (Penalties) Bill 2003	3
Privacy and Personal Information Protection Amendment Bill 2003	4
Quarantine Station Preservation Trust Bill 2003	2
Road Transport Efficiency Bill 2003	3
Royal Blind Society (Corporate Conversion) Bill 2003	4
Sydney Water Amendment (Water Restrictions) Bill 2003	4
Sporting Venues (Pitch Invasion) Bill 2003	2
Voluntary Euthanasia Trial (Referendum) Bill 2003	3

Appendix 2: Index of Ministerial Correspondence on Bills from September 2003

Bill	Minister/Member	Letter sent	Reply	Digests
Child Protection Legislation Amendment Bill 2003	Minister for Community Services	12/09/03		2
Powers of Attorney Bill 2003	Attorney General	12/09/03	07/10/03	2,4
Gaming Machines Amendment (Miscellaneous) Bill 2003	Minister for Gaming and Racing	10/10/03		3
Environmental Planning and Assessment (Development Consents) Bill 2003	Minister for Infrastructure and Planning	24/10/03		4
Privacy and Personal Information Protection Amendment Bill 2003	Attorney General	24/10/03		4
Sydney Water Amendment (Water Restrictions) Bill 2003	Minister for Energy and Utilities	24/10/03		4

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2003

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Child Protection Legislation Amendment Bill 2003	N			C	
Commonwealth Powers (De Facto Relationships) Bill 2003				N	
Crimes Amendment (Protection of Innocent Accused) Bill 2003	R				
Criminal Procedure Amendment (Sexual Offence Evidence) Bill 2003	N				
Defamation Amendment (Costs) Bill 2003	R				
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2003	N		N		
Environmental Planning and Assessment Amendment (Development Consents) Bill 2003	N		N	C	
Evidence Legislation Amendment (Accused Child Detainees) Bill 2003	N			N	
Funeral Funds Amendment Bill 2003	N			N	
Gaming Machine Amendment (Miscellaneous) Bill 2003	N			C	
Hairdressers Bill 2003				N	
Industrial Relations Amendment (Public Vehicles and Carriers) Bill 2003	N			N	
Powers of Attorney Bill 2003	N			C	
Privacy and Personal Information Protection Amendment Bill 2003	R			C	R
Quarantine Station Preservation Trust Bill 2003		R			

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Road Transport Efficiency Bill 2003				R	N
Royal Blind Society (Corporate Conversions) Bill 2003	N		N		
Sporting Venues (Pitch Invasion) Bill 2003	R				
Sydney Water Amendment (Water Restrictions) Bill 2003	R	R		C	
Voluntary Euthanasia Trial (Referendum) Bill 2003				R	N

Key

R Issue referred to or brought to the attention of Parliament
C Correspondence with Minister/Member
N Issue Notes