PARLIAMENT OF NEW SOUTH WALES

Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 9 of 2009

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987:*

8A Functions with respect to Bills

(1) The functions of the Committee with respect to Bills are:
  (a) to consider any Bill introduced into Parliament, and
  (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
    (i) trespasses unduly on personal rights and liberties, or
    (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
    (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
    (iv) inappropriately delegates legislative powers, or
    (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny

(2) A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations:

(1) The functions of the Committee with respect to regulations are:
  (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
  (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
    (i) that the regulation trespasses unduly on personal rights and liberties,
    (ii) that the regulation may have an adverse impact on the business community,
    (iii) that the regulation may not have been within the general objects of the legislation under which it was made,
    (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,
    (v) that the objective of the regulation could have been achieved by alternative and more effective means,
    (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
    (vii) that the form or intention of the regulation calls for elucidation, or
    (viii) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
  (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

(2) Further functions of the Committee are:
  (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
  (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

(3) The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament. Following a brief description of the Bill, the Committee considers each Bill against the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987* (see page 3).

Section B: Ministerial correspondence – Bills previously considered

This section contains the Committee's reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee's scrutiny criteria.

Part Two – Regulations

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the *Digest*. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the *Digest* drawing the regulation to the Parliament's "special attention". The criteria for the Committee's consideration of regulations is set out in s 9 of the *Legislation Review Act 1987* (see page 3).

Regulations for the special attention of Parliament

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

Regulations about which the Committee is seeking further information

This table lists the Regulations about which the Committee is seeking further information from the Minister responsible for the instrument, when that request was made and when any reply was received.

Copies of Correspondence on Regulations

This part of the *Digest* contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought information. The Committee's letter to the Minister is published together with the Minister's reply.

Appendix 1: Index of Bills Reported on in 2009

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

Appendix 2: Index of Ministerial Correspondence on Bills for 2009

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Bill and correspondence appear.

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2009

This table specifies the action the Committee has taken with respect to Bills that received comment in 2008 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

Appendix 4: Index of correspondence on Regulations reported on in 2009

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

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Appropriation Bill 2009

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

2. Appropriation (Parliament) Bill 2009

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

3. Appropriation (Special Offices) Bill 2009

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

4. Casino Control Amendment Bill 2009

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

5. Education Amendment (Publication of School Results) Bill 2009

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

6. Government Information (Information Commissioner) Bill 2009

Issue: Clause 2 – Commencement by proclamation – Provide the executive with unfettered control over the commencement of an Act.

10.	The Committee accepts the above reasons and has not identified any issues identified under s 8A (1)(b)(iv) of the *Legislation Review Act 1987*.

7. Government Information (Public access) Bill 2009

Issue: Clause 2 (1) – Commencement by proclamation – Provide the executive with unfettered control over the commencement of an Act.

12.	The Committee accepts the above reasons and has not identified any issues identified under s 8A (1)(b)(iv) of the *Legislation Review Act 1987*.

8. Government Information (Public Access)(Consequential Amendments And Repeal) Bill 2009

Issue: Clause 2 (1) – Commencement by proclamation – Provide the executive with unfettered control over the commencement of an Act.

20.	The Committee accepts the above reasons and has not identified any issues identified under s 8A (1)(b)(iv) of the *Legislation Review Act 1987*.

9. Motor Sports (World Rally ChampionShip) Bill 2009

Issue: Part 3 Application of other laws; Clause 18 No Liability for Nuisance

However, given the community benefits of this specific event, the Committee does not consider this to be an undue trespass on personal rights and liberties.

Issue: Clause 9 – Directions by police officers

15.	The Committee has concerns that Clause 9(3) may unduly trespass on the personal rights and liberties of persons comprising a group subject to the police direction. However, the Committee notes that Clause 9(4) provides that that just because the police officer is not required to repeat any such direction, information or warning does not in itself give rise to any presumption that each person in the group has received the direction, information or warning. Accordingly, the Committee is satisfied that Clause 9 does not unduly trespasses on the personal rights and liberties.

10. National Parks and Wildlife (Broken Head Nature Reserve) Bill 2009

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

11. Personal Property Securities (Commonwealth) Powers Bill 2009

12. Road Transport Legislation Amendment (Traffic Offence Detection) Bill 2009

Issue: Clause 2 – Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

13. State Emergency Service Amendment Bill 2009

14. State Revenue Legislation Amendment Bill 2009

15. State Revenue Legislation Further Amendment BilL 2009

16. Statute Law (Miscellaneous Provisions) Bill 2009

SECTION B: POSPONEMENT OF REPEAL OF REGULATIONS

Notification of the proposed postponement of the repeal of the Industrial Relations (General) Regulation 2001; Employment Protection Regulation 2001

Part One – Bills

SECTION A: COMMENT ON BILLS

1. APPROPRIATION BILL 2009

Date Introduced:	16 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Eric Roozendaal MLC
Portfolio:	Treasurer

Purpose and Description

1. This Bill aims to appropriate out of the Consolidated Fund sums for the recurrent services and capital works and services of the Government for the year 2009–10.

2. The following Bills are cognate with this Bill:

   - *Appropriation (Parliament) Bill 2009*
   - *Appropriation (Special Offices) Bill 2009*
   - *State Revenue Legislation Amendment Bill 2009*

Background

3. The object of this Bill is to appropriate various sums of money required for the recurrent services and capital works and services of the Government during the 2009–2010 financial year. The Bill relates to appropriations from the Consolidated Fund—the principal account of the Government for General Government transactions. The Consolidated Fund could be considered as the "public purse" and largely comprises receipts from, and payments out of, taxes, fines, some regulatory fees, Commonwealth grants and income from Crown assets.

4. The Bill for the 2009–2010 year contains an additional appropriation, which allocates revenue raised in connection with changes to gaming machine taxes to the Minister for Health for spending on health related services.

The Bill

5. **Outline of provisions**

Part 1 (clauses 1–3) provides for the name of the proposed Act (also referred to as the short title), commencement on 1 July 2009, and interpretation of references to the financial year to which the proposed Act relates.
Part 2 (clauses 4–25) provides for the appropriations for the financial year of 2009–2010. The amounts appropriated for the 2009–2010 financial year are:

(a) $44,989,326,000 for recurrent services, and
(b) $6,540,252,000 for capital works and services.

Part 3 (clauses 26 and 27) makes an additional appropriation to the Minister for Health, with this being part of the revenue raised from gaming machine taxes.

Part 4 (clauses 28–31) provides for general matters related to the appropriations set out in the proposed Act.
Clause 28 enables the Treasurer to authorise payment for a purpose, in excess of the sum appropriated for the purpose, in specified circumstances. **Clause 29** allows this function to be delegated by the Treasurer.
Clause 30 allows the Treasurer to apply an appropriation differently in the event that responsibility for a service or function is transferred.
Clause 31 allows a Minister to table a Budget Paper in the Legislative Assembly by presenting it to the Clerk of the Legislative Assembly, if the Legislative Assembly is not sitting when the Budget Paper is sought to be tabled.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

2. APPROPRIATION (PARLIAMENT) BILL 2009

Date Introduced:	16 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Eric Roozendaal MLC
Portfolio:	Treasurer

Purpose and Description

1. This Bill aims to appropriate out of the Consolidated Fund sums for the recurrent services and capital works and services of the Legislature for the year 2009–10.

2. This Bill is cognate with the *Appropriation Bill 2009*.

Background

3. The object of this Bill is to appropriate out of the Consolidated Fund the following sums for the recurrent services and capital works and services of the Legislature for the year 2009–10:

   Recurrent Services $104,322,000
   Capital Works and Services $3,836,000

The Bill

4. The amount appropriated is intended to be applied to the following services/ functions:

	Recurrent Services	**Capital Works and Services**
Chamber and Committee Support	$13,874,000	$ 530,000
Members' Support	$84,981,000	$2,206,000
Community Access	$ 5,467,000	$1,100,000
Total	**$104,322,000**	**$3,836,000**

5. **Outline of provisions**

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on 1 July 2009.
Clause 3 provides for interpretation of references to the 2009–10 financial year and other matters of interpretation.
Clause 4 provides for the appropriation out of the Consolidated Fund, for the recurrent services of the Legislature for the year 2009–10, of the amount of $104,322,000.
Clause 5 provides for the appropriation out of the Consolidated Fund, for the capital works and services of the Legislature for the year 2009–10, of the amount of $3,836,000.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

3. APPROPRIATION (SPECIAL OFFICES) BILL 2009

Date Introduced:	16 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Eric Roozendaal MLC
Portfolio:	Treasurer

Purpose and Description

1. This Bill aims to appropriate out of the Consolidated Fund sums for the recurrent services and capital works and services of certain offices for the year 2009–10.

2. This Bill is cognate with the *Appropriation Bill 2009*.

Background

3. This Bill enables appropriation out of the Consolidated Fund for specified sums for the recurrent services and capital works and services for the year 2009–10 of certain offices.

The Bill

4. The object of this Bill is to appropriate out of the Consolidated Fund the following sums for the recurrent services and capital works and services for the year 2009–10 of the offices specified:

	Recurrent Services	Capital Works and Services
Independent Commission Against Corruption	$16,800,000	$290,000
Ombudsman's Office	$19,827,000	$785,000
New South Wales Electoral Commission	$15,137,000	$5,974,000
Office of the Director of Public Prosecutions	$85,003,000	$10,713,000

5. **Outline of provisions**

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on 1 July 2009.
Clause 3 makes provision for interpretation of references to the 2009–10 financial year and other matters of interpretation.
Clauses 4–7 provide for the appropriations for the year 2009–10 in respect of the offices mentioned in the Overview, in the amounts described in the Overview. The total amounts appropriated are:

(a) $136,767,000 for recurrent services, and

(b) $17,762,000 for capital works and services.

Clause 8 enables the Treasurer to authorise payment for a purpose in excess of the sum appropriated for the purpose, in specified circumstances.

Clause 9 allows that function to be delegated by the Treasurer.

Clause 10 mirrors a provision that is contained in the *Appropriation Act 2009* that allows the Treasurer to apply an appropriation differently in the event that responsibility for a service or function is transferred.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

4. CASINO CONTROL AMENDMENT BILL 2009

Date Introduced:	17 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Kevin Greene
Portfolio:	Gaming and Racing

Purpose and Description

1. The object of this Bill is to amend the *Casino Control Act 1992* as follows:

(a) to extend the casino licence review period from 3 to 5 years,
(b) to extend the period that casino employee licences remain in force from 3 to 5 years,
(c) to require the Casino, Liquor and Gaming Control Authority (***the Authority***) to publish on its website, rather than in the Gazette, orders approving the games that may be played in the casino and the rules for those games,
(d) to make other miscellaneous amendments of a minor or consequential nature.

Background

2. According to the Agreement in Principle speech the amendments seek to achieve a number of aims: to extend the casino licence review period from three years to five years; to extend the licence period for casino special employees from three years to five years; to implement better regulation principles to reduce the regulatory burden on Star City casino and the administrative burden on the Casino, Liquor and Gaming Control Authority, which is referred to as the authority, while ensuring that the effective regulation of Star City is maintained; and to remove barriers inhibiting the Casino, Liquor and Gaming Control Authority from implementing better and more efficient ways of achieving its objectives.

3. A thorough review of the Act, which was conducted jointly by the authority and the casino operator, has identified a range of amendments to the Act. These are needed to ensure New South Wales has current best practice for casino regulation that does not contain redundant administrative requirements.

4. An important change introduced by this bill is to change the casino licence review period from every three years to a maximum of every five years. Under section 31 of the Act, the authority must investigate and form an opinion as to whether the casino operator is suitable to continue to give effect to the casino licence and the Act, and that it is in the public interest that the casino licence should continue in force. These statutory investigations examine inter alia corporate structures, associates and financial resources. They also involve the conduct of extensive checks with various law enforcement agencies and external regulatory bodies, not only in New South Wales but interstate and internationally.

5. The last two such reviews conducted by the authority in 2003 and 2006 found that Star City Pty Ltd, which is the licensee, has operated in a responsible manner, consistent with the objectives of the Act. These statutory reviews are extremely thorough, but they are also extremely resource intensive for both the authority and the casino operator. Therefore, conducting reviews more often than necessary is an unjustifiable regulatory burden on both parties.

6. The licensing by the authority of special employees in the casino is another important facet of the casino's operational oversight. The special employees are identified under the Act as those who perform functions such as making decisions with respect to the casino's operations, or engage in activities related to the conduct of gaming. Special employees may be involved in the movement of money or chips, or the operation or maintenance of the casino's gaming equipment or security systems. This bill seeks to extend the special employee licence renewal period from three years to five years.

7. Any risk in extending the licence period is also covered by the mechanisms that are in place to monitor the ongoing suitability of licensed individuals. Such mechanisms include the requirement for the licensed employee to report specified changes in circumstance and to flag on the police database, in order to alert the authority, criminal charges that have been brought against any licensed casino special employee. The advantages of increasing the renewal period are: reducing the resources required for the processing of renewals; maintaining the ability to determine whether the licensee continues to meet suitability requirements, including financial stability; and continuing to enable the authority to state with some assurance that its objective of keeping the casino free from criminal influence is being met through the casino employee licensing process.

8. A goal of this bill is also future-proofing the casino legislation, drafting it to accommodate unforseen change and innovation in the commercial and technical environment. To this end, the Government is proposing a number of changes to the Act. The first of these is to re-define "chips"—the main currency on the gaming tables—so as to make it clear that it includes virtual chips or any other representation of chips, in addition to physical tokens, for the purpose of gaming.

9. This bill will future-proof the Act with regard to the advent of new technology. For example, new technology may make closed-circuit television obsolete. The proposed changes in the bill will allow this to happen without the need to amend the Act further. The bill proposes additional amendments to remove red tape and improve the efficiency and efficacy of the Casino Control Act. The casino's internal layout needs to change to accommodate gaming trends and changes in surveillance technology. It is therefore proposed to amend the Act so as to simplify and clarify the approvals process by making minor amendments to section 65 of the Act.

10. The bill also introduces amendments that bring the regulation of the casino into line with other jurisdictions with respect to banking procedures and facilities and internal accounting controls.

The Bill

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on the date of assent

to the proposed Act.
Schedule 1 [1] makes it clear that the definition of ***chips*** covers not only tokens in a physical form but also tokens that are depicted in an electronic form.
Schedule 1 [2] and [3] provide that the Authority is not to redefine the boundaries of the casino on its own initiative without giving the casino operator at least 14 days' notice and the opportunity to make submissions on the proposed change.
Schedule 1 [4] provides that the review by the Authority as to the casino operator's suitability, and whether it is in the public interest for the casino licence to continue, is to be conducted every 5 years instead of every 3 years.
Schedule 1 [5] provides that a person who is employed in the casino to operate, maintain, construct or repair gaming equipment is required to be licensed as a special employee under the Act only if the gaming equipment that the person is working on is gaming equipment approved by the Authority.
Schedule 1 [6] extends (from 3 to 5 years) the period for which casino employee licences remain in force.
Schedule 1 [7] extends (from 7 to 14 days) the period in which the casino operator is required to notify the Authority when licensed employees start or cease to exercise functions in the casino.
Schedule 1 [8] provides that the plans, diagrams and specifications that the Authority may approve in relation to the layout of the casino no longer need to specifically indicate the manner in which closed circuit television systems operate in the casino or the position or description of catwalk surveillance systems in the casino.
Schedule 1 [9] enables the casino operator to apply to the Authority for the Authority to amend its approval of the casino's layout.
Schedule 1 [10] provides that any order by the Authority approving the games that may be played in the casino (and the rules for those games) must be published on the Authority's website rather than in the Gazette (as is currently the case).
Schedule 1 [11] provides that summaries of the rules of games played in the casino can be provided to casino patrons by the casino operator in a form other than by way of a brochure.
Schedule 1 [12] provides that cheques accepted by the casino operator from overseas accounts must be banked by the casino operator within 30 days (rather than 20 days) after they are accepted.
Schedule 1 [13] increases the penalty, from 10 to 20 penalty units, for offences relating to minors entering the casino or using false evidence of age in order to enter the casino.
Schedule 1 [14] removes a provision specifying the content of the system of internal controls and administrative and accounting procedures for the casino that is approved by the Authority.
Schedule 1 [15] modifies the existing requirements relating to the casino operator's banking arrangements. Rather than requiring the casino operator to hold accounts, as approved by the Authority, at a bank in New South Wales in relation to its casino operations, the proposed amendment will require the casino operator to provide the Authority with the details of its bank accounts (including those kept outside Australia) in relation to its casino operations. The requirement for the casino operator to provide the Authority with access to those accounts is retained. **Schedule 1 [16]** is a consequential amendment.

Schedule 1 [17] provides that the Authority does not have the function of directly supervising the operations of the casino or the conduct of gaming in the casino.
Schedule 1 [18] enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.

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Schedule 1 [19] inserts savings and transitional provisions as a consequence of the proposed Act.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

5. EDUCATION AMENDMENT (PUBLICATION OF SCHOOL RESULTS) BILL 2009

Date Introduced:	18 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Verity Firth MP
Portfolio:	Education and Training

Purpose and Description

1. This Bill amends the *Education Act 1990* and the *Education Regulation 2007* with respect to the publication of school results.

2. Schedule 1 [1] to the Bill provides the new substituted section 18A. It sets out provisions relating to the publication of school results rather than authorising regulations on the matter. The substituted section authorises the provision by the State of school results to the Commonwealth or a Commonwealth authority (such as the proposed Australian Curriculum, Assessment and Reporting Authority) in accordance with an agreement between the Commonwealth and the State.

3. The prohibition on the ranking of schools is transferred to the new section 18A, subject to any publication of school results authorised by the Commonwealth/State agreement.

4. The provisions transferred from the regulations also preserve the existing prohibition on the publication of results of particular students, except publication to the students or their parents, to relevant school principals or as approved by the Board of Studies in relation to students who have achieved outstanding results. The new provisions apply despite any other Act or law or decision of any tribunal.

5. Schedule 1 [3] makes the following savings and transitional provisions to:

   (a) ensure that the new arrangements for publication of school results extend to school results for testing, examinations or assessments held before the commencement of the proposed Act,

   (b) preserve an existing freedom of information exemption about school results pending the replacement of the Freedom of Information Act by the proposed *Government Information (Public Access) Act 2009*,

   (c) terminate the effect of provisions in the *Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2009* that relate to the application of 1997 protocols concerning the publication of school results and the negotiation of changes to those protocols.

6. The Bill also aims to overcome a 1997 protocol as part of the New South Wales public school teacher's award. The protocol provides that the Department of Education and Training is not to "publish or broadcast, or aid in the publication or broadcast of any information or achievement which allows comparison between individual students or

which will allow schools to be ranked in any publication or broadcast". This restriction may prevent New South Wales providing the information to the Commonwealth because there would be no control over how third parties published or broadcast publicly available information. Therefore, the Bill overrides this provision of the award.

Background

7. This Bill is for implementing the agreements reached by the Council of Australian Governments [COAG] in 2008 and by the Ministerial Council on Education, Employment, Training and Youth Affairs, known as MCEETYA.

8. All State and Territory Governments and the Commonwealth have agreed that for the first time in 2009 there will be nationally uniform reporting about the results of individual schools. MCEETYA endorsed the principle that:

> The provision of school information to the community should be done in such a way as to enhance community engagement and understanding of the educational enterprise.

9. From the Agreement in Principle speech:

> The capacity to report on the results achieved by schools in the New South Wales education system has been the subject of a regulation since 1997. This prevents the publication of school test results in a manner that ranks or otherwise compares the results of individual schools. It also protects the publication of results that reveal the results of particular students without their consent…This reporting framework encompasses: streamlined and consistent reporting on national progress, an annual national report on the outcomes of schooling in Australia, national reporting on performance of individual schools to inform parents and carers, and evaluation by Governments of school performance; plain language student reports to parents and carers, and an annual report being made publicly available to each school community on the school's achievements and other contextual information; and performance indicators about progress towards achieving agreed outcomes and specific reporting on outcomes for indigenous students and students from low socio-economic status communities.

10. Since 1997, all public schools in New South Wales have been required to publicly report about their performance and, to publish information about their performance in externally conducted tests, such as the Basic Skills Tests in literacy and numeracy in primary school, the English Language and Literacy Assessment test and the Secondary Numeracy Assessment Program—ELLA and SNAP—in junior secondary, as well as the School Certificate and the Higher School Certificate in senior secondary. The Basic Skills Tests, the English Language and Literacy Assessment test and the Secondary Numeracy Assessment Program since 2008 have been replaced by equivalent tests under the National Assessment Program—Literacy and Numeracy, or NAPLAN.

11. By 2007, every school annual report was required to include the school's performance over time, with optional reporting against the State average. More than 60 per cent of schools also report their test results against a group of schools with similar background characteristics, and hundreds of schools proudly publish their reports on their websites.

12. All State and Territory Ministers have also endorsed the principle that public reporting should not be by way of league tables. Instead, the national agreement included

individual reports for each school, with rich information, rather than a single numeral. The protocols agreed by MCEETYA Ministers on 12 June state:

> Governments will not publish simplistic league tables or rankings, and will put in place strategies to manage the risk that third parties may seek to produce such tables or rankings.

13. The new Australian Curriculum, Assessment and Reporting Authority [ACARA], a body that works to MCEETYA direction, will be supplied with the information to enable it to publish nationally comparable information on all schools. This body will be subject to protocols and directions endorsed by MCEETYA. Information about the schools within relevant groupings would be separately publicly available. It will include national testing results and school attainment rates, student population characteristics, teaching staff and financial resources. The information will be published on ACARA's website.

14. The Bill will protect the results of identified individual students. Their results will not be published without their consent or the consent of their parents, except in the recognition of excellent performance as already existing for Higher School Certificate results. The Bill will allow de-identified data about individuals to be provided to ACARA for the purposes of analysis. National discussions have confirmed that the information enabling matching of particular students over time will be destroyed after the analysis.

The Bill

15. The object of this Bill is to transfer to the *Education Act 1990*, and to amend, provisions that are currently contained in the regulations under that Act relating to the prohibition on the public release of school results (including results of national basic skills testing and of School and Higher School Certificate examinations) that disclose the results of particular students or rank particular schools. The amendments will authorise the State to provide school results to the Commonwealth or an authority established by the Commonwealth in accordance with any national agreement to which NSW is a party and for the publication of results relating to particular schools in accordance with any such agreement.

16. **Outline of provisions**

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on the date of assent.
Schedule 1 Amendment of *Education Act 1990* No 8
Schedule 1 [1] substitutes section 18A. The substituted section sets out provisions relating to the publication of school results rather than authorising regulations on the matter. The substituted section authorises the provision by the State of school results to the Commonwealth or a Commonwealth authority (such as the proposed Australian Curriculum, Assessment and Reporting Authority) in accordance with an agreement between the Commonwealth and the State. **Schedule 1 [2]** enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.
Schedule 2 Amendment of *Education Regulation 2007*
Schedule 2 repeals clause 4 that contains the provisions authorised by current section 18A of the Act relating to the prohibition of the publication of school results as a consequence of the transfer of provisions on the matter to section 18A by Schedule 1 [1].

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

6. GOVERNMENT INFORMATION (INFORMATION COMMISSIONER) BILL 2009

Date Introduced:	17 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Nathan Rees MP
Portfolio:	Premier

Purpose and Description

1. This Bill amends various laws as a consequence of the enactment of the *Government Information (Public Access) Act 2009* (the GIPA Act); to repeal the *Freedom of Information Act 1989*; and for other purposes. The Bill is cognate with the GIPA Act and *Government Information (Public Access) (Consequential Amendments and Repeal) Bill 2009*.

2. The Bill creates a new Information Commissioner, who is to have the functions conferred or imposed on the Commissioner by or under the *Government Information (Public Access) Act 2009* (the "GIPA Act") and any other Act declared by the regulations to be an Information Act for the purposes of the proposed Act.

3. The functions of the Information Commissioner under the GIPA Act include:

   (i) to promote public awareness and understanding of the GIPA Act;

   (ii) provide information, advice, assistance and training to agencies and the public on any matters relevant to the GIPA Act;

   (iii) to review decisions of agencies in respect of applications for access to information under the GIPA Act;

   (iv) to investigate, audit and report on the exercise by agencies of their functions under, and compliance with, the GIPA Act; and

   (v) to make reports and provide recommendations to the Minister about proposals for legislative and administrative changes to further the object of the GIPA Act.

Background

4. This new Freedom of Information legislation is the outcome of the NSW Ombudsman's Review of the *Freedom of Information Act 1989*.[1] The Government also undertook a public consultation process in developing the Bills through Exposure Draft Bills, which were tabled in Parliament on 6 May 2009.[2]

[1] NSW Ombudsman, Opening Up Government: Review of the Freedom of Information Act 1989, February 2009 at http://www.ombo.nsw.gov.au/publication/PDF/specialreport/Opening_up government_Review of FOI Act 1989.pdf

[2] The NSW Department of Premier and Cabinet, "FOI Reform – Open Government Information"

5. As stated by the Premier in the Second Reading Speech on 17 June 2009: "the legislative changes represent the first comprehensive overhaul of the freedom of information regime in 20 years".[3] The changes include the establishment of a new Information Commissioner through the *Government Information (Information Commissioner) Bill 2009*.

6. According to this Bill, the Information Commissioner's roles will include reviewing the decisions of agencies in relation to access applications; receiving and investigating complaints about agencies in relation to their information disclosure obligations; promoting open Government, and promoting public awareness and understanding of the legislation; providing information, advice, assistance and training to agencies and the public; and reporting and recommending proposals for future legislative and administrative changes to further the object of open Government.

7. The Information Commissioner will report directly to Parliament and will be subject to oversight by a joint parliamentary committee. Appointments will be subject to veto by a joint parliamentary committee. The commissioner will only be eligible to be reappointed once. The Commissioner will only be able to be removed from office following a resolution of both Houses of Parliament.

8. The Bill will be reviewed after five years from the date of assent to determine whether the objectives of the legislation remain valid and whether the terms of the legislation remain appropriate for securing those objectives.

The Bill

Part 1 Preliminary

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

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

Clause 3 defines certain words and expressions used in the proposed Act. The term ***agency*** has the same meaning as in the GIPA Act, and ***Joint Committee*** means the Committee on the Office of the Ombudsman and the Police Integrity Commission constituted under the *Ombudsman Act 1974* or such other joint committee of members of Parliament as may be appointed for the purposes of the proposed Act.

Part 2 Appointment of Information Commissioner

Clause 4 provides that the Governor may appoint an Information Commissioner (the ***Commissioner***), who may hold office on a full-time basis for up to 5 years, and who may be re-appointed. Members of the NSW Parliament, or of the legislature of another State or Territory or of the Commonwealth, are not eligible to be appointed as Commissioner.

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at http://www.dpc.nsw.gov.au/prem/foi_reform_-_open_government_information; See also the "Companion Guide" to the Bills at http://www.dpc.nsw.gov.au/__data/assets/file/0018/45171/OGI_Guide.pdf

[3] See also Dr Gareth Griffith, FOI Update – Proposed Reforms in NSW, E Brief No 6/09, NSW Parliamentary Library; Dr Gareth Griffith, Freedom of Information and Recent Developments in NSW, Briefing Paper No 06/07, NSW Parliamentary Library at http://bulletin/prod/parlment/publications.nsf/V3ListRPSubject

Clause 5 enables the Joint Committee to veto the appointment of a person as the Commissioner.

Clause 6 provides that the Commissioner is to be paid remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975* and traveling and subsistence allowances as determined by the Minister.

Clause 7 sets out the circumstances in which the office of Commissioner becomes vacant.

Clause 8 provides that the Commissioner may be removed from office by the Governor on the address of both Houses of Parliament and provides a process for the Governor to suspend the Commissioner on certain grounds pending a decision by the Houses of Parliament on the question of removal from office.

Clause 9 provides that if the office of Commissioner becomes vacant, a person is to be appointed to fill the vacancy.

Clause 10 provides that the *Public Sector Employment and Management Act 2002* does not apply to the appointment of the Commissioner, and the holder of the office is not, as holder, subject to that Act.

Clause 11 provides that the Minister may appoint an acting Commissioner during the illness or absence of the Commissioner or a vacancy in the office.

Clause 12 provides that the staff of the Commissioner are to be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*.

Clause 13 enables the Commissioner to delegate his or her functions, other than the power of delegation.

Part 3 Functions of Commissioner

Division 1 General functions of Commissioner

Clause 14 provides for the functions of the Commissioner.

Clause 15 further provides that the Commissioner is to act in an informal manner as far as possible (including avoiding formal hearings), is to act according to the substantial merits of the case without undue regard to technicalities, is not bound by the rules of evidence and may determine procedures to be followed, including procedures for inquiries or investigations.

Clause 16 enables the Commissioner to engage the services of any person for the purpose of getting expert assistance.

Division 2 Complaints

Clauses 17–20 deal with complaints to the Commissioner. A person may complain to the Commissioner about the conduct of an agency in the exercise of its functions under an Information Act, including conduct that may constitute a contravention of an Information

Act. The Commissioner may decide whether or not to investigate a complaint and must notify the complainant about the decision and how the complaint
is to be dealt with. In dealing with a complaint, the Commissioner may provide information to the parties to the complaint, undertake discussions with the parties and facilitate the direct resolution of the complaint through informal processes such as conciliation. The Commissioner may also decide to investigate the complaint under Division 3.

Division 3 Investigations

Clause 21 provides that the Commissioner may investigate and report on the exercise of any functions of an agency under an Information Act, including the systems, policies and practices of an agency. The Commissioner must provide such a report to the Minister responsible for an agency to which the report relates and to the principal officer of an agency that is the subject of the report.

Clause 22 requires the Commissioner to notify a complainant of its decision to investigate a complaint and must notify an agency if the Commissioner is to investigate a complaint about the agency.

Clause 23 provides that an investigation is to be conducted in private. Submissions to the Commissioner can be made by the complainant and, if practicable, by the agency concerned. Before making any adverse comments about a person in a report of an investigation, the Commissioner must, in so far as is practicable to do so, inform the person and give the person the opportunity to make submissions. Before publishing a report on an investigation that makes an adverse comment in respect of an agency, the Commissioner must inform the Minister responsible for the agency that the Commissioner proposes to publish such a report and must, at the request of that Minister, consult the Minister.

Clause 24 requires the Commissioner to report any conduct of an agency that constitutes a failure to exercise its functions properly in accordance with any provision of an Information Act to the Minister responsible for the agency, to the agency's principal officer and, if it is conduct of a person employed under the *Public Sector Employment and Management Act 2002*, to the head of the Department of Premier and Cabinet. Such a report may be given to the complainant (if any) and to the relevant agency, which must, if requested by the Commissioner, notify the Commissioner of any action taken or proposed in consequence of the report.

Division 4 Powers of Commissioner

Clause 25 enables the Commissioner to require an agency to provide specific information and records.

Clause 26 enables the Commissioner to enter and inspect premises used by an agency and inspect any record or thing on the premises.

Clause 27 limits these powers in certain situations related to a claim of privilege.

Clause 28 enables the Commissioner to apply to the Supreme Court for an injunction to prevent a contravention of any provision of an Information Act.

Clause 29 gives the Commissioner power to conduct formal inquiries, with specified powers of a Royal Commission under the *Royal Commissions Act 1923*.

Clause 30 prevents the Commissioner from having access to Cabinet information within the meaning of the GIPA Act.

Division 5 Disclosure of information

Clause 31 enables the Commissioner to provide the Ombudsman with certain information that relates to conduct of an agency that could be the subject of a complaint under the *Ombudsman Act 1974*.

Clause 32 enables the Commissioner to provide certain information to the Director of Public Prosecutions, the Independent Commission Against Corruption or the Police Integrity Commission.

Clause 33 enables the Commissioner to provide certain information to an agency that the Commissioner obtained in relation to a complaint against the agency and to make comments to the agency. The Commissioner may, in certain circumstances, provide such information and make comments to another relevant agency.

Clause 34 enables the Ombudsman to provide certain information to the Commissioner that relates to conduct of any agency that could be the subject of a complaint under the proposed Act.

Clause 35 provides that the Commissioner must not, in the exercise of functions under the proposed Act, disclose any information for which there is an overriding public interest against disclosure, as provided by the GIPA Act, except as authorized by the other provisions of the Division.

Part 4 Reports by Commissioner

Clause 36 requires the Commissioner to prepare and submit to Parliament an annual report about the Commissioner's work and activities. A copy of the report is to be provided to the Minister.

Clause 37 requires the Commissioner to prepare and publish an annual report on the operation of the GIPA Act (generally, across all agencies) and to provide the report to Parliament. A copy of the report is to be provided to the Minister.

Clause 38 allows the Commissioner to make, at any time, a special report on any matter relating to the Commissioner's functions to Parliament. A copy of the report is to be provided to the Minister.

Clause 39 sets out the procedures for tabling reports in Parliament. If the Commissioner recommends that the report be made public, the Presiding Officer of a House of Parliament may make it public immediately.

Part 5 Miscellaneous

Clause 40 requires the Ombudsman to consult with the Commissioner about any complaint received by the Ombudsman that could be a complaint to the Commissioner

under the proposed Act. If the Commissioner decides to deal with the complaint, the Ombudsman is not to investigate the matter any further (to the extent that it relates to conduct that could be the subject of a complaint under the proposed Act).

Clause 41 provides that neither the Commissioner nor a member of the Commissioner's staff is competent or compellable to give evidence or produce any document in certain legal proceedings in respect of any information obtained by the Commissioner or staff member in the course of the exercise of functions under the proposed Act or any other Act.

Clause 42 protects persons involved in the administration of the proposed Act, including the Commissioner, from personal liability (provided they were not acting in bad faith). Civil or criminal proceedings against such a person cannot be brought without leave of the Supreme Court.

Clause 43 makes it an offence with a maximum penalty of 10 penalty units (currently, $1,100) for a person:

> (a) to obstruct or hinder the Commissioner or a member of the Commissioner's staff in the exercise of their functions under the proposed Act or any other Act, or
> (b) to refuse or fail to comply with any lawful requirement of the Commissioner under the proposed Act or any other Act, or
> (c) to falsely represent that the person is the Commissioner or a member of the Commissioner's staff.

It is an indictable offence, with a maximum penalty of 200 penalty units (currently, $22,000) or 5 years imprisonment or both, to use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to any person because that person makes a complaint to the Commissioner, assists the Commissioner or gives evidence to the Commissioner.

It is an indictable offence, with a maximum penalty of 200 penalty units (currently, $22,000) or 5 years imprisonment or both, for an employer to dismiss or prejudice an employee because the employee assists the Commissioner.

Clause 44 sets out the functions of the Joint Committee, which include monitoring and reviewing the exercise of the Commissioner's functions, reporting to Parliament on certain matters, and examining any reports produced by the Commissioner.

Clause 45 protects persons involved in the administration of the proposed Act, including the Commissioner, from personal liability.

Clause 46 provides for how proceedings for an offence under the proposed Act are to be dealt with.

Clause 47 is a regulation-making power.

Clause 48 requires a review of the proposed Act to be undertaken after 5 years.

Government Information (Information Commissioner) Bill 2009

Schedule 1 Amendment of Acts

Schedule 1 amends the Acts specified in the Schedule.

Issues Considered by the Committee

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

Issue: Clause 2 – Commencement by proclamation – Provide the executive with unfettered control over the commencement of an Act.

9. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee also notes the reasons indicated in the Agreement in Principle speech, which include a major overhaul and reform of the Freedom of Information legislative scheme, as well as establishing the oversight office of a new independent Information Commissioner, which could require some flexibility of time for implementation.

10. **The Committee accepts the above reasons and has not identified any issues identified under s 8A (1)(b)(iv) of the *Legislation Review Act 1987*.**

The Committee makes no further comment on this Bill.

7. GOVERNMENT INFORMATION (PUBLIC ACCESS) BILL 2009

Date Introduced:	17 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Nathan Rees MP
Portfolio:	Premier

Purpose and Description

1. The object of this Bill is to provide for access to be given to government information on the basis of a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure. Principal features of the new arrangements for access to government information are as follows:

   (a) mandatory proactive release of certain government information (***open access information***) is required and proactive release of other government information is authorised,
   (b) informal release of government information in response to an informal request is also authorised,
   (c) a formal access application will be able to be made for access to government information and there will be a legally enforceable right to be provided with access to government information pursuant to the access application process provided by the Bill,
   (d) access will not be provided to government information if there is an overriding public interest against disclosure (that is, if there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure),
   (e) the Bill limits the public interest considerations that can be taken into account as public interest considerations against disclosure of information and provides that there is a general public interest in favour of the disclosure of government information,
   (f) the Bill provides that for certain government information (such as Cabinet information) it is to be conclusively presumed that there is an overriding public interest against disclosure,
   (g) agency decisions about access applications are reviewable by a process of internal review, review by the Information Commissioner (to be appointed under the *Government Information (Information Commissioner) Bill 2009*) and review by the Administrative Decisions Tribunal.

2. The Bill replaces the Freedom of Information Act 1989, which is repealed by the Government Information (Public Access) (Consequential Amendments and Repeal) Bill 2009.

Background

3. This bill is cognate with the Government Information (Information Commissioner) Bill and the Government Information (Public Access) (Consequential Amendments and Repeal) Bill. According to the Agreement in Principle speech the new legislative framework shifts the focus of government information availability toward proactive disclosure.

4. The legislation requires that certain "open access information" must be published. This includes details of an agency's structure and functions, its policy documents, and its register of significant private sector contracts. In addition, agencies are authorised to release other information unless it is sensitive personal information or there is some other overriding public interest reason why it cannot be disclosed. There is a significant amount of information that can and should be released without the need for a formal application.

5. As well as the focus on proactive disclosure, the bills enhance the rights of the public to apply for particular information under formal application processes. The new legislation makes clear that an agency should release the requested information unless there is an overriding public interest against disclosure. This is supported by an explicit presumption in favour of disclosure. Of course, the legislation recognises that the public interest in favour of disclosure may, in some cases, be outweighed by particular public interest considerations against disclosure.

6. The bills continue to ensure that the confidentiality required in respect of Cabinet information, law enforcement and safety information, sensitive commercial information and private information will be adequately protected. The new legislation specifies some information for which it is conclusively presumed that there is an overriding public interest against disclosure. Apart from these prescribed cases, agencies will be required to apply a public interest test on a case-by-case basis. The requirement to apply a public interest test applies even in respect of information that is prohibited from release under some other Act.

7. The new Act makes it clear that decisions by agencies are to be made independently of political considerations. Among other things, the legislation expressly prohibits decision makers from taking into account any possible embarrassment to the Government that might arise if information is released. And for the first time, the legislation also makes clear that public servants are not subject to ministerial direction and control in dealing with an application to access Government information.

8. The new legislation also creates offences for public officials who deliberately make decisions they know to be in contravention of the legislation. It will also be an offence to destroy, conceal or alter a record in order to prevent the disclosure of Government information. And it will be an offence for any person to knowingly direct or influence a public official to make an unlawful decision—a landmark change to public policy.

9. The new legislation will not increase fees or charges. The new bill expressly prescribes the fees and charges in the legislation itself. This means that no future government can increase those fees and charges without the approval of Parliament.

10. The new legislation implements the Ombudsman's recommendations to provide short and realistic turnaround times for freedom of information applications, namely, that the

time frames for dealing with access applications should be 20 working days for an application and 15 working days for an internal review. There is also clear guidance to agencies and applicants as to when time periods can be suspended or extended, including allowing for extension with the agreement of the applicant. All extensions will be required to be notified formally to the applicant. The legislation provides that the failure of an agency to decide an application within the required time frame will be taken to be a refusal which will, in turn, trigger the applicant's review rights. The applicant will also be entitled to a full refund of the application fee and any advance deposit already paid.

The Bill

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
Clause 3 states the object of the proposed Act, requires that the proposed Act be interpreted and applied so as to further that object and requires the discretions conferred by the proposed Act to be exercised so as to facilitate and encourage access to government information.
Clause 4 contains definitions of key terms used in the proposed Act. Schedule 4 contains other definitions. The clause defines ***government information*** to mean information contained in a record held by an agency.

Part 2 Open government information—general principles

Division 1 Ways of accessing government information

Clause 5 provides that there is a presumption in favour of the disclosure of government information, unless there is an overriding public interest against disclosure.
Clause 6 requires an agency to make the government information that is its ***open access information*** publicly available, unless there is an overriding public interest against disclosure of the information.
Clause 7 authorises an agency to make any government information held by the agency publicly available, unless there is an overriding public interest against disclosure of the information.
Clause 8 authorises an agency to release government information held by it to a person in response to an informal request by the person (that is, a request that is not an access application), unless there is an overriding public interest against disclosure of the information.
Clause 9 provides that a person who makes an access application for government information has a legally enforceable right to be provided with access to the information in accordance with Part 4 (Access applications) of the proposed Act, unless there is an overriding public interest against disclosure of the information.
Clause 10 provides that the proposed Act is not intended to prevent or discourage the publication or giving of access to government information as permitted or required by or under any other Act or law and does not affect the operation of any other Act or law that requires government information to be made available to the public or that enables a member of the public to obtain access to government information.
Clause 11 provides for the proposed Act to override a provision of any other Act or statutory rule that prohibits the disclosure of information, other than a provision of a law listed in Schedule 1 as an overriding secrecy law (for which it is to be conclusively presumed that there is an overriding public interest against disclosure).
Division 2 Public interest considerations

Clause 12 provides that there is no limit on the public interest considerations in favour of the disclosure of government information that may be taken into account for the purpose of determining whether there is an overriding public interest against disclosure of government information, and that there is a general public interest in favour of the disclosure of government information.
Clause 13 provides that there is an ***overriding public interest against disclosure*** of government information if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.
Clause 14 provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1. It also provides that the public interest considerations listed in the Table to the clause are the only other considerations that may be taken into account as public interest considerations against disclosure for the purpose of determining whether there is an overriding public interest against disclosure of government information.
Clause 15 states the general principles that are to apply to a determination as to whether there is an overriding public interest against disclosure of government information.
Division 3 Assistance and oversight
Clause 16 requires an agency to provide advice and assistance, so far as it would be reasonable to expect the agency to do so, to a person who requests or proposes to request access to government information.
Clause 17 provides for the general functions of the Information Commissioner in connection with the operation of the proposed Act.

Part 3 Open access information

Division 1 Preliminary
Clause 18 lists the government information held by an agency that is to be the agency's open access information and that is required to be made publicly available by the agency under clause 6 (Mandatory proactive release of certain government information). Open access information includes the agency's current publication guide, its policy documents, its disclosure log of access applications and its register of government contracts with the private sector.
Clause 19 provides that Part 3 does not apply to an agency in respect of any functions of the agency listed in Schedule 2 (Excluded information of particular agencies).
Division 2 Publication guides
Clause 20 requires each agency to have a publication guide.
Clause 21 requires an agency to adopt its first publication guide within 6 months after the commencement of the proposed section and review its publication guide and adopt a new publication guide at intervals of not more than 12 months.
Clause 22 requires an agency to notify (and, if required, consult with) the Information Commissioner before adopting or amending a publication guide, and authorises the Information Commissioner to develop guidelines and model publication guides for the assistance of agencies in connection with publication guides.
Division 3 Policy documents
Clause 23 contains a definition of an agency's ***policy documents***.
Clause 24 deals with the effect of an agency's policy documents not being publicly available when required.
Division 4 Disclosure log of access applications

Clause 25 requires each agency to keep a record (called its ***disclosure log***) that records details of access applications that an agency decided by providing access to information applied for.
Clause 26 lists the information that is to be recorded in a disclosure log.
Division 5 Government contracts with private sector
Clause 27 requires each agency to keep a register (its ***government contracts register***) of government contracts with the private sector that records information about each government contract to which the agency is a party that has (or is likely to have) a value of $150,000 or more (***class 1 contracts***).
Clause 28 provides for how the value of a contract is to be determined.
Clause 29 lists the details to be included in the government contracts register for class 1 contracts.
Clause 30 requires further details to be included in the government contracts register for certain significant contracts (***class 2 contracts***).
Clause 31 provides that a copy of the contract must be included in the government contracts register, if it is a class 2 contract that has (or is likely to have) a value of $5 million or more (a ***class 3 contract***).
Clause 32 provides that commercial-in-confidence information and certain other confidential information is not required to be included in the government contracts register.
Clause 33 requires particulars in the government contracts register to be amended to reflect any material variation made to a contract that would affect the particulars that are required to be included in the register.
Clause 34 provides for the minimum period for which information in an agency's government contracts register must be made publicly available as open access information.
Clause 35 provides for the publication of an agency's government contracts register on the NSW Government tenders website.
Clause 36 requires an agency to obtain the opinion of the Chairperson of the State Contracts Control Board in relation to any disagreement between a party to a government contract and the agency as to the way in which the agency has interpreted its obligations under the proposed Division.
Clause 37 limits the information that is required to be included in an agency's government contracts register to information that the agency holds or that it is reasonably practical for the agency to obtain.
Clause 38 provides that the proposed Division does not apply to a government contract entered into by the Department of State and Regional Development that involves the provision of industry support.
Clause 39 provides that a State owned corporation or a subsidiary of a State owned corporation is not required to include any details of a government contract in its government contracts register if the contract is entered into in the course of activities engaged in by the corporation or subsidiary in a market in which it is in competition with any other person.
Clause 40 provides that the proposed Division does not require Landcom to include any details of a government contract in its government contracts register, if the contract is a contract for the sale of land.

Part 4 Access applications

Division 1 Making an access application
Clause 41 lists the formal requirements for a valid access application for government information.
Clause 42 permits an applicant to include other information in an access application.

Clause 43 prevents an access application being made to an agency for access to government information that is excluded information of the agency (ie information relating to a function of the agency specified in Schedule 2).

Division 2 Transfer, amendment or withdrawal of access applications

Clause 44 authorises an agency that receives an access application to transfer the application to another agency either by ***agency-initiated transfer*** or by ***applicant-initiated transfer***.

Clause 45 requires the consent of the other agency for an agency-initiated transfer of an access application to another agency and provides for the circumstances in which such a transfer is permitted.

Clause 46 requires the agreement of the applicant and the agency to which the application was made to an applicant-initiated transfer of an access application to another agency and requires that it appear that the information relates more closely to the functions of the other agency.

Clause 47 requires an agency that transfers an application to give notice of the transfer to the applicant.

Clause 48 provides for the effect of the transfer of an access application.

Clause 49 provides for the circumstances in which an applicant is permitted to amend their access application.

Clause 50 allows an applicant to withdraw an access application.

Division 3 Process for dealing with access applications

Clause 51 requires an agency to decide whether an access application that it receives is a valid access application and to notify the applicant of its decision.

Clause 52 deals with how an invalid access application can be validated and the obligations that an agency has to assist an applicant to make a valid access application.

Clause 53 limits the obligation of an agency to provide access to government information in response to an access application to information held by the agency when the application is received. An agency is required to undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received.

Clause 54 requires an agency to consult with a person before providing access to information in response to an access application, if it appears that the person may reasonably be expected to have concerns about the disclosure of the information and that those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.

Clause 55 authorises an agency, in determining whether there is an overriding public interest against disclosure of information in response to an access application, to consider personal factors of the application (such as the applicant's identity and relationship with other persons) as factors in favour of providing the applicant with access to the information.

Clause 56 provides for an access applicant to request that all or specified information concerning their application not be made publicly available in the agency's disclosure log.

Division 4 Deciding access applications

Clause 57 requires an agency to decide an access application and notify the applicant of the decision within 20 working days after the agency receives the application, subject to a limited right of the agency to extend this period by up to 15 working days.

Clause 58 deals with the various ways in which an agency can decide an access application.

Clause 59 provides for when an agency can decide that information is already

available to an access applicant.
Clause 60 sets out the reasons for which an agency can decide to refuse to deal with an access application.
Clause 61 requires an agency to provide reasons for its decision to refuse to provide access to information.
Clause 62 requires an agency to include in a notice of its decision to provide access to information any processing charges that are payable and how those charges have been calculated.
Clause 63 provides that if an agency does not decide an access application within time, the agency is deemed to have decided to refuse to deal with the application.
Division 5 Processing charges and advance deposits
Clause 64 allows an agency to impose a ***processing charge*** for dealing with an access application at a rate of $30 per hour for each hour of processing time.
Clause 65 provides for a 50% reduction in the processing charge payable by an applicant suffering financial hardship.
Clause 66 provides for a 50% reduction in the processing charge payable by an applicant, if the agency is satisfied that the information applied for is of special benefit to the public generally.
Clause 67 provides that an agency cannot impose a processing charge for the first 20 hours of processing time if an access application is made for personal information about the applicant.
Clause 68 allows an agency to require an applicant to make an advance payment of a processing charge (an ***advance deposit***).
Clause 69 limits the advance deposit that can be required from an applicant to 50% of the estimated total processing charge for dealing with the application.
Clause 70 allows an agency to refuse to deal further with an access application if the applicant does not pay the advance deposit within the required time.
Clause 71 provides for a refund to be made to an applicant of any amount paid as an advance deposit that exceeds the total processing charges payable for dealing with the application.
Division 6 How access is provided
Clause 72 sets out the ways in which access to government information can be provided.
Clause 73 prevents an agency from imposing any conditions on the use or disclosure of information when the agency provides access to the information.
Clause 74 allows an agency to delete from a copy of a record to which access is to be provided information that the agency refuses to provide access to or information that is not relevant to the application.
Clause 75 allows an agency to provide access to information by creating a new record of that information.
Clause 76 provides that an agency may provide access to information that is in addition to the information applied for.
Clause 77 provides that an entitlement to access to information granted pursuant to an access application must be exercised within 6 months (or a longer period allowed by the agency).
Clause 78 deals with when an agency may defer providing access to information.
Clause 79 provides that an agency does not have to comply with a subpoena or other court order to produce a document to a person if that document has already been provided to the person in response to an access application by that person.

Part 5 Review of decisions

Division 1 Reviewable decisions

Clause 80 sets out the decisions of an agency in respect of an access application that are ***reviewable decisions***.
Clause 81 provides that the ***review period*** within which a person may apply for a review of a reviewable decision when more than one reviewable decision is made on an access application and those decisions are made at different times is extended to the end of the review period for the last of those decisions.
Division 2 Internal review by agency
Clause 82 gives a person aggrieved by a reviewable decision the right to apply for a review (an ***internal review***) of the decision by the agency that made the decision.
Clause 83 provides that an aggrieved person must apply for an internal review within 20 days of being notified of the decision, unless the agency agrees to accept the application out of time.
Clause 84 provides that an internal review is done by a person in the agency, who is not less senior than the person who made the original decision, making a new decision.
Clause 85 provides that a $40 fee is payable for an internal review.
Clause 86 requires an agency to conduct an internal review and notify the applicant of its decision within 15 working days after the agency receives the application, subject to a limited right of the agency to extend this period by up to 10 working days.
Clause 87 provides that there is no processing charge for an internal review.
Clause 88 provides that there cannot be an internal review of a decision made on the internal review of a reviewable decision.
Division 3 Review by Information Commissioner
Clause 89 gives a person aggrieved by a reviewable decision the right to apply for a review of the decision by the Information Commissioner.
Clause 90 requires a person to apply for a review of the decision by the Information Commissioner within 8 weeks after being notified of the reviewable decision.
Clause 91 provides that the Information Commissioner must not, while conducting a review under the proposed Division, disclose any information for which there is an overriding public interest against disclosure.
Clause 92 provides that, after conducting a review, the Information Commissioner may make recommendations to the agency concerned about the decision.
Clause 93 provides that, after conducting a review, the Information Commissioner may recommend that the agency reconsider its original decision and make a new decision.
Clause 94 provides that, after conducting a review, the Information Commissioner may make a recommendation against a decision of an agency that there is an overriding public interest against disclosure.
Clause 95 provides that, after conducting a review, the Information Commissioner may make recommendations to the agency concerned about its procedures for dealing with access applications.
Clause 96 provides for the circumstances in which the Information Commissioner may refuse to review a decision.
Clause 97 places the onus on an agency to justify its decision in any review by the Information Commissioner, unless the review is of a decision to provide access to information, in which case the onus is on the applicant to establish that there is an overriding public interest against disclosure.
Clause 98 provides that a matter is not to be the subject of review by the Information Commissioner while it is or has been the subject of proceedings before the Administrative Decisions Tribunal (the ***ADT***).
Clause 99 provides that the Information Commissioner may refer a decision that is subject to a review under the proposed Division to the ADT with the consent of the

applicant for review.

Division 4 Review by Administrative Decisions Tribunal

Clause 100 gives a person aggrieved by a reviewable decision the right to apply for a review of the decision by the ADT (an ***ADT review***), whether or not the decision has been internally reviewed or reviewed by the Information Commissioner.

Clause 101 requires a person to apply for a review of the decision by the ADT within 8 weeks after being notified of the reviewable decision, or if the decision has been reviewed by the Information Commissioner, within 4 weeks after being notified of the Information Commissioner's decision, whichever gives the longer period to apply.

Clause 102 provides that the procedures for internal review in the *Administrative Decisions Tribunal Act 1997* do not apply to reviewable decisions under the proposed Act.

Clause 103 provides that certain provisions of the *Administrative Decisions Tribunal Act 1997* do not apply to an application for ADT review.

Clause 104 gives the Information Commissioner, and any person who could be aggrieved by a decision of the ADT, a right to appear and be heard in proceedings before the ADT in relation to ADT reviews.

Clause 105 places the onus on an agency to justify its decision in any ADT review, unless the review is of a decision to provide access to information, in which case the onus is on the applicant to establish that there is an overriding public interest against disclosure.

Clause 106 sets out the procedure to be followed for ADT reviews of decisions that relate to Cabinet or Executive Council information.

Clause 107 provides that the ADT must not disclose any information for which there is an overriding public interest against disclosure and must conduct ADT reviews in private if necessary to prevent disclosure of such information.

Clause 108 provides that the ADT may make an order giving an agency more time to deal with an access application that is subject to ADT review, if the decision is a decision that was deemed to be a refusal to provide access to information because the agency did not make the decision within time.

Clause 109 provides that the ADT may refuse to review a decision, if satisfied that the application for review is frivolous, vexatious, misconceived or lacking in substance.

Clause 110 provides that the ADT may make a restraint order against a person who repeatedly makes access applications that lack merit. A person against whom a restraint order is made is prevented from making an access application without the approval of the ADT.

Clause 111 provides that the ADT may refer any matter to the Information Commissioner that the ADT considers is indicative of a systemic issue in relation to the determination of access applications by a particular agency or agencies generally.

Clause 112 provides that if the ADT is of the opinion that an officer of an agency has failed to exercise in good faith his or her functions under the proposed Act, the ADT must bring the matter to the attention of the Minister responsible for the agency.

Part 6 Protections and offences

Division 1 Protections

Clause 113 provides that an action for defamation or breach of confidence cannot be brought against the Crown, an agency or an officer of an agency in respect of a decision to disclose government information, if the person who made the decision believed in good faith that the proposed Act permitted or required the decision to be made.

Clause 114 provides that a person (and any other person concerned) who makes a decision to disclose government information is not guilty of an offence under the proposed Act, if the person believed in good faith that the proposed Act permitted or required the decision to be made.
Clause 115 protects persons involved in the administration of the proposed Act acting in good faith from personal liability.
Division 2 Offences
Clause 116 provides that an officer of an agency who makes a reviewable decision knowing it is contrary to the requirements of the proposed Act is guilty of an offence, which has a maximum penalty of 100 penalty units (currently $11,000).
Clause 117 provides that a person who directs an officer of an agency to make a reviewable decision that the person knows is not required or permitted under the proposed Act or who directs an officer to act in a manner that the person knows is contrary to the requirements of the proposed Act is guilty of an offence, which has a maximum penalty of 100 penalty units (currently $11,000).
Clause 118 provides that a person who influences an officer of an agency to make a reviewable decision that the person knows is not required or permitted under the proposed Act is guilty of an offence, which has a maximum penalty of 100 penalty units (currently $11,000).
Clause 119 provides that a person who knowingly misleads or deceives an officer of an agency for the purpose of gaining access to government information is guilty of an offence, which has a maximum penalty of 100 penalty units (currently $11,000).
Clause 120 provides that a person who destroys, conceals or alters government information for the purpose of preventing the disclosure of the information as authorised or required under the proposed Act is guilty of an offence, which has a maximum penalty of 100 penalty units (currently $11,000).

Part 7 Miscellaneous

Clause 121 requires government contracts with the private sector to include provision that will give the contracting agency an immediate right of access to certain information in the records of the private sector contractor, so as to include that information as information held by the agency for the purposes of an access application.
Clause 122 provides that the proposed Act binds the State and all other Australian jurisdictions.
Clause 123 provides that the proposed Act does not affect the operation of the *State Records Act 1998*.
Clause 124 limits the powers of the Ombudsman under the *Ombudsman Act 1974* so that the powers do not extend to investigating the conduct of any person or body in relation to a decision that is reviewable under the proposed Act.
Clause 125 sets out the requirements for agencies, Ministers and the Minister administering the proposed Act to prepare and submit annual reports about their obligations under the proposed Act.
Clause 126 sets out the notice requirements for agencies under the proposed Act.
Clause 127 enables an agency to waive, reduce or refund any fee or charge payable under the proposed Act.
Clause 128 provides that proceedings for offences against the proposed Act or the regulations are to be dealt with summarily before a Local Court and may only be taken by or with the authority of the Director of Public Prosecutions or the Attorney General.
Clause 129 is a regulation-making power.
Clause 130 provides for the review of the proposed Act after 5 years.

Clause 131 provides that the Joint Committee to be established under the *Government Information (Information Commissioner) Bill 2009* is to review Schedules 1 and 2 and the Table to clause 14 in consultation with the Information Commissioner.
Clause 132 provides that the Regulation set out in Schedule 5 is taken to be a regulation made under the proposed Act, and deals with the operation of the statutory rule making process and staged repeal process in respect of the Regulation.

Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure
Schedule 1 describes the information for which there is a conclusive presumption of an overriding public interest against disclosure, including information the disclosure of which is prohibited by an ***overriding secrecy law***, Cabinet and Executive Council information, information protected by legal professional privilege and documents affecting law enforcement and public safety.

Schedule 2 Excluded information of particular agencies
Schedule 2 lists government information for which an access application cannot be made, including judicial and prosecutorial information and complaints handling and investigative information.

Schedule 3 Savings, transitional and other provisions

Part 1 of Schedule 3 to the proposed Act provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act and the proposed *Government Information (Information Commissioner) Act 2009* and *Government Information (Public Access) (Consequential Amendments and Repeal) Act 2009*.
Part 2 of Schedule 3 contains savings and transitional provisions consequent on the enactment of the proposed Act and the repeal of the *Freedom of Information Act 1989* by the proposed *Government Information (Public Access) (Consequential Amendments and Repeal) Act 2009*.

Schedule 4 Interpretative provisions

Schedule 4 contains definitions of terms used in the proposed Act and other interpretative provisions.

Schedule 5 Government Information (Public Access) Regulation 2009
Schedule 5 contains a proposed regulation that is taken to be made under the proposed Act. The Regulation prescribes additional information as open access information of local authorities and imposes additional requirements on local authorities concerning the providing of access to open access information.

Issues Considered by the Committee

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

Issue: Clause 2 (1) – Commencement by proclamation – Provide the executive with unfettered control over the commencement of an Act.

11. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee also notes the reasons indicated in the Agreement in Principle speech, which include a major overhaul and reform of the Freedom of Information legislative scheme, as well as establishing the oversight office of a new independent Information Commissioner, which could require some flexibility of time for implementation.

12. **The Committee accepts the above reasons and has not identified any issues identified under s 8A (1)(b)(iv) of the *Legislation Review Act 1987*.**

The Committee makes no further comment on this Bill.

8. GOVERNMENT INFORMATION (PUBLIC ACCESS)(CONSEQUENTIAL AMENDMENTS AND REPEAL) BILL 2009

Date Introduced:	17 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Nathan Rees MP
Portfolio:	Premier

Purpose and Description

1. This Bill amends various laws as a consequence of the enactment of the *Government Information (Public Access) Act 2009*; to repeal the *Freedom of Information Act 1989*; and for other purposes.

2. This Bill is cognate with the *Government Information (Public Access) Bill 2009*.

3. The new legislation will put in place a framework based around the principles of proactive disclosure, a presumption in favour of public interest disclosure, and oversight by a new independent Information Commissioner.

4. The new legislation makes it clear that an agency should release the requested information unless there is an overriding public interest against disclosure. This is supported by an explicit presumption in favour of disclosure.

5. The Bills continue to ensure that the confidentiality required in relation to Cabinet information, law enforcement and safety information, sensitive commercial information and private information will be adequately protected. The new legislation also specifies some information for which it is conclusively presumed that there is an overriding public interest against disclosure. Apart from these prescribed cases, agencies will be required to apply a public interest test on a case-by-case basis. The requirement to apply a public interest test applies even in respect of information that is prohibited from release under some other Act.

6. One of the main changes is to address the complex overlap of disclosure provisions applying to local councils. This was recommended by the Ombudsman and has been supported in the submissions. Under the new legislation, all applications for council information will be brought under the umbrella of the new legislation.

7. The Bills also provide that agencies that engage private sector contractors to provide public services on their behalf must ensure that the public have a right to access relevant information about the delivery of those services. In addition, the Bills provide that public sector bodies who perform what may be described as government functions, can be declared to be agencies in their own right. This approach has already been applied in respect to private managers of correctional facilities, who have been brought within the scope of the Freedom of Information Act.

8. The new legislation prohibits decision makers from taking into account any possible embarrassment to the Government that might arise if information is released. The proposed legislation also makes it clear that public servants are not subject to ministerial direction and control in dealing with an application to access Government information.

9. The new legislation creates offences for public officials who deliberately make decisions they know to be in contravention of the legislation. It will be an offence to destroy, conceal or alter a record in order to prevent the disclosure of Government information. It will also be an offence for any person to knowingly direct or influence a public official to make an unlawful decision.

Background

10. The Government Information (Public Access) Bill 2009 and the Government Information (Information Commissioner) Bill 2009 are also introduced together as cognate Bills. Together, these Bills represent the first comprehensive overhaul of the freedom of information regime in 20 years.

11. The Ombudsman's report on the review of the Freedom of Information legislation, was received in February, and has been considered. In preparing that report, the Ombudsman undertook public consultations. The Ombudsman's recommendations have taken on the views of many individuals and organisations. The Government has also undertaken a further public consultation process in developing these Bills through draft exposure bills, which were tabled on 6 May this year. The Government received over 50 submissions in response, and the majority of them supported the general direction of the proposed reforms.

12. As well as responding to the Ombudsman's report, the Bills refers to reforms arising from the Solomon review in Queensland and recently proposed changes to Commonwealth legislation.

13. From the Agreement in Principle speech:

> The new legislation shifts the focus toward proactive disclosure. The legislation requires that certain "open access information" must be published. This includes details of an agency's structure and functions, its policy documents, and its register of significant private sector contracts. In addition, agencies are authorised to release other information unless it is sensitive personal information or there is some other overriding public interest reason why it cannot be disclosed. There is a significant amount of information that can and should be released without the need for a formal application.

14. According to the Agreement in Principle speech:

> Currently, there are secrecy provisions in over a hundred different Acts. Under the current Freedom of Information Act, if a document is subject to one of these secrecy provisions then it is automatically "exempt". Under the new legislation, there is a list of around 20 secrecy provisions, which conclusively establish an overriding public interest against disclosure. These include the obvious things such as details of witnesses under witness protection legislation, the identity of jurors, details on the child protection offenders register and so on. However, information that is subject to any other secrecy provision will now need to be subject to the public interest test on a case-by-case basis. The fact that a secrecy provision applies will be a relevant consideration but it will no longer of itself be conclusive. If

the agency does decide that the information can be released, then the Government Information (Public Access) Bill will override all other legislation and ensure that the information can be released under the protection of the law.

15. The Ombudsman recommended that applicants continue to be required to make some contribution to the actual costs incurred by agencies in dealing with applications. However, the new legislation will not increase fees or charges and the current discounts for those on low incomes will continue to apply.

16. The New South Wales Law Reform Commission is currently involved in a comprehensive review of existing privacy statutes. The Attorney General asked the commission to extend its work to consider how privacy laws interact with public access laws. The outcome of this work will lead to further reforms in this area.

The Bill

17. The objects of this Bill are:

(a) to transfer provisions concerning the amendment of personal records from the *Freedom of Information Act 1989* to the *Privacy and Personal Information Protection Act 1998*, and
(b) to repeal the *Freedom of Information Act 1989*, and
(c) to make miscellaneous amendments to other legislation as a consequence of the enactment of the *Government Information (Public Access) Act 2009*.

18. **Outline of provisions**

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
Clause 3 repeals the *Freedom of Information Act 1989*.

Schedule 1 contains amendments to the *Freedom of Information Act 1989* relating to the transfer of provisions concerning the amendment of personal records from that Act to the *Privacy and Personal Information Protection Act 1998*.
Schedule 2 amends the legislation specified in that Schedule, as a consequence of the enactment of the *Government Information (Public Access) Act 2009*.

Issues Considered by the Committee

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

Issue: Clause 2 (1) – Commencement by proclamation – Provide the executive with unfettered control over the commencement of an Act.

19. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee also notes the reasons indicated in the Agreement in Principle speech, which include a major overhaul and reform of the Freedom of Information legislative scheme, as well

as establishing the oversight office of a new independent Information Commissioner, which could require some flexibility of time for implementation.

20. **The Committee accepts the above reasons and has not identified any issues identified under s 8A (1)(b)(iv) of the *Legislation Review Act 1987*.**

The Committee makes no further comment on this Bill.

9. MOTOR SPORTS (WORLD RALLY CHAMPIONSHIP) BILL 2009

Date Introduced:	17 June 2009
House Introduced:	Legislative Council
Minister Responsible:	The Hon Ian MacDonald MLC
Portfolio:	Primary Industries, Energy, Mineral Resources and State Development

Purpose and Description

1. The object of this Bill is to facilitate the conduct of a motor sport (the World Rally Championship). The FIA World Rally Championship is the highest profile four-wheel motor sport championship in the world after Formula One. Events New South Wales and the Confederation of Australian Motor Sport announced that the Australian round of the FIA World Rally Championship would be staged every two years until 2017 in the Northern Rivers region of New South Wales, with an option to extend until 2027. The first event, Repco Rally Australia, will be held in the Tweed and Kyogle local government areas from 3 to 6 September.

2. Accordingly, the Bill includes provisions relating to the conduct of rally events in certain regions of NSW. Many of the provisions in the bill are based on legislation used for other special events, such as the V8 Supercars sporting event to be held at Sydney Olympic Park.[4]

Background

3. The Bill centralises the State and local government approvals needed into one authorisation for the conduct of a rally within the Northern Rivers region. The authorisation may also allow the construction and dismantling of temporary works associated with the rally, such as temporary structures to support crew, media and spectators.

4. The Bill also authorises public authorities, including estate agencies and local councils, to assist in the conduct of a rally event and related works or activities. For example, public authorities can provide advice to the Minister, or Minister's delegate, in determining the appropriate conditions of the authorisation or they can carry out road maintenance works or set up temporary emergency or first-aid facilities for a rally event.

5. Where a person is authorised, permitted or required to do anything under the Bill in relation to the rally event, it will not be necessary to obtain separate approvals under specified legislation. For example, it will not be necessary to obtain separately a special purposes permit to conduct a car rally on State Forest roads under the *Forestry Act 1916*, a permit for a road event on a public road under the *Roads Act*

[4] See for example, Homebush Motor Racing (Sydney 400) Bill 2008 in Legislation Review Digest No 15 of 2008 at page 55.

1993, a licence under the *Motor Vehicle Sports (Public Safety) Act 1985*, or an approval under the *National Parks and Wildlife Act 1974* to use a road managed under that Act.

6. The Bill also modifies the application of the *Environmental Planning and Assessment Act 1979*, the *Fisheries Management Act 1994*, the *Local Government Act 1993*, the *Water Management Act 2000*, the *Crown Lands Act 1989*, the *Protection of the Environment Operations Act 1997* and the road transport legislation in relation to a rally event.

7. Criminal proceedings under the *Protection of the Environment Operations Act 1997* can still be brought by the Environment Protection Authority or by a person authorised by the authority. In deciding whether to institute or authorise such proceedings, the Environment Protection Authority will have regard to its prosecution guidelines.

8. Clause 18 makes it clear that anything done or omitted to be done by a person pursuant to the Bill does not constitute a nuisance. Similar events in other States, at Sydney Olympic Park and Bathurst have been the subject of the same types of legislative provisions.

9. Clause 9 of the Bill gives police officers power to give directions to persons on a road on which the rally event is being conducted or on public or private land adjacent to, or in the vicinity of, that road. According to the Bill, the direction may be given only if the police officer believes on reasonable grounds that it is necessary for the safety of a person in the conduct of the rally event, and the direction must be reasonable in the circumstances for the purpose of reducing or eliminating the risk to the safety of any person. According to the Second Reading Speech, an example where it may be appropriate to give such a direction would be where a spectator is standing too close to a road on which the rally event is being conducted. If a person persists in the relevant conduct without reasonable excuse after a direction is given, an offence is committed with a maximum penalty of $220.

10. Finally, the Bill provides that it is to be reviewed five years after it is assented to in order to determine whether its policy objectives remain appropriate. The Government will also undertake an informal review of the rally event to see how well it worked for the community.

The Bill

Part 1 Preliminary

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

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

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Conduct of rally events

Clause 4 enables the Minister to declare, by order, any area within the Northern Rivers region or other region prescribed by the regulations under the proposed Act

as the area (the ***declared rally area***) within which a ***rally event*** (being a round of the World Rally Championship) may be conducted. The proposed section also enables the Minister to designate the period during which the rally event may be conducted (the ***declared rally period***). A rally event may not be conducted after the year 2017, unless the regulations under the proposed Act authorise a later year.

Orders under the proposed section must be published in the Gazette and may be amended or revoked by a further order.

Clause 5 provides that the Minister may authorise a person (the ***rally promoter***) to conduct a rally event in accordance with the proposed Act. That authorisation may be subject to any reasonable conditions that the Minister may impose, by written notice to the rally promoter, relating to public safety, environmental protection, insurance, reporting requirements, transport arrangement and traffic management, reinstatement of land, consultation requirements, financial arrangements, temporary works requirements and emergency vehicle and other property access. The Minister may add, amend or revoke conditions and may revoke an authorisation if the rally promoter contravenes a condition imposed under the proposed section. The contravention of any condition relating to public safety, environmental protection or insurance is an offence.

Clause 6 provides that an authorisation under proposed section 5 may also authorize a rally promoter to carry out ***temporary works*** associated with a rally event within the declared rally area and the declared rally period, subject to any conditions imposed under proposed section 5. The temporary works include those works to support crew, media and spectators, including service roads, parking, security and fencing, traffic and rally control facilities, utility, telecommunication, media and lighting facilities, facilities for vehicles, temporary structures such as seating, stands, shade, catering and toilet facilities, advertising signage, fire fighting and medical facilities and road maintenance works. The use of Walter Peate Reserve, Kingscliff, or other prescribed area, as a temporary helipad, with restricted hours and numbers of flights is also a temporary work. The rally promoter must comply with any written direction of the Minister to ensure compliance with, or to rectify a breach of, a condition relating to temporary works.

Clause 7 requires a rally promoter to carry out land reinstatement work arising from the conduct of a rally event. The proposed section clarifies that any damage caused by deliberate vandalism or by persons aiming to disrupt the conduct of a rally event is excluded.

Clause 8 provides for public authorities to assist in the conduct of rally events and related works or activities.

Clause 9 provides for directions necessary for the safety of persons to be given by police officers to persons on a road on which a rally event is being conducted, or on public or private land adjacent to, or in the vicinity of, that road. Any such direction must be reasonable for the purpose of reducing or eliminating the risk to safety and may be given to persons comprising a group. An offence is committed with a maximum penalty of $220 if a person persists in the relevant conduct without reasonable excuse after a direction is given.

Part 3 Application of other laws

Clause 10 modifies the application of the *Environmental Planning and Assessment Act 1979* in respect of declarations, authorisations, the conduct of rally events and ***rally-related activities*** (being the carrying out and dismantling of temporary works, the reinstatement of land and the activities of public authorities under proposed section 8).

Clause 11 provides that a person who is authorised, permitted or required to do anything in relation to roads and areas immediately adjacent to roads by or under the proposed Act may do that thing despite the fact that the doing of it is not authorized (when required to be) or permitted by or under the *National Parks and Wildlife Act 1974*. It further provides that any act that is authorised, permitted or required by or under the proposed Act is taken to be a defence to a prosecution for various offences contained in Part 8A of the *National Parks and Wildlife Act 1974*.

Clause 12 provides that any act that is authorised, permitted or required by or under the proposed Act is taken to be a defence to a prosecution for various offences contained in Part 7A of the *Fisheries Management Act 1994*.

Clause 13 provides that a person who is authorised, permitted or required to do anything by or under the proposed Act may do that thing despite the fact that the doing of it is not authorised (when required to be) by, or is contrary to, or is inconsistent with, the terms and conditions of an approval granted under, the *Local Government Act 1993*. The proposed section also provides that community land may be used for anything authorised, permitted or required by or under the proposed Act despite any restriction, including a plan of management for community land, applying to the land under the *Local Government Act 1993*.

Clause 14 provides that a person who is authorised, permitted or required to do anything under the proposed Act in relation to roads may do that thing despite the fact that it is not authorised (when required to be) by or under the *Forestry Act 1916*.

Clause 15 provides that a person who is authorised, permitted or required to do anything under the proposed Act may do that thing despite the fact that it is not approved as a controlled activity (when required to be) by or under the *Water Management Act 2000*.

Clause 16 enables a reserve under the *Crown Lands Act 1989* to be used for anything that is authorised, permitted or required by or under the proposed Act.

Clause 17 suspends the following provisions of road and noise legislation, except to the extent provided by the regulations under the proposed Act:

> (a) the provisions of, or an instrument made under, the *Motor Vehicle Sports (Public Safety) Act 1985*, section 40 of the *Road Transport (Safety and Traffic Management) Act 1999* and the *Roads Act 1993* do not apply in respect of a rally event during a declared rally period,
> (b) for the purposes of the road transport legislation, within the meaning of the *Road Transport (General) Act 2005*, or an instrument made under that Act, a road or road related area temporarily closed during its use for the purposes of a rally event, is not a road or road related area within the meaning of that legislation,

(c) the provisions of, or an instrument made under, the *Protection of the Environment Operations Act 1997* that relate to noise do not apply in respect of anything that is authorised, permitted or required by or under the proposed Act.

Clause 18 provides that anything done or omitted to be done by a person pursuant to the proposed Act does not constitute a nuisance.

Part 4 Miscellaneous

Clause 19 provides for the delegation of functions of the Minister under the proposed Act.

Clause 20 protects the exercise of certain functions of the Minister (or any delegate of the Minister) or a public authority from challenge or review before a court or administrative review body or from being restrained, removed or otherwise affected by any proceedings.

Clause 21 provides that directors, and other persons concerned in the management of a corporation, who knowingly authorise or permit the contravention of a provision of the proposed Act are to be taken to have contravened the same provision.

Clause 22 provides that proceedings for an offence under the proposed Act or the regulations may be dealt with summarily before a Local Court.

Clause 23 provides that proceedings:

a) under the proposed Act may only be instituted by a person with the consent of the Minister, and

(b) under sections 219, 252 and 253 of the *Protection of the Environment Operations Act 1997* and under section 20 (2) of the *Land and Environment Court Act 1979* (relating to the *Protection of the Environment Operations Act 1997*) that arise out of the conduct of a rally event, may only be instituted by, or with the authority of, the Environment Protection Authority.

Clause 24 authorises the Governor to make regulations for the purposes of the proposed Act, including provisions of a savings or transitional nature.

Clause 25 provides for the review of the proposed Act in 5 years.

Issues Considered by the Committee

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

Issue: Part 3 Application of other laws; Clause 18 No Liability for Nuisance

11. The Committee has concerns that Part 3 of the Bill will infringe on personal rights. For example, clause 18 states that:

> "Anything done or omitted to be done by any person:
> (a) in the exercise of a function under this Act or the regulations, or
> (b) pursuant to any of the provisions of this Act or the regulations, or
> (c) in accordance with any authorisation under this Act or the regulations,
> does not constitute a nuisance."

However, given the community benefits of this specific event, the Committee does not consider this to be an undue trespass on personal rights and liberties.

Issue: Clause 9 – Directions by police officers

12. Clause 9 provides police officers with the power to give a direction to a person on a road on which a rally event is being conducted, or on public or private land adjacent to, or in the vicinity of, that road, if they believe on reasonable grounds that it is necessary for the safety of that or any other person from the conduct of the rally event (including any participants in the event). Clause 9(2) specifies that the direction must be reasonable in the circumstances for the purpose of reducing or eliminating the risk to the safety of any person.

13. Clause 9(5) provides that a person must not, without reasonable excuse, refuse or fail to comply with a direction given in accordance with this section, with a maximum penalty of $220. Clause 9(6) states that a person is not guilty of an offence under this section unless it is established that the person persisted, after the direction concerned was given, to engage in the relevant conduct. The Committee is of the view that these provisions are necessary for the safe conduct of motor racing events and does not consider them to unduly trespass on the personal rights and liberties of individuals.

14. However, Clause 9(3) provides that a direction may be given to persons comprising a group and in any such case the police officer is not required to repeat the direction, or the information and warning referred to in section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to each person in the group.

15. The Committee has concerns that Clause 9(3) may unduly trespass on the personal rights and liberties of persons comprising a group subject to the police direction. However, the Committee notes that Clause 9(4) provides that that just because the police officer is not required to repeat any such direction, information or warning does not in itself give rise to any presumption that each person in the group has received the direction, information or warning. Accordingly, the Committee is satisfied that Clause 9 does not unduly trespasses on the personal rights and liberties.

The Committee makes no further comment on this Bill.

10. NATIONAL PARKS AND WILDLIFE (BROKEN HEAD NATURE RESERVE) BILL 2009

Date Introduced:	19 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carmel Tebbutt
Portfolio:	Deputy Premier

Purpose and Description

1. The object of the Bill is to revoke the reservation of certain land currently reserved under the *National Parks and Wildlife Act 1974* as part of Broken Head Nature Reserve. Lands reserved under the *National Parks and Wildlife Act 1974* may not be revoked, except by an Act of Parliament.

2. According to the Agreement in Principle Speech, the revocation of six small parcels of land, totalling 981 square metres, from Broken Head Nature Reserve and transfer to the Bundjalung people of Byron Bay—the Arakwal people, as part of Broken Head Caravan Park, will enable the implementation of the Indigenous Land Use Agreement.

Background

3. The Broken Head Nature Reserve is a 98-hectare reserve located five kilometres south of Byron Bay. The area is also culturally significant to the Bundjalung people of Byron Bay – the Arakwal people.

4. Broken Head Nature Reserve lies adjacent to Broken Head Caravan Park and over time small parcels of land have inadvertently become part of the well-established camping area in the Caravan Park. As stated in the Agreement in Principle Speech:

> Over the years, since the nature reserve was established in 1974, the caravan park has inadvertently encroached on the nature reserve in six separate areas, totalling 981 square metres. These small parcels of land are now well-established camping areas and have negligible conservation value for the nature reserve.

5. Accordingly, the Bill revokes six small parcels of land, totalling 981 square metres (0.1% of the nature reserve), from Broken Head Nature Reserve. As stated in the Agreement in Principle Speech, the proposal is essentially a minor boundary adjustment, to be considered in its wider context. It will to enable the land to be transferred to the traditional owners of the land (the Bundjalung people of Byron Bay – the Arakwal people) as part of an Indigenous Land Use Agreement with the New South Wales Government.

6. The Indigenous Land Use Agreement between New South Wales and the Bundjalung people of Byron Bay—the Arakwal people, was signed on 20 December 2006. Under the agreement, the Bundjalung people of Byron Bay—the Arakwal people will

surrender any potential native title in the lands and waters in the area around Broken Head, and approximately 70 hectares of Crown land will be added to the national parks system, namely, additions to Arakwal National Park, Broken Head Nature Reserve and Cumbebin Swamp Nature Reserve.

7. Under the Indigenous Land Use Agreement, Broken Head Caravan Park, which is Crown land to the north of the nature reserve, will be transferred to the Bundjalung people of Byron Bay—the Arakwal people, who will maintain ownership of the caravan park for a minimum of 10 years.

The Bill

Outline of Provisions

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

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

Clause 3 revokes the reservation of part of Broken Head Nature Reserve under the *National Parks and Wildlife Act 1974*.

Clause 4 provides for the land to vest in the Minister administering Part 11 of the *National Parks and Wildlife Act 1974*.

Clause 5 ensures that the proposed Act does not operate to extinguish native title rights and interests existing in relation to the land immediately before it vesting under the proposed Act.

Issues Considered by the Committee

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

11. PERSONAL PROPERTY SECURITIES (COMMONWEALTH) POWERS BILL 2009

Date Introduced:	16 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell
Portfolio:	Transport

Purpose and Description

1. The Personal Property Securities (Commonwealth Powers) Bill 2008 (the Bill) is made in accordance with section 51 (xxxvii) of the Commonwealth Constitution. The object of this Bill is to refer certain matters relating to security interests in personal property to the Commonwealth Parliament to enable the Commonwealth Parliament to make laws about those matters as part of a new national scheme.

2. The Bill operates by reference to the text of the proposed Personal Property Securities Bill 2009 (Cth), tabled in the Legislative Assembly of New South Wales (the Commonwealth Bill). The Bill provides for the referral of power to the Commonwealth Parliament to establish a single national legislative scheme for the regulation and registration of security interests in personal property, which is part of the package of reforms approved by the Council of Australian Governments.

3. The Commonwealth Bill was developed in consultation with the Personal Property Securities Review Consultative Group, which included the Australian Consumers Association, nominees of the Ministerial Council on Consumer Affairs and the Standing Committee of Attorneys-General, the Law Council of Australia and relevant industry bodies including the Motor Traders Association of Australia and the Australian Bankers Association.[5]

4. The key objective of the Commonwealth reforms is to remove the uncertainty arising from the large amount of Commonwealth, State and Territory legislation and its uneasy interaction with the common law and equitable legal principles governing personal property securities.

5. The reforms will establish national comprehensive rules governing security interests in personal property, including a clear set of rules relating to security interests in personal property and for ordering priorities between competing secured interests in personal property, and the creation of a single national personal property securities register.

[5] See also Senate Legal and Constitutional Affairs Committee Inquiry into Personal Property Securities Bill 2008 [exposure draft] at http://www.aph.gov.au/Senate/committee/legcon_ctte/index.htm; The Attorney General's Department, Personal Property Securities Reform at http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_personalpropertysecuritiesreform_PersonalPropertySecuritiesReform

Background

6. Where a lender provides a loan or credit to a borrower, the debt may be secured by that lender taking a security interest in property the borrower or third party owns or in which the borrower or third party has an interest. Security can be given over personal property or real property.

7. Personal property is any form of property other than land or buildings. It includes tangibles, for example, cars, boats, machinery and agricultural produce and intangibles, for example, contract rights, uncertificated shares, intellectual property such as trademarks and patents and receivables.

8. Early securities took the form of legal mortgages, but personal property securities now extend to a variety of transactions, including fixed or floating charges, finance leases, hire purchase agreements, commercial consignments, and retention of title arrangements in which a company sells goods to a client but retains the title to those goods until they are fully paid for.

9. In April 2007, the Council of Australian Governments gave its in-principle support for the establishment of a national system for the registration of personal property securities supported by a referral of legislative power by the States to the Commonwealth. In its communiqué of 3 July 2008, the Council of Australian Governments acknowledged that Australia's overlapping and inconsistent regulations impede productivity growth.

10. The Commonwealth Bill applies the same rules to all security interests in personal property regardless of the form of the transaction, who the grantor of the interest is, or the jurisdiction in which the transaction takes place. It also sets out: clear priority rules for all security interests in personal property; a streamlined enforcement regime; and protections for businesses and consumers purchasing and dealing with personal property.

11. A single national personal property securities register will replace numerous registers currently operated by the Commonwealth, the States and the Territories. The personal property securities register will be a publicly accessible, electronic record of personal property securities and will be updated and searchable in real time.

12. As stated in the Agreement in Principle Speech on 16 June 2009:

> Over the past few years the Commonwealth, State and Territory governments have been working cooperatively to reform the law relating to personal property securities, or PPS. The reforms will establish national comprehensive rules governing security interests in personal property. Central to the reforms will be a clear set of rules for creating security interests in personal property and for ordering priorities between competing secured interests in personal property and the creation of a national personal property securities register. The proposed personal property securities reforms, which are currently scheduled to commence in May 2010, will significantly change the way in which information on personal property securities is held in Australia.

13. Because the proposed Commonwealth Bill contains matters that are not within the legislative competence of the States, the Bill contains a definition of initial referred provisions, which means the tabled text to the extent to which that text deals with matters that are included in the legislative powers of the Parliament of the State.

14. The Bill refers to the Commonwealth Parliament the matters to which the initial referred provisions relate, but only to the extent of the making of laws with respect to those matters by including the initial referred provisions in a Commonwealth Act enacted in the terms, or substantially in the terms, of the tabled text. The Bill defines this reference to be the initial reference and the Commonwealth Act enacted pursuant to it to be the Commonwealth PPS Act.

15. The Bill also refers certain matters (the referred PPS matters) in relation to different kinds of personal property so as to enable the Commonwealth to make amendments to the Commonwealth PPS Act from time to time concerning security interests in those kinds of property. Each of these references is defined in the Bill to be an amendment reference. The amendment references relate to the following kinds of personal property:

    (a) personal property (other than fixtures and water rights),
    (b) fixtures (which are goods, other than crops, that are affixed to land),
    (c) transferable water rights (which are certain transferable rights, entitlements or authorities, whether or not exclusive, that are granted by or under the common law or legislation of the State in relation to the control, use or flow of water).

16. The Bill provides for exclusions from the referred PPS matters that are intended to limit the power of the Commonwealth Parliament to use an amendment reference to exclude or limit the power of the State to administer, vary and abrogate any State statutory rights (such as licences) that it creates from time to time.

17. The Bill will enable each of the amendment references to be commenced at different times. For example, the amendment references in relation to fixtures and transferable water rights will be able to be commenced after the Commonwealth has enacted an Act pursuant to the initial reference. The Bill also provides for the termination of the initial reference and also for the termination of any or all of the amendment references.

The Bill

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

Clause 2 provides for the commencement of the provisions of the proposed Act (other than proposed section 6 (2), (3) and (4)) on the date of assent to the proposed Act. Proposed section 6 (2), (3) and (4) (which make the amendment references to the Commonwealth Parliament) will commence on a day or days appointed by proclamation of the Governor.

Clause 3 defines certain terms and expressions used in the proposed Act, including the following. The expression ***law of the State*** is defined to mean any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time. The expression is intended to cover both existing and future Acts and instruments as enacted, made and amended from time to time.

The expression ***excluded State statutory right*** is defined to mean a right, entitlement or authority that is granted by or under a law of the State (which is referred to in the proposed Act as a ***State statutory right***) that is declared by that law not to be personal property for the purposes of the Commonwealth PPS Act. As a result of the ambulatory

nature of the definition of ***law of the State*** referred to above, the expression will extend to declarations that are made in relation to both existing and future State statutory rights.

The expression ***express amendment*** is defined to mean the direct amendment of the text of the Commonwealth PPS Act, but as not including enactment of a provision having substantive effect otherwise than as part of the text of that Act. Each of the amendment references is limited to the express amendment of the Commonwealth PPS Act. This ensures that the matters covered by the amendment references cannot be the source of power for other Commonwealth legislation.

The expression ***personal property*** is defined to mean property (including a licence) other than:

(a) land, or
(b) an excluded State statutory right.

The term ***licence*** is defined to mean either of the following:

(a) a transferable right, entitlement or authority to do one or more of the following:
    (i) to manufacture, produce, sell, transport or otherwise deal with personal property,
    (ii) to provide services,
    (iii) to explore for, exploit or use a resource,
(b) a transferable authority to exercise rights comprising intellectual property.

The term ***licence***, however, does not include any excluded State statutory right.

Clause 4 defines the expression ***referred PPS matters*** in relation to personal property that is the subject of the different amendment references under the proposed Act. The expression is defined to mean:

(a) the matter of security interests in the personal property, and
(b) without limiting the generality of paragraph (a), each of the following matters:
    (i) the recording of security interests, or information with respect to security interests, in the personal property in a register,
    (ii) the recording in such a register of any other information with respect to the personal property (whether or not there are any security interests in the personal property),
    (iii) the enforcement of security interests in the personal property (including priorities to be given as between security interests, and as between security interests and other interests, in the personal property).

The proposed section, however, excludes from the expression the matter of making provision with respect to personal property or interests in personal property in a manner that excludes or limits the operation of a law of the State to the extent that the law makes provision with respect to:

(a) the creation, holding, transfer, assignment, disposal or forfeiture of a State statutory right, or
(b) limitations, restrictions or prohibitions concerning the kinds of interests that **may be created or held in, or the kinds of persons or bodies that may create or** hold interests in, a State statutory right, or
(c) without limiting the generality of paragraph (a) or (b)—any of the following matters:

(i) the forfeiture of property or interests in property (or the disposal of forfeited property or interests) in connection with the enforcement of the general law or any law of the State,

(ii) the transfer, by operation of that law of the State, of property or interests in property from any specified person or body to any other specified person or body (whether or not for valuable consideration or a fee or other reward).

Paragraphs (a) and (b) of the above exclusions from the referred PPS matters are intended to limit the power of the Commonwealth Parliament to use an amendment reference to exclude or limit the power of the State to administer, vary and abrogate any State statutory rights (such as licences) that it creates from time to time.

Paragraph (c) of the above exclusions from the referred PPS matters is intended, among other things, to preserve the operation of laws of the State that provide for the confiscation of the proceeds of crimes or for the transfer by or under a law of the State of assets from defunct bodies.

Clause 5 defines the expression ***security interest*** in personal property. Generally speaking, a security interest in personal property is an interest in relation to the property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property). However, the proposed section also makes it clear that a security interest may encompass certain other interests provided for by a transaction regardless of whether or not the transaction secures payment or performance of an obligation. An example of such an interest is an interest of a lessee or bailor under a lease or bailment of goods.

Clause 6 deals with the references described in the Overview. Clause 6 (1), (2), (3) and (4) make the references.

Clause 6 (1) provides for the inclusion of the referred provisions in a Commonwealth Act enacted in the terms, or substantially in the terms, of the tabled text. The expression "substantially in the terms" of the tabled text will enable minor adjustments to be made to the tabled text.

Clause 6 (2) in effect refers matters to the Commonwealth Parliament in connection with the future amendment of the Commonwealth PPS Act concerning security interests in personal property (other than fixtures or water rights).

Clause 6 (3) in effect refers matters to the Commonwealth Parliament in connection with the future amendment of the Commonwealth PPS Act concerning security interests in fixtures.

Clause 6 (4) in effect refers matters to the Commonwealth Parliament in connection with the future amendment of the Commonwealth PPS Act concerning security interests in transferable water rights (other than excluded State statutory rights).

Clause 6 (5) removes a possible argument that one of the references might be limited by any of the other references (except as provided by clause 6 (2), which excludes fixtures and water rights from the reference made by that proposed subsection).

Clause 6 (6) makes it clear that the reference of a matter has effect only to the extent that the matter is not otherwise within the legislative power of the Commonwealth Parliament and to the extent that the matter is within the legislative power of the State Parliament.

Clause 6 (7) makes it clear that the State Parliament envisages that the Commonwealth PPS Act can be amended or affected by Commonwealth legislation enacted in reliance on other powers (though this may be the subject of provisions in the Intergovernmental Agreement that will underpin the scheme) and that instruments made or issued under the Commonwealth PPS Act may affect the operation of that legislation otherwise than by express amendment.

Clause 6 (8) specifies the period during which a reference has effect. Each reference will begin when the subsection that makes the reference commences and end when the period of that particular reference is terminated under the proposed Act.

Clause 7 deals with the termination of the period of the references specified under clause 6 (namely, the period ending on a day fixed by the Governor by proclamation). The clause enables the periods of all references to be terminated at the same time or only the periods of any or all of the amendment references.

Clause 8 makes it clear that the separate termination of the period of an amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

Clause 9 provides for the accuracy of a copy of the tabled text containing the proposed Commonwealth PPS Act to be certified by the Clerk of the Legislative Assembly of New South Wales. Such a certificate is evidence of the accuracy of the tabled text and that the text was in fact tabled as contemplated by the Bill.

Issues Considered by the Committee

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

Issue: Clause 2 - Commencement by proclamation – Provide the executive with unfettered control over the commencement of an Act

18. The Committee notes that Sections 6(2), (3) and (4) of the proposed Act are to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee notes from the Agreement in Principle Speech that nature of the national scheme may require greater flexibility regarding the Commencement provisions. The Committee is of the same view with respect to the termination of references by proclamation provisions in Clause 7 of the proposed Act.

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

The Committee makes no further comment on this Bill.

12. ROAD TRANSPORT LEGISLATION AMENDMENT (TRAFFIC OFFENCE DETECTION) BILL 2009

Date Introduced:	17 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Michael Daley MP
Portfolio:	Roads

Purpose and Description

1. This Bill amends the *Road Transport (Safety and Traffic Management) Act 1999* and certain other legislation to make further provision with respect to the detection of speeding offences by heavy vehicles and the detection of certain other traffic offences.

2. The main purpose is to amend the *Road Transport (Safety and Traffic Management) Act 1999* to allow for the introduction of two new camera enforcement technologies for driving offences. The first, is point-to-point speed enforcement. Point-to-point enforcement will be used to target heavy vehicle speeding. The second, is the introduction of digital red light cameras to replace the existing wet film red light camera program.

3. The introduction of point-to-point enforcement technology targets heavy vehicle speeding. The proposed Act defines a heavy vehicle as a coach, motor vehicle or trailer with a gross vehicle mass greater than 4.5 tonnes. This definition is consistent with other New South Wales legislation such as that which deals with fatigue in the heavy vehicle industry.

4. For the purposes of point-to-point enforcement, speeding offences are defined as both failing to obey a speed limit and speed-limiter offences.

5. This Bill also introduces a new provision into the Act to allow for one road safety device to be approved for multiple functions, for example, red light and speed detection.

Background

6. The new road safety technologies are being introduced in support of the State Plan, Priority S7, to make roads safer.

7. According to the Agreement in Principle speech, “speed remains the most significant factor in the road toll. It contributes to about 36 per cent of fatal crashes. An average of 190 people die and around 4,400 people are injured each year in New South Wales alone due to speed-related crashes”.

8. The new road safety technologies that will be introduced by this Bill have been tried and proven in other jurisdictions to improve the drivers safety.

9. Point-to-point technology will be targeted at heavy vehicles as they are over-represented in serious road crashes. Roads and Traffic Authority speed surveys on major freight routes have found that about half of all heavy vehicles travel above the speed limit. Research from the National Transport Council has suggested that if all heavy vehicles complied with speed limits there would be a 29 per cent reduction in heavy vehicle crashes.

10. The lengths of road proposed for point-to-point enforcement will be on highways in rural areas that are known heavy vehicle routes and have a history of high heavy vehicle speeding and crash rates.

11. Twenty stretches of road will be covered initially by point-to-point on the following roads and highways: Mount Ousley, Great Western, Hume, Mid Western, Monaro, New England, Newell, Pacific, Federal, Mitchell, Golden, Gwydir and Oxley.

12. The amendments create new provisions within the *Road Transport (Safety and Traffic Management) Act 1999* that allow the use of point-to-point technology to prove a speeding offence under existing road transport law.

13. According to the Agreement in Principle speech:

> Point-to-point enforcement works by using cameras to identify the time that a vehicle passes detection points at the start and end of a point-to-point enforcement length. The time taken for the vehicle to travel between the two points is measured and used to calculate the average speed of the vehicle across the point-to-point length. If the average speed is greater than the speed limit on that length of road the driver will be infringed for speeding. This approach to point-to-point enforcement is consistent with the successful introduction of point-to-point enforcement in Victoria. Where there are multiple speed limits along a point-to-point enforcement length this Bill provides for the calculation of an average speed limit. The average speed limit will be calculated from the part of the point-to-point length to which each speed limit applied. Drivers will be infringed if their average speed is above this average speed limit calculation.

14. There may be occasions when a fixed speed camera forms part of the detection devices at the start or end of a point-to-point length. Drivers will then not be penalised by both fixed speed cameras and point-to-point and will be issued only with the greater of the two offences.

15. Point-to-point speed enforcement is a tested technology that has been used in many countries in Europe such as the United Kingdom, Italy, Norway, Sweden and Spain. There are five point-to-point enforcement lengths on the Hume Highway in Victoria. Evaluations of point-to-point enforcement technology have shown it to be effective in reducing vehicle speeds and fatalities and injuries along substantial lengths of road.

16. This Bill also proposes the creation of significant penalties for deliberate acts of avoiding detection at point-to-point camera sites. This is to ensure that drivers do not drive on the wrong side of the road, swerve across lanes, tailgate or turn off their lights at night to avoid detection by point-to-point cameras.

17. The purpose of red-light cameras is to reduce the dangerous practice of driving through or running red lights at signalised intersections. New South Wales currently has a wet-film red-light camera program. This outdated program has been in operation since 1988. The old wet-film technology that is used is obsolete. The current program involves the rotation of cameras between 183 sites, and no new sites have been

added over the past eight years. The New South Wales Police Force and the Roads and Traffic Authority advise that occupational health and safety issues are associated with constantly rotating cameras at busy intersections. The current cameras also require manual collection and replacement of film.

18. Digital technology aims to reduce the burden of operating red-light cameras. Digital red-light cameras are safer to operate and can be placed in locations where they are needed most. The new digital red-light cameras also have the capacity to conduct speed enforcement.

19. From the Agreement in Principle speech:

> The Government will carefully consider the rollout of combined red-light/speed detection devices to particular sites. Combined red-light/speed detection devices will be used only at intersections where they will provide the greatest road safety benefit. This will be at locations where there is a red-light camera at an intersection that is situated on a length of road with a significant crash and car-hooning history. The combination of both red-light cameras and speed detection devices at these locations will further enhance the road safety benefits of the red-light camera program…The amendments proposed in this bill do not result in any new offences. Drivers who are detected both disobeying a red light and speeding will be liable for both offences, including the fines and demerits applicable for each offence. This reflects the seriousness of these offences…Following the acceptance of amendments contained in this Bill, the Roads and Traffic Authority will roll out digital red-light cameras to 200 intersections. The first 50 cameras will be installed by June 2010. These locations will be a combination of existing and new intersections. New cameras will be placed at intersections where they will provide the greatest road safety benefit.

The Bill

20. The objects of this Bill are as follows:

(a) to amend the *Road Transport (Safety and Traffic Management) Act 1999* (***the Principal Act***):

(i) to enable evidence of the average speed of certain heavy vehicles between detection points to be used to establish that speeding offences involving such vehicles have been committed, and

(ii) to provide for the approval of devices for use in obtaining information to calculate the average speeds of such vehicles between detection points and for the use of such information as evidence in proceedings for speeding offences, and

(iii) to provide for an inspection period for approved digital red light camera devices that is consistent with other kinds of approved digital camera devices used to detect traffic offences, and

(iv) to enable a device to be approved for use in detecting more than one kind of traffic offence,

(b) to make consequential amendments to certain other Acts and statutory rules.

21. **Outline of provisions**

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

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

Schedule 1 Amendment of *Road Transport (Safety and Traffic Management) Act 1999* No 20

Use of evidence of average speeds of heavy vehicles

Schedule 1 [1] inserts section 43A in the Principal Act to enable a person who brings proceedings for a speeding offence involving a heavy vehicle to rely on evidence of the average speed of the vehicle between detection points as evidence of the actual speed of the vehicle. The proposed section defines a ***speeding offence*** to be an offence against the Principal Act or the regulations of failing to obey a speed limit or a speed limiter offence within the meaning of Division 2A of Part 5 of the Principal Act.

The proposed section will apply only in relation to speeding offences involving motor vehicles or trailers with a GVM (Gross Vehicle Mass) greater than 4.5 tonnes.

The proposed section sets out a formula for calculating the average speed of such a heavy vehicle between detection points on a road. In cases where there is more than one speed limit applicable to a driver between detection points, the proposed section provides for the calculation of an average speed limit against which the average speed of a vehicle is to be measured.

If there is more than one driver of a heavy vehicle during the same journey, the proposed section holds each driver accountable for the speeding offence except for any particular driver who can establish any exculpatory ground prescribed by the regulations.

The calculation of the average speed or average speed limit for a heavy vehicle between detection points will be based on the shortest practicable distance between the detection points that could be used by a driver of the vehicle without contravening any road rules. The proposed section enables certificate evidence to be given by registered land surveyors (within the meaning of the *Surveying Act 2002*) concerning such distances.

Approval and use of devices to detect average speeds of heavy vehicles

Schedule 1 [2] inserts section 47A in the Principal Act to enable the Roads and Traffic Authority, by order published in the Gazette, to approve a device as being designed to photograph a vehicle at a point during its journey between different points on a road for use in calculating the vehicle's average speed between those points and to record certain information on any photograph that it takes. Any such approved device will be an ***approved average speed detection device*** for the purposes of the Principal Act. **Schedule 1 [12]** makes a consequential amendment to the Dictionary of the Principal Act.

Schedule 1 [2] also inserts section 47B in the Principal Act to provide for the admission and use of photographs taken by approved average speed detection devices in proceedings in which evidence of an average speed is being relied on to establish a speeding offence.

Schedule 1 [5]–[9] make consequential amendments to sections 69E, 69F and 73A of the Principal Act.

Inspection periods of digital red light cameras

Schedule 1 [3] amends section 57 of the Principal Act to enable the regulations to prescribe the period during which a red traffic light camera (called an ***approved camera detection device*** in the Act) must be inspected before an alleged traffic light offence for the purposes of issuing certificate evidence concerning photographs the device has taken.

Schedule 2.7 [2] inserts clause 156D in the *Road Transport (Safety and Traffic Management) Regulation 1999* to provide that the prescribed period is 30 days (in the case of a digital camera device) and 168 hours (in the case of a non-digital camera device). The period of 168 hours, which is currently the period specified by section 57, was originally inserted for the purposes of non-digital cameras and is no longer appropriate with the advent of digital cameras.

Approval of devices for multiple traffic offence detection purposes

Schedule 1 [4] inserts Division 4 in Part 4 of the Principal Act. The new Division (which contains a section 57C) will enable the same device to be approved under the Act for the purposes of several provisions of the Act dealing with the approval of devices to detect traffic offences. For example, it will be possible under the proposed section to approve a digital camera device for use as both a red light camera and a speed recording camera if the device is designed to perform both kinds of functions.

Savings and transitional provisions

Schedule 1 [10] amends clause 1 of Schedule 2 to the Principal Act to enable the Governor to make regulations of a savings or transitional nature.

Schedule 1 [11] amends Schedule 2 to the Principal Act to insert a new Part that contains provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Consequential amendments of other Acts and statutory rules

Schedule 2.1 amends section 283 of the *Criminal Procedure Act 1986*, which deals with the need for, and admissibility of, certain evidentiary matters relating to law enforcement devices. The proposed amendments are consequential on the amendments made to the Principal Act concerning the approval and use of evidence from approved average speed detection devices.

Schedule 2.2 amends section 38 of the *Fines Act 1996*, which deals with the circumstances in which a person issued with a penalty reminder notice for a vehicle offence detected by an approved camera device is not liable to pay the penalty. The proposed amendment adds offences detected by the use of approved average speed detection devices to the list of devices approved under the Principal Act to which section 38 applies.

Schedule 2.3 amends rule 20 of the *Road Rules 2008* to add a note to the rule indicating that proposed section 43A (to be inserted by Schedule 1 [1] to the proposed Act) will enable the use of average speeds and average speed limits to be used in proceedings for offences against the rule that involve heavy vehicles to which the proposed section will apply.

Schedule 2.4 amends the *Road Transport (Driver Licensing) Regulation 2008* to provide for additional demerit points to be allocated for certain offences against the *Road Rules 2008* committed in an average speed detection zone. An ***average speed detection zone*** is defined to mean a length of road to which an average speed detection zone sign applies, being a length of road beginning at an average speed detection zone sign and ending 300 metres along the length of road in the direction driven by a driver on the road who faces the sign before passing it. The object of the amendments is to discourage certain contraventions of the *Road Rules 2008* in order to avoid approved average speed detection devices. The amendments are consistent with the allocation of demerit points in connection with the commission of such offences in Safe-T-Cam zones.

Schedule 2.5 amends section 179 of the *Road Transport (General) Act 2005* to expand the enforcement provisions in that section so that the provisions will also apply to a speeding offence detected by use of an average speed obtained from information gathered from approved average speed detection devices. Section 179 provides for the responsible person for a vehicle to be held responsible for camera recorded offences unless the person discloses who the actual offender was by means of a statutory declaration.

Schedule 2.6 amends the *Road Transport (General) Regulation 2005* to provide for additional amounts for penalty notices issued for certain offences against the *Road Rules 2008* committed in an average speed detection zone. The amendments are consistent with the amendments made to the *Road Transport (Driver Licensing) Regulation 2008* by Schedule 2.4.

Schedule 2.7:

(a) amends clause 156B of the *Road Transport (Safety and Traffic Management) Regulation 1999* to prescribe security indicators for photographs taken by approved average speed detection devices, and

(b) inserts clause 156D in the Regulation for the purpose described above in connection with the amendment made by Schedule 1 [3], and

(c) inserts clause 160A in the Regulation to provide for a ground of exculpation for a driver for the purposes of proposed section 43A (3) of the Principal Act if another driver has been held responsible for the speeding offence and a statutory declaration made by the driver seeking exculpation concerning the matter is provided to the State Debt Recovery Office.

Issues Considered by the Committee

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

Issue: Clause 2 – Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

22. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee accepts the advice received from the Minister's office, that the decision was made by the Roads and Traffic Authority for the following reasons:

> "As the Bill introduces offences for avoidance, other agencies (namely SDRO, Police, Judicial Commission etc) need time to ensure systems are in place to comply with provisions in the Act…a communication plan to advise drivers of the changes has been agreed upon and time would be required to develop and implement. Other implementation issues including the tendering for suppliers could not be fully commenced until the Bill had been passed".

23. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

The Committee makes no further comment on this Bill.

13. STATE EMERGENCY SERVICE AMENDMENT BILL 2009

Date Introduced:	17 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Steve Whan MP
Portfolio:	Emergency Services

Purpose and Description

1. The object of this Bill is to amend the *State Emergency Service Act 1989* (the ***principal Act***):

   (a) to change the title of the head of the State Emergency Service (the ***SES***) from Director-General of the State Emergency Service to the Commissioner of the State Emergency Service and to change the title of the Deputy Director-General to Deputy Commissioner, and

   (b) to provide that the SES is to act as the combat agency in respect of tsunamis and is to co-ordinate the evacuation and welfare of affected communities, and

   (c) to preclude councillors (within the meaning of the *Local Government Act 1993*) from being appointed as the controller of an SES unit or as the controller of all SES units in a local government area.

Background

2. The State Emergency Service Amendment Bill 2009 provides additional legislative recognition of the responsibilities of one of this State's most valuable emergency services and provides for its ongoing structural reform.

3. In New South Wales the State Emergency Service was designated as the combat agency responsible for tsunami, in a logical extension of its expertise in flood planning and response. The service was responsible for the development of the New South Wales tsunami plan—a sub-plan of the New South Wales Disaster Plan—and has been a consistent and committed participant in the Australian Emergency Management Committee's Australian Tsunami Working Group.

4. According to the Agreement in Principle speech the government considers that the service's role as the lead combat agency for tsunami planning and response should be detailed in legislation, along with its responsibilities in respect to floods, storms and the protection of life and property. The bill before the House today amends the State Emergency Service Act to reflect this major combat responsibility. The second amendment contained in this bill is the move to bring the leadership of the State Emergency Service in line with our other emergency services by replacing the title of "Director General" with that of "Commissioner". This will also apply to the rank of "Deputy". This rank and title structure is aligned with our other emergency services, such as the New South Wales Fire Brigades and the New South Wales Rural Fire Service.

5. The new funding model for the State Emergency Service, as detailed in the State Revenue and Other Legislation Amendment (Budget Measures) Bill 2008, now means that local government contributes to the overall funding of the State Emergency Service, as it has to the funding of our fire services, along with the insurance industry and the State Government.

6. This change means that the service's relationship with councils requires a higher degree of transparency and separation of powers. As a result, elected councillors will not be eligible to be appointed as local controllers, unit controllers or their deputies. Any local or unit controller or deputy who is elected to a local council will cease his or her role as a State Emergency Service controller or deputy on a date three months after their election takes effect. However, I should point that this will not affect existing controllers who currently are councillors. Only people appointed from this point onwards will be affected.

The Bill

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act (except for Schedule 1 [11]) on the date of assent to the proposed Act. Schedule 1 [11] commences on the later of the date of assent to the proposed Act or 1 July 2009 (the date of the commencement of Schedule 6.3 [1] to the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2008* that inserts the provisions being amended).

Schedule 1 Amendment of State Emergency Service Act 1989 No 164
Schedule 1 [1], [3], [5] and [11] give effect to the object set out in paragraph (a) of the Overview.
Schedule 1 [4] gives effect to the object set out in paragraph (b) of the Overview.
Schedule 1 [2] provides that notes in the principal Act do not form part of that Act.
Schedule 1 [10] provides that the emergency powers that the SES has in relation to floods, storms and emergencies which the State Emergency Operations Controller directs the SES to deal with also apply in relation to tsunamis.
Schedule 1 [6]–[9] give effect to the object set out in paragraph (c) of the Overview.
Schedule 1 [12] enables savings and transitional regulations to be made consequent on the enactment of the proposed Act.
Schedule 1 [13] inserts specific savings and transitional provisions consequent on the enactment of the proposed Act. Among other things, the provisions make it clear that the amendments precluding councillors from being appointed as unit controllers or local controllers do not affect the appointment of councillors who are also unit controllers or local controllers on the commencement of the proposed amendments.

Schedule 2 Amendment of other Acts
Schedule 2.1 amends the *Public Finance and Audit Act 1983* as a consequence of the change of title of the head of the State Emergency Service.
Schedule 2.2 amends the *Public Sector Employment and Management Act 2002* as a consequence of the change of title of the head of the State Emergency Service.
Schedule 2.3 amends the *State Emergency and Rescue Management Act 1989* as a consequence of the change of title of the head of the State Emergency Service.

State Emergency Service Amendment Bill 2009

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

14. STATE REVENUE LEGISLATION AMENDMENT BILL 2009

Date Introduced:	16 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Eric Roozendaal MLC
Portfolio:	Treasurer

Purpose and Description

1. This Bill amends certain State revenue legislation in connection with the Budget for the year 2009–2010.

2. This Bill is cognate with the *Appropriation Bill 2009*.

Background

3. The Bill will amend the *Duties Act 1997* and the *First Home Owner Grant Act 2000*.

The Bill

4. The objects of this Bill are as follows:

(a) to amend the *Duties Act 1997*:

(i) to introduce a scheme for a 50% reduction in the duty payable on new housing (to be known as the NSW Housing Construction Acceleration Plan), and

(ii) to abolish the duty payable on an application to register a caravan (including a camper trailer),

(b) to amend the *First Home Owner Grant Act 2000* to extend the period of operation of the NSW New Home Buyers Supplement.

5. **Outline of provisions**

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on assent, except for the provisions relating to the NSW Housing Construction Acceleration Plan and the abolition of duty on caravans and camper trailers, which commence on 1 July 2009.

Schedule 1 Amendment of *Duties Act 1997* No 123
Schedule 1 [1] provides for the NSW Housing Construction Acceleration Plan. Under the Plan, there is a 50% duty reduction on the following dutiable transactions:

(a) an agreement for the sale or transfer, or a transfer, of dutiable property for the purposes of the acquisition of a new home that is complete and ready for occupation,

(b) an agreement for the sale or transfer of land on which a new home is to be built before completion of the sale or transfer (an ***off the plan purchase agreement***).

The agreement for sale or transfer, or transfer, must be entered into, or occur, on or after 1 July 2009 and before 1 January 2010. An off the plan purchase agreement must generally be completed by 30 June 2011. An agreement or transfer is not eligible under the scheme if it is eligible for a duty exemption or concession under the First Home Plus scheme or a grant is payable in respect of the acquisition of the new home under the *First Home Owner Grant Act 2000*. The dutiable value of the dutiable property that is the subject of the agreement or transfer must not exceed $600,000.

Schedule 1 [2] exempts from duty an application to register a caravan or camper trailer.

Schedule 1 [3] enables savings and transitional regulations to be made as a consequence of the amendments.

Schedule 2 Amendment of *First Home Owner Grant Act 2000* No 21

Schedule 2 [1] extends the operation of the NSW New Home Buyers Supplement from 10 November 2009 to 30 June 2010. As a result, the amount of the supplement ($3,000) will continue to be available in respect of contracts for the purchase or construction of a new home that are made before 30 June 2010.

Schedule [2] and [3] are consequential amendments, which provide for the date by which off the plan purchase agreements entered into during the extension period must be completed in order to qualify for the supplement. **Schedule 2 [4]** enables savings and transitional regulations to be made as a consequence of the amendments.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

15. STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL 2009

Date Introduced:	17 June 2009
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Joseph Tripodi MP
Portfolio:	Finance

Purpose and Description

1. The State Revenue Legislation Further Amendment Bill 2009 relates to tax administration and amends various Acts administered by the Office of State Revenue.

2. According to the Second Reading Speech on 17 June 2009, the amendments were introduced to ensure that the relevant legislation is consistent with best practice tax administration. As stated in the Second Reading Speech on 17 June 2009, the Bill:

> …makes amendments in five broad areas, namely to provide revenue protection measures and address tax avoidance practice, Tax concessions for duties and land tax; Improve administration of first home benefits under the First Home Plus and First Home Owner Grant schemes; improve administration of fines enforcement; and to clarify provisions in State revenue legislation to align them with current practices and interpretations.

3. The Bill amends the *Duties Act 1997*; *Fines Act 1996*; *First Home Owner Grant Act 2000*; *Land Tax Management Act 1956*; *Petroleum Products Subsidy Act 1997*; *Taxation Administration Act 1996*; *Betting Tax Act 2001*; *Payroll Tax Act 2007*; *Insurance Protection Tax Act 2001; Unclaimed Money Act 1995;* and *Health Insurance Levies Act 1982*.

4. The amendments also include changes to the administration of fines and penalty notice by the State Debt Recovery Office in relation to the annulment of enforcement orders (Schedule 2).

Background

5. The objects of the Bill are provided below:

Amendments to the *Duties Act 1987*

6. The Bill amends the *Duties Act 1997*:

> (i) to make further provision for eligibility for a duty concession or exemption under the First Home Plus scheme, and
> (ii) to make further provision for the recovery of duty where the duty concession or exemption under the First Home Plus scheme is wrongly applied to an agreement or transfer, and

(iii) to make the duty chargeable in respect of an acquisition of an interest in a landholder chargeable regardless of whether the landholder is "land rich" and to make other changes to the scheme for landholder duty, and

(iv) to revise and simplify arrangements for the assessment of duty on mortgages, and

(v) to deter artificial, blatant or contrived schemes to reduce, avoid or postpone liability for duty by introducing special provisions relating to the assessment of tax avoidance schemes, and

(vi) to make further provision for the charging of duty in respect of the transfer of business assets, and

(vii) to provide for further concessions in respect of transactions charged with nominal duty, and

(viii) to require an emergency services levy to be treated as part of the premium of an insurance policy, for duty purposes, and

(ix) to clarify that a duty of 5% of the premium is payable on life insurance that is trauma or disability insurance, and

(x) to replace the current arrangements by which certain Crown bodies are charged with duty under that Act, and

(xi) to make other minor amendments, including for law revision purposes.

Amendments to the *Fines Act 1996*

6. The Bill amends the *Fines Act 1996*:

(i) to provide that if a person's court fine enforcement order or a penalty notice enforcement order is withdrawn or annulled, any money already paid under the order may be allocated to the payment of other fine enforcement orders payable by the person, and

(ii) to specify how applications for the annulment of penalty notice enforcement orders are to be determined, and

(iii) to clarify that amounts payable under a penalty notice received, recovered or collected by the State Debt Recovery Office on behalf of another person or body (for example, a local council) may be paid by the Office to the person or body (rather than into Consolidated Revenue as is the general rule) and that the Office may deduct or retain its fee or payment from those amounts, and

(iv) to make certain terminology used in that Act relating to motor vehicles consistent with road transport legislation.

Amendments to the *First Home Owner Grant Act 2000*

7. The Bill amends the *First Home Owner Grant Act 2000*:

(i) to extend the application of the first home owner boost for new and established homes, and

(ii) to establish a cap on eligibility for the first home owner grant, and

(iii) to allow the Chief Commissioner to vary or reverse a decision to confer a grant that was based on false or misleading information provided by the applicant for a first home owner grant at any time after the decision is made, and

(iv) to allow the Chief Commissioner to lodge a caveat in respect of land to ensure the payment of any amount that is recoverable from an applicant, and

(v) to permit information obtained in the administration of the *First Home Owner Grant Act 2000* to be disclosed in connection with the administration of the *First Home Saver Accounts Act 2008* of the Commonwealth, and

(vi) to confirm that the commencement date of an eligible transaction is the date at which an applicant's compliance with certain eligibility criteria is to be determined, and

(vii) for law revision purposes.

Amendments to the *Land Tax Management Act 1956*

8. The Bill amends the *Land Tax Management Act 1956*:

(i) to provide that lessees from the Crown of land on Lord Howe Island are exempt from land tax, and

(ii) to provide that the joint assessment of joint owners of land is to be on the basis of the aggregated values of the proportionate interests of non-exempt joint owners, and

(iii) to make it clear that when the Commonwealth is a joint owner of land, the Commonwealth's immunity from land tax does not confer immunity or exemption on any other joint owner, and

(iv) to exempt company title home units from the provision that makes land tax a first charge on land, and

(v) to make it clear that a principal place of residence concession that applies following the death of the owner of residential land extends to strata lots, and

(vi) to extend principal place of residence concessions that apply following the death of an owner to the land tax reductions that apply to partial use of land for residential purposes.

Amendments to the *Petroleum Products Subsidy Act 1997*

9. The Bill amends the *Petroleum Products Subsidy Act 1997* to provide for the abolition of the subsidy scheme under that Act on 1 July 2009 or on a later date specified by regulation.

Amendments to the *Taxation Administration Act 1996*

10. The Bill amends the *Taxation Administration Act 1996*:

(i) to provide that the market rate component of the interest rate that is payable on unpaid tax is to be updated quarterly rather than annually, and

(ii) to provide that the reduction in penalty tax for a voluntary disclosure of information relating to a tax default does not apply to certain registered taxpayers who fail to lodge a return and pay tax by the due date.

Amendments to the *Betting Tax Act 2001*

11. The Bill amends the *Betting Tax Act 2001*:

(i) to confirm that betting tax on approved betting activities is payable at a rate of 10.91 per cent, rather than the higher rate of 19.11 per cent, and

(ii) to remove the power of the Governor to make an order declaring a lower rate of betting tax for approved betting activities.

Amendments to the *Payroll Tax Act 2007*

12. The Bill amends the *Payroll Tax Act 2007*:

(i) to ensure that the relevant amount of wages that must be paid by employers annually in order for them to be designated as a designated group employer for payroll tax purposes is the same as the threshold amount for payroll tax, and

(ii) to authorise the Hardship Review Board, which is constituted under the *Taxation Administration Act 1996*, to exercise its functions under that Act in relation to payroll tax payable under the *Payroll Tax Act 2007*.

Amendments to the *Insurance Protection Tax Act 2001*

13. The Bill amends the *Insurance Protection Tax Act 2001* to ensure that the premium payable for general insurance includes any contribution required to be paid by an insurer under the *State Emergency Service Act 1989*, and for law revision purpose.

Amendments to the *Unclaimed Money Act 1995*

14. The Bill amends the *Unclaimed Money Act 1995* to provide that unclaimed dividends and other unclaimed amounts arising from the liquidation of a company that have been or will be paid to the Treasurer under a provision of the *Companies (New South Wales) Code* are to be paid to the Chief Commissioner of State Revenue and dealt with as unclaimed money under the *Unclaimed Money Act 1995.*

Amendments to the *Health Insurance Levies Act 1982*

15. The Bill makes minor amendments of a law revision nature to the *Health Insurance Levies Act 1982*.

The Bill

Outline of Provisions

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

Clause 2 provides for the commencement of the proposed Act.

Clause 3 provides that explanatory material does not form part of the proposed Act.

Schedule 1 Amendment of Duties Act 1997

Schedule 1 amends the *Duties Act 1997*. Schedule 1.1 makes amendments relating to First Home Plus. The explanatory note states that The First Home Plus scheme confers a duty exemption or concession on eligible first homebuyers.
Item [1] ensures that, if a transfer of land is exempt from duty under the scheme, a conversion of the form of title to that land (for instance from company title to strata title) is also exempt from duty. This is consistent with the treatment of other conversions in the form of title to land. Item [2] makes it clear that it is a strict requirement of the scheme that both the applicant, and his or her spouse, must not have owned residential property previously. A concession that allows a purchase to be treated as eligible under the scheme even though a small ownership share in a property is being acquired by a person who has previously owned residential property does not extend to the first home buyer's spouse. Item [2] also ensures that a person who has previously held a leasehold interest in residential property in the Australian Capital Territory is treated as a person who has

previously owned residential land in Australia and, accordingly, is not eligible under the scheme. Item [3] updates the definition of ***Australian citizen*** as a consequence of changes to Commonwealth legislation. Items [4] and [6] make further provision for the recovery of duty payable where an agreement or transfer is wrongly assessed as eligible under the scheme. At present, if the Chief Commissioner approves an application under the scheme in anticipation of the applicant complying with the residence requirement, and the applicant fails to comply with the residence requirement, the applicant is required to pay the amount of outstanding duty that would have been payable in respect of the relevant agreement or transfer if it had not been assessed as eligible under the scheme. Item [4] provides that a failure to do so is a tax default under the *Taxation Administration Act 1996*, so that interest and penalty tax may be charged in respect of a failure to pay the amount to the Chief Commissioner. Item [5] renumbers existing provisions relating to the First Home Plus scheme to accommodate the new provisions relating to recovery of duty payable where an agreement or transfer is wrongly assessed as eligible under the scheme. Item [6] makes it clear that the Chief Commissioner can reassess an agreement or transfer if the Chief Commissioner forms the opinion that the agreement or transfer is not eligible under the scheme (whether because of failure to comply with the residence requirement or otherwise). Any liability for outstanding duty that an applicant or former applicant has under the scheme is a charge on the applicant's interest in the land that is the subject of the agreement or transfer. The Chief Commissioner may lodge and maintain a caveat in respect of the land until the duty (and any interest or penalty tax) has been paid. Item [7] is a consequential amendment.

Schedule 1.2 includes amendments relating to landholder duty. The explanatory note states that the amendments replace the provisions of the *Duties Act 1997* relating to charging of duty on the acquisition of an interest in a unit trust scheme or company that is a land rich landholder. Duty is chargeable under the current provisions when a significant interest in a land rich landholder is acquired (for example, through the acquisition of shares or units in the unit trust scheme or company). Duty is charged by reference to the value of the land holdings of the unit trust scheme or company, at the same rate as the general rate for a transfer of land under Chapter 2 of the Act.

The principal changes effected by the new provisions are as follows:

> (a) Liability for duty will be assessed on the acquisition of an interest in a landholder whether or not that landholder is "land rich". That is, an acquisition of a significant interest in a unit trust scheme or company will be dutiable under the provisions if the scheme or company has land holdings with an unencumbered value of $2,000,000 or more. It will no longer be necessary to establish that its land holdings comprise 60% or more of the unencumbered value of all its property. This change will not apply to acquisitions in primary producers. Duty will only be chargeable on an acquisition of a significant interest in a primary producer if the unencumbered value of its land holdings comprise 80% or more of the unencumbered value of all its property.
> (b) Liability for duty will be extended to acquisitions of interests in public unit trust schemes and listed companies that are landholders. At present, only acquisitions in private unit trust schemes and private companies that are landholders are dutiable. However, for public unit trust schemes and listed companies that are landholders (***public landholders***), a different threshold for the charging of duty will apply. A significant interest is acquired in a public landholder only if a 90% interest in the landholder is acquired. For private landholders a 50% interest suffices. Duty on the acquisition of a significant interest in a public landholder will be charged at a

concessional rate, being 10% of the rate that would be charged on a transfer of all the land holding and goods of the public landholder.

(c) The threshold at which duty is charged on an acquisition in a private unit trust scheme is increased so that it is the same as the threshold for the charging of duty on an acquisition in a private company. In both cases, significant acquisition will now be an acquisition of an interest of 50% or more. At present, an acquisition of an interest in a private unit trust scheme is dutiable if an interest of 20% or more is acquired.

(d) Duty on the acquisition of an interest in a landholder will be charged by reference to the value of the goods of the landholder, as well as the value of its land holdings. The inclusion of goods makes the arrangements for charging of duty more consistent with Chapter 2 of the Act, which imposes duty on a transfer of land or goods (or both).

(e) Tracing provisions that allow land holdings to be traced through linked entities are revised so that entities can be linked only where a person has an interest of 50% or more in another entity (rather than 20%).

(f) Provisions that quarantine interests in private landholders that were acquired before the landholder duty provisions commenced or before the landholder held land are removed. As a result, those interests may be counted for the purpose of determining whether a person has acquired a significant interest in a landholder. However, duty will not be chargeable on an interest to the extent that it was acquired before the commencement of the landholder duty provisions or before the landholder held land in New South Wales. An interest in a landholder that is acquired at a time when a landholder does not hold land in New South Wales will continue to be quarantined for the period of 12 months after the landholder first holds land in New South Wales.

(g) The concessional treatment currently given to a private unit trust scheme that is in the process of converting into a public unit trust scheme is removed.

(h) Managed investment schemes, and sub-trusts of unit trust schemes, will be treated as unit trust schemes for the purposes of the provisions.

(i) Further provision is made for the disclosure of previous acquisitions in a landholder, so that an acquisition made more than 3 years before the acquisition to which a statement relates will have to be disclosed if it is related to a later acquisition.

(j) The definitions of ***associated person*** and ***related person*** are changed, to reflect the fact that the scheme now extends to public landholders. Interests acquired in a landholder by a person may be aggregated with interest acquired by associated persons for duty purposes. The new provisions allow trusts and companies to be treated as associated persons under the provisions if their securities are traded as stapled securities. The changes to the definitions will also apply in respect of Chapter 2 of the Act (which similarly allows dutiable transactions made by or to associated persons to be aggregated).

(k) The definition of ***associated person*** is also changed to limit the circumstances in which the responsible entity of a managed investment scheme will be deemed to be associated with the responsible entity of another managed investment scheme. (Again, this affects when dutiable transactions and acquisitions in landholders can be aggregated.)

(l) Provision is made for a partial exemption from duty under the landholder provisions where the Chief Commissioner considers it just and reasonable to grant a partial exemption. At present, only a full exemption can be granted.

(m) The general exemption under the Act for corporate reconstructions is extended to landholder duty.

The principal amendment is set out in item [2]. Items [10], [11] and [13] define the terms used in the new provisions. Item [8] extends the corporate reconstruction exemption as referred to above. Items [1], [3]–[7], [9] and [12] are consequential amendments. Transitional provisions relating to these amendments are in Schedule 1.5 [41]. The amendments will apply to the assessment of duty on interests acquired in landholders on or after 1 July 2009. However, in the case of public landholders, an acquisition of a significant interest will be chargeable with duty under the new provisions only if an acquisition is made in the public landholder on or after 1 October 2009. Acquisitions in public landholders made before 1 July 2009 are exempt from duty. There is an exemption for acquisitions in public landholders that have already been announced to the market. Concessions also apply to acquisitions made as a result of an option or agreement entered into before 11 November 2008 (the date the removal of the land rich requirement was announced in Parliament).

Schedule 1.3 includes amendments relating to mortgage duty. The explanatory note states that the amendments revise the provisions of the *Duties Act 1997* relating to mortgage duty, to simplify the duty assessment process and close avoidance opportunities. The principal changes in respect of mortgage duty are as follows:

(a) Liability for duty will be assessed on the basis of the amount of advances made under the agreement, understanding or arrangement for which the mortgage is security, so as to deter avoidance practices.
(b) The Chief Commissioner will be required to reassess the total mortgage duty payable in respect of a mortgage any time the amount secured by the mortgage is increased. The mortgage will then be charged with additional duty on the basis of the difference between the total duty chargeable on the amount secured by the mortgage, and the amount of ad valorem duty for which the mortgage has already been stamped under NSW law. This replaces the current arrangements where the amount of further mortgage duty that is chargeable is calculated by reference to the amount of any advance or further advance.
(c) All mortgages or other instruments that secure the same moneys will be treated as, and assessed as, a mortgage package (it will no longer be necessary for them to be executed within a 28-day period). This simplifies the assessment process as such mortgages or instruments will be assessed as if they are a single mortgage.
(d) There will be a concession for mortgage packages that have been charged with duty in other jurisdictions, so that the maximum duty that may be charged in respect of a mortgage package is the duty that would be chargeable if it were a single mortgage over property wholly within New South Wales. This replaces the current (more complex) arrangements for giving credit for the payment of duty in other jurisdictions.
(e) A mortgage on which any mortgage duty is unpaid will be unenforceable to the extent of any amount secured by it on which duty has not been paid.

The principal amendments are set out in items [4]–[8] and [11]–[15]. Items [1]–[3], [9], [10] and [16]–[19] are amendments of a consequential nature. Transitional provisions relating to these amendments are in Schedule 1.5 [41]. The amendments will apply to the assessment of mortgage duty for which a liability arises on or after 1 July 2009. However, any further advances made on or after 1 July 2009 in respect of mortgages first executed before 1 July 2009 that secure a definite and limited sum will continue to be assessed on

the basis of the amount of the further advance, to avoid the imposition of a duty liability that would not have been anticipated at the time of first execution of the mortgage.

Schedule 1.4 includes amendments relating to tax avoidance schemes. The explanatory note states that the object of the new provisions is to deter artificial, blatant or contrived schemes to reduce or avoid liability for duty. The provisions require a person who has avoided the payment of duty, as a result of a tax avoidance scheme that is of an artificial, blatant or contrived nature, to pay the amount of duty avoided to the Chief Commissioner of State Revenue (the ***Chief Commissioner***). A tax avoidance scheme is any scheme entered into, made or carried out by a person, whether alone or with others, for the sole or dominant purpose of enabling liability for duty to be avoided or reduced.

"Scheme" is broadly defined to include trusts, contracts and other arrangements, promises, plans and other proposals. The provisions list a number of factors to be considered for the purpose of determining whether a scheme is a tax avoidance scheme and whether it is of an artificial, blatant or contrived nature.

The amount of duty avoided by a person as a result of a tax avoidance scheme is the amount of duty or additional duty that would have been payable (or that it is reasonable to expect would have been payable) by the person if the tax avoidance scheme had not been entered into or made. A liability to pay the duty avoided is taken to have arisen when the duty would have been payable had the scheme not been entered into or made.

The Chief Commissioner must give reasons to a taxpayer for assessing or reassessing liability for duty on the basis that a scheme is a tax avoidance scheme. Transitional provisions relating to the amendment are in Schedule 1.5 [41]. The amendment applies to tax avoidance schemes entered into or made, or carried out, on or after 1 July 2009.

Schedule 1.5 includes other amendments. The explanatory note states the following

Business assets
Items [1]–[7] clarify the provisions of the *Duties Act 1997* relating to the charging of duty in respect of a transfer of business assets. The amendments make it clear that duty is chargeable in respect of a transfer of the goodwill of a business when goods have been supplied or services have been provided by the business in New South Wales in the previous 12 months. It will no longer be necessary for there to have been a sale of goods or services by the business (that is, the provisions extend to goods supplied, or services provided, whether or not for consideration). Also, the provision of services that a business is contractually obliged to provide can fall within the ambit of the provisions.

Nominal duties
Item [8] requires a minimum duty of $10, instead of $50, to be charged in respect of a transfer of shares of a corporation that is not the legal or beneficial owner of land in New South Wales. Item [9] requires a transfer of marketable securities that is chargeable with duty at the concessional rate of $50 to be charged with ad valorem duty, if the ad valorem duty would be less than $50. This is subject to a minimum duty of $10 being payable. Item [11] allows a nominal duty of $50 to be charged in respect of a transfer of dutiable property from a sub-custodian of a custodian of a responsible entity of a managed investment scheme to the custodian of the responsible entity of a managed investment scheme. Item [12] requires a transaction made in connection with a deceased estate that is chargeable with duty at the concessional rate of $50 to be charged with ad valorem

duty, if the ad valorem duty would be less than $50. This is subject to a minimum duty of $10 being payable.

Insurance duty
Item [26] requires an emergency service levy to be treated as a part of the premium of an insurance policy, for duty purposes.
Items [28]–[31] clarify that a duty of 5% of the premium is payable on life insurance that is trauma or disability insurance.

Application of Act to Crown
Items [38] and [42] replace the current arrangements for specifying which (if any) Crown bodies are liable to pay duty under the *Duties Act 1997*. In general the Crown in right of New South Wales is not required to pay duty under the Act. However, the Act currently allows the Governor to make an order applying the Act to specified persons or bodies (whether statutory or otherwise), so that those persons or bodies do not benefit from a duty exemption. The amendments remove the power to make such an order. Instead, the Crown bodies that are required to pay duty will now be specified in a Schedule to the Act. Item [39] enables the Schedule to be amended by proclamation of the Governor. The Crown bodies which are required to pay duty (and which are already required to pay duty) are Forests NSW, the State Transit Authority of New South Wales and the Sydney Harbour Foreshore Authority.

Law revision amendments
Item [10] clarifies a reference to property, so that it applies to dutiable property only.
Items [13]–[17] update provisions relating to liquor licences, as a consequence of the repeal of the *Liquor Act 1982* and its replacement by the *Liquor Act 2007*. Items [18]–[25] and [33]–[37] update certain duty exemptions that apply in respect of transactions that are made as a consequence of the termination of a de facto relationship, to reflect the fact that financial settlements made in connection with the breakdown of a de facto relationship are now made under the *Family Law Act 1975* of the Commonwealth, rather than under State law. Item [43] replaces the definition of "de facto relationship" so that it is consistent with the Commonwealth law. Items [27] and [32] update references to a Commonwealth health services law, as a consequence of changes to Commonwealth law.

Savings and transitional matters
Item [40] enables savings and transitional regulations to be made as a consequence of the amendments. Item [41] contains particular savings and transitional provisions, that clarify the application of the amendments made to the *Duties Act 1997* by the Schedule. Most of the amendments in Schedule 1.5 have effect from 1 July 2009. The amendments relating to de facto relationships have effect from 1 March 2009 (when the relevant changes were made to Commonwealth law).

Schedule 2 Amendment of Fines Act 1996
Schedule 2 amends the *Fines Act 1996*. The explanatory note states that Items [1], [3], [4], [10] and [11] of the proposed amendments to the *Fines Act 1996* (the ***Act***) bring the terminology of the Act into line with road transport legislation and other legislation in relation to offences related to vehicles. In particular, Schedule 2 [3] extends certain provisions of the Act to the "responsible person" in relation to a vehicle (within the meaning of the *Road Transport (General) Act 2005*) rather than simply the owner of the vehicle and Schedules 2 [10] and 2 [11] replace the outdated term "registered owner" in a number of provisions with the correct term "registered operator".

Items [2], [5] and [9] of the proposed amendments amend sections 17, 46 and 52 of the Act to provide that if a person's court fine enforcement order or a penalty notice enforcement order is withdrawn or is annulled, any amount of money that would otherwise be repayable to the person may instead be allocated by the State Debt Recovery Office towards the payment of amounts payable under any other fine enforcement order that is in force in relation to the person. The State Debt Recovery Office will be required to notify the person concerned of any such allocation, but a failure to notify the person does not affect that allocation.

Item [6] of the proposed amendments amends section 49 of the Act to make changes to the process of determining applications for annulments of penalty notice enforcement orders. The new provisions will provide that, when dealing with an application for annulment, the State Debt Recovery Office:

(a) must annul the penalty notice enforcement order if it is satisfied that:
(i) the person was not aware that a penalty notice had been issued until the enforcement order was served, but only if the application was made within a reasonable time after that service, or
(ii) the person was otherwise hindered by accident, illness misadventure or other cause from taking action in relation to the penalty notice, but only if the application was made within a reasonable time after the person ceased being so hindered, or
(iii) the penalty reminder notice was, or both the penalty notice and the penalty reminder notice, in relation to a particular offence were, returned as being undelivered to its sender after being sent to the person at the person's recently reported address and notice of the enforcement order was served on the person at a different address, and

(b) may annul the penalty notice enforcement order if:
(i) it is satisfied that a question or doubt has arisen as to the person's liability for the penalty or other amount concerned, but only if the person had no previous opportunity to obtain a review of that liability, or
(ii) having regard to the circumstances of the case, it is satisfied that there is other just cause why the application should be granted.

In general terms, the changes make clearer the situations where the State Debt Recovery Office must annul an order (paragraph (a) (i)–(iii)) and where the Office has a discretion to annul an order (paragraph (b) (i) and (ii)).

The amendment also provides that, if the person concerned does not dispute the person's liability to pay the amount payable under the penalty notice and that amount was paid to the State Debt Recovery Office at the time of making the application for the annulment of the order, after the annulment the matter does not need to be referred to the Local Court. (In all other cases the matter must be referred to the Local Court on annulment).

Items [7] and [8] make consequential amendments.

Item [12] of the proposed amendments inserts proposed section 122B into the Act to clarify that any amount payable under a penalty notice received, recovered or collected by the State Debt Recovery Office under arrangements entered into with a person under section 114 (1A) (for example, a local council) may be paid by the Office to the person

concerned in accordance with those arrangements (rather than into Consolidated Revenue as is the general rule). The Office may, in accordance with the arrangements concerned, deduct or retain from any amount paid or to be paid the Office's fee or payment in relation to the penalty notices and amounts concerned.

Schedule 3 Amendment of First Home Owner Grant Act 2000
Schedule 3 amends the *First Home Owner Grant Act 2000*. The explanatory note states the following:

First home owner boost for new and established homes.
Items [8]–[15] extends the first homeowner boost for new and established homes from 30 June 2009 to 31 December 2009. For new homes, the current amount of the boost ($14,000) remains in place for transactions with a commencement date between 1 July 2009 and 30 September 2009. The amount is reduced to $7,000 for transactions with a commencement date between 1 October 2009 and 31 December 2009. For established homes, the current amount of the boost ($7,000) remains in place for transaction with a commencement date between 1 July 2009 and 30 September 2009. The amount is reduced to $3,500 for transactions with a commencement date between 1 October 2009 and 31 December 2009.

First home owner grant cap

Items [5] and 3 [7] establish the ***first home owner grant cap***, which will apply to all eligible transactions with a commencement date on or after 1 January 2010. The first home owner grant will only be payable in respect of an eligible transaction if the total value of the transaction does not exceed the cap, which is $750,000 (or another amount prescribed by the regulations). The ***total value*** of a transaction is:

(a) in the case of a contract to buy a home, the consideration for the transaction or the value of the property (whichever is the greater), or
(b) in the case of a contract to build a new home, the total of the consideration for the transaction and the value of the land on which the home is to be built, or
(c) in the case of the building of a home by an owner builder, the total of the value of the home (once it is built) and the value of the land on which the home is built.

Item [18] enables the Chief Commissioner to require an applicant for a first home owner grant to provide a valuation of the property or consideration for the purposes of determining the total value of a transaction. The Chief Commissioner may also have a valuation done or adopt a valuation by a registered valuer.

Item [16] provides that an applicant who receives the first home owner grant for the building of a home by an owner builder before the completion of the transaction must notify the Chief Commissioner and must repay the grant within 14 days of becoming aware that the transaction will exceed the first home owner grant cap.

Item [2] inserts definitions related to the first home owner grant cap.

Compliance with eligibility criteria
Items [3], [4] and [6] confirm that the commencement date of an eligible transaction is the date at which an applicant's compliance with certain eligibility criteria is to be determined. The commencement date of an eligible transaction is the date on which the contract for the purchase of a first home is made or, in the case of an owner builder, the date on which the laying of foundations for a first home is commenced. Item [3] makes it clear that

an applicant's relationship status (that is, whether the applicant has a spouse within the meaning of the Act) is to be determined on the commencement date of the eligible transaction for which the grant is sought. Item [4] revises a provision that allows an applicant who is legally married but separated to have his or her marital status disregarded, to make it clear that the applicant must have been separated on the commencement date of the eligible transaction. Item [6] clarifies that an applicant must be an Australian citizen or permanent resident on the commencement date of the eligible transaction.

Miscellaneous

Item [1] updates the definition of ***Australian citizen*** as a consequence of changes to Commonwealth laws.

Item [17] removes the 5-year time limit on the Chief Commissioner's power to vary or reverse a decision in relation to a grant if the decision was made on the basis of false or misleading information provided by an applicant. Accordingly, a decision to confer the grant that was based on false and misleading information provided by the applicant may be varied or reversed at any time after it has been made.

Item [19] allows the Chief Commissioner to lodge and maintain a caveat in respect of land to ensure the payment of any amount that is recoverable from an applicant or former applicant for a first home owner grant.

Item [20] permits information obtained in the administration of the Act to be disclosed in connection with the administration of the *First Home Saver Accounts Act 2008* of the Commonwealth.

Savings and transitional provisions

Item [21] enables savings and transitional regulations to be made as a consequence of the amendments to the Act and Schedule 3 [22] provides for particular savings and transitional matters.

Schedule 4 Amendment of Land Tax Management Act 1956

Schedule 4 amends the *Land Tax Management Act 1956*. The explanatory note states that Item [1] exempts land on Lord Howe Island from the provision that imposes land tax on lessees of land from the Crown. Item [2] makes it clear that for the purpose of determining the land tax liability of joint owners of land the joint assessment of those owners is to be on the basis of the aggregated interests of those joint owners who are not exempt from land tax (that is, by excluding the proportionate interest of any joint owner who is exempt from land tax). Item [3] makes it clear that when the Commonwealth is a joint owner of land, the Commonwealth's immunity from land tax does not confer a land tax exemption on any other joint owner, and the Commonwealth's immunity is to be regarded as an exemption from land tax for the purposes of the joint assessment of any other joint owner not exempt from land tax. Item [4] exempts company title home units from the provision that makes land tax a first charge on land (which remains until land tax is paid, even if the land is sold), to prevent land tax owed by the owner of one unit from being a charge on all other units in a company title block. Item [5] amends the principal place of residence concession that applies following the death of the owner to make it clear that the concession applies to strata lots used and occupied as the deceased owner's principal place of residence before death. Items [6]–[9] extend existing principal place of residence concessions that apply following the death of the owner of residential land so that those concessions will also operate for the purposes of the land tax reduction

that applies for the residential use component of mixed development or mixed use land. Item [10] enacts transitional provisions that delay the operation of the amendments until the next land tax year, with the exception of the exemption for Crown leases on Lord Howe Island which will operate from the commencement of the provision that first imposed land tax on lessees of Crown land.

Schedule 5 Amendment of Petroleum Products Subsidy Act 1997

Schedule 5 amends the *Petroleum Products Subsidy Act 1997*. The explanatory note states that Item [1] of the amendments to the *Petroleum Products Subsidy Act 1997* provides for the abolition of the payment of subsidies under that Act on 1 July 2009 (the ***subsidy abolition date***). This is the date on which it is currently proposed to discontinue payment of subsidies under the *Fuel Subsidy Act 1997* of Queensland.

Subsidies will not be payable on sales of petroleum products by registered persons on or after the subsidy abolition date. No subsidy will be payable for claims made more than 12 months after the subsidy abolition date. The amendments also authorise regulations to be made postponing the subsidy abolition date, in the event that the changes to the Queensland subsidy scheme are not proceeded with or are postponed. Item [2] enables the making of saving and transitional regulations as a consequence of the proposed amendments. Item [3] postpones the repeal of the *Petroleum Products Subsidy Regulation 2004* for one year. The regulation is due to be repealed by the *Subordinate Legislation Act 1989* on 1 September 2009. The postponement of the repeal ensures that the regulation continues to have effect in the event that the subsidy abolition date is postponed, and for the purposes of the winding up of the subsidy scheme.

Schedule 6 Amendment of Taxation Administration Act 1996

Schedule 6 amends the *Taxation Administration Act 1996*. The explanatory note states that Item [1] of the proposed amendments provides that the market rate component of the interest rate payable on unpaid tax will be updated every quarter, rather than once a year as is currently the case. The applicable rate will be the Bank Accepted Bill rate published by the Reserve Bank before the beginning of the quarter in which the interest falls due, rather than the rate for May of the preceding financial year. Items [2] and [3] provide that the reduction in penalty tax for a voluntary disclosure of information relating to a tax default does not apply to certain registered taxpayers who fail to lodge a return and pay tax by the due date. As a result of the amendments, a registered employer under the *Payroll Tax Act 2007* will not be able to claim a reduction in penalty tax for a voluntary disclosure of payroll tax liability if the disclosure is made after a failure to lodge a return as required by that Act or pay tax in accordance with that Act.

Schedule 7 Amendment of other Acts

Schedule 7.1 amends the *Betting Tax Act 2001*. The explanatory note states that the amendments confirm that betting tax on approved betting activities is payable, and has always been payable, under the *Betting Tax Act 2001* at a rate of 10.91 per cent, rather than the higher rate of 19.11 per cent specified in the Act. The amendments also remove the power of the Governor to make an order declaring a lower rate of betting tax for approved betting activities under the Act, so that it will no longer be possible to change the rate of tax payable except by changing the Act.

Schedule 7.2 amends the *Health Insurance Levies Act 1982*. The explanatory note states that Item [1] updates a reference to a Commonwealth Act as a result of changes to Commonwealth law. Item [2] omits an outdated reference to the *Ambulance Services Act*

1976, which has been repealed. Item [3] replaces a reference to the repealed *Ambulance Services Act 1990*.

Schedule 7.3 amends the *Insurance Protection Tax Act 2001*. The explanatory note states that Item [1] updates a reference to a Commonwealth health services law as a result of changes to Commonwealth law. Item [2] ensures that, for the purposes of the calculation of the tax payable under the *Insurance Protection Tax Act 2001*, the premium payable for general insurance includes any contribution required to be paid by an insurer under the *State Emergency Service Act 1989*.

Schedule 7.4 amends the *Payroll Tax Act 2007*. The explanatory note states that Item [1] ensures that the relevant amount of wages that must be paid by employers annually in order for them to be designated as a group for payroll tax purposes is the same as the threshold amount for payroll tax. Item [2] authorises the Hardship Review Board, which is constituted under the *Taxation Administration Act 1996*, to exercise its functions under that Act in relation to payroll tax payable under the *Payroll Tax Act 2007*. The Hardship Review Board exercised functions with respect to payroll tax under the *Pay-roll Tax Act 1971*, and has continued to do so since that Act was repealed and replaced by the *Payroll Tax Act 2007*. Item [4] validates certain decisions of the Board that were made after the commencement of the new Act and before the amendment. Item [3] corrects an incorrect cross-reference.

Schedule 7.5 amends the *Unclaimed Money Act 1995*. The amendment provides that unclaimed dividends and other unclaimed amounts arising from the liquidation of a company that have been or will be paid to the Treasurer under a provision of the *Companies (New South Wales) Code* are to be paid to the Chief Commissioner of State Revenue and dealt with as unclaimed money under the *Unclaimed Money Act 1995*.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

16. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2009

Date Introduced:	17 June 2009
House Introduced:	Legislative Council
Minister Responsible:	Hon Nathan Rees MP
Portfolio:	Premier

Purpose and Description

1. This Bill repeals certain Acts and amends certain other Acts and instruments in various respects and for the purpose of effecting statute law revision; and to make certain savings.

2. Schedule 1 amends the *Fire Brigades Act 1989* to require an insurance company to inform policy holders when renewing their property or home and contents insurance how much of their premium is attributable to contributions the insurance company is required to make under the *State Emergency Service Act 1989* towards the costs of State Emergency Service expenditure. Similar requirements already exist in relation to an insurance company's contributions under the *Fire Brigades Act 1989* and the *Rural Fires Act 1997*.

3. Schedule 1 amends the *Land Acquisition (Just Terms Compensation) Act 1991* to enable corrections to be made to compensation notices for compulsory acquisitions. Corrections may be made only before the offer of compensation in the notice is accepted and only to deal with clerical errors or obvious mistakes, or to reflect any change in the determination of the Valuer-General as to the amount of compensation to be offered.

4. It makes amendments to the *Environmental Planning and Assessment Act 1979*. These include an amendment to the director general's power to make payments out of the Special Contributions Areas Infrastructure Fund to a local council or the Department of Planning for the provision of local infrastructure. The amendment aims to clarify that the power is not limited by the requirement for the Minister to identify what part of a special infrastructure contribution is for the provision of local infrastructure by a local council or the department.

5. Schedule 1 also amends the *Residential Tenancies Act 1987* to clarify that the Tenancy Commissioner may prosecute any offence under that Act without the need for the prosecution to follow on from the investigation or resolution of a complaint by a landlord or tenant. Similar amendments will be made to the *Community Land Management Act 1989*, the *Residential Parks Act 1998* and the *Strata Schemes Management Act 1996* in relation to the power of the Commissioner for Fair Trading to prosecute under those Acts.

6. The *Firearms Act 1996* will be amended to require a person whose licence under the Act has expired or ceases to be in force for any other reason to immediately surrender the licence and any firearm in the person's possession to police and to authorise the

police to seize any such firearm. Currently, a person is required to surrender a licence and firearms and the police authorised to seize such firearms only if the person's licence ceases to be in force because it is suspended or revoked.

7. Amendments to the *Protection of the Environment Operations Act 1997* will enable the Department of Environment and Climate Change to recover reasonable costs from a person when it issues a notice to prevent the carrying out of an activity in an environmentally unsatisfactory manner.

8. Schedule 1 also makes various amendments to the *Mental Health (Forensic Provisions) Act 1990*, which relate to information-sharing protocols under the Act. These include amendments requiring the existing powers of the departments of Health, Corrective Services and Juvenile Justice to enter into such protocols with each other to be exercised by the heads of those departments, and allowing area health services and statutory health corporations to participate in sharing and exchanging information under the protocols. The amendments will allow information to be shared or exchanged under a protocol to cover a broader group of persons for the purposes of the Act.

9. The *Law Enforcement (Controlled Operations) Act 1997* will be amended to extend the protection given by the Act to a participant in a cross-border controlled operation who is unaware that the authority for the operation has been varied or cancelled. This will ensure that the protection given by the Act applies in respect of operations in the nature of cross-border controlled operations that are authorised by or under the provisions of a corresponding law. This is aimed at ensuring mutual recognition of the Act by Queensland and is consistent with national model laws that have been developed for cross-border controlled operations.

10. Schedule 1 also makes various amendments to the *Water Management Act 2000*. The amendments include broadening the category of persons whom the Minister may require to prepare reports concerning compliance with directions given to them under the Act. The amendments also include increasing the maximum monetary penalty that a Local Court may impose in proceedings for an offence against the Act where an offence against the Act is prosecuted in the Local Court. This aims to ensure that the maximum monetary penalty parallels the amount that a Local Court may impose under the *Protection of the Environment Operations Act 1997*.

Background

11. Schedule 1 to the Bill makes minor amendments to a range of Acts and instruments. The amendments are explained in detail in the explanatory note relating to the Act or instrument concerned, as set out in Schedule 1.

12. Schedule 2 amends certain Acts and instruments for the purpose of effecting statute law revision. The amendments are explained in detail in the explanatory note relating to the Act or instrument concerned, as set out in Schedule 2.

13. Schedule 3 to the Bill amends certain Acts for the purpose of effecting statute law revision, consequent on the enactment of the *Legal Profession Act 2004*.

14. Schedule 4 amends certain Acts in relation to the official notification of the making of certain statutory instruments on the NSW legislation website that is maintained by the Parliamentary Counsel.

15. Schedule 5 repeals a number of Acts and statutory instruments and provisions of Acts. Clause 1 repeals Acts and a statutory instrument that are redundant. Clause 2 repeals redundant provisions of Acts. Clause 3 repeals provisions of Acts that contain only commenced amendments to other Acts or instruments. Clause 4 repeals State environmental planning policies that contain only amendments and ancillary provisions.

16. Section 30 (2) of the *Interpretation Act 1987* ensures that the repeal of an Act or statutory rule does not affect the operation of any savings, transitional or validation provision contained in the Act or statutory rule, and that the repeal of an amending Act does not affect any amendment made by the Act. Section 5 (6) of the *Interpretation Act 1987* provides that the provisions of section 30 that apply to a statutory rule also apply to an environmental planning instrument. The Acts or instruments that were amended by the Acts being repealed are available electronically at www.legislation.nsw.gov.au.

17. Schedule 6 to the Bill contains savings, transitional and other provisions of a more general effect than those set out in Schedule 1. It includes a provision allowing the Governor, by proclamation, to revoke the repeal of any Act or instrument or the provision of any Act or instrument repealed by the proposed Act.

The Bill

18. The objects of this Bill are:

(a) to make minor amendments to various Acts and instruments (Schedule 1), and
(b) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedules 2–4), and
(c) to repeal certain Acts and instruments and provisions of Acts (Schedule 5), and
(d) to make other provisions of a consequential or ancillary nature (Schedule 6).

19. **Outline of provisions**

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act.
Clause 3 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.
Clause 4 provides for the repeal of the amendments made by the proposed Act after the amendments have commenced. Once the amendments have commenced, those provisions will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending provision does not affect the amendments made by that provision.

Schedule 1 Minor amendments
Schedule 1 makes amendments to the following Acts and instruments:
Adoption Act 2000 No 75
Adoption Amendment Act 2008 No 103
Annual Reports (Departments) Regulation 2005
Annual Reports (Statutory Bodies) Regulation 2005
Australian Museum Trust Act 1975 No 95
Coastal Protection Act 1979 No 13
Community Land Management Act 1989 No 202
Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2
Crimes (Domestic and Personal Violence) Act 2007 No 80
Dangerous Goods (Road and Rail Transport) Act 2008 No 95

Statute Law (Miscellaneous Provisions) Bill 2009
District Court Act 1973 No 9
Electricity Supply Act 1995 No 94
Environmental Planning and Assessment Act 1979 No 203
Environmental Planning and Assessment Amendment Act 2008 No 36
Fire Brigades Act 1989 No 192
Firearms Act 1996 No 46
Gas Supply Act 1996 No 38
Holiday Parks (Long-term Casual Occupation) Act 2002 No 88
Holiday Parks (Long-term Casual Occupation) Regulation 2003
Innovation Council Act 1996 No 77
Land Acquisition (Just Terms Compensation) Act 1991 No 22
Law Enforcement (Controlled Operations) Act 1997 No 136
Library Act 1939 No 40
Local Courts Act 1982 No 164
Mental Health Act 2007 No 8
Mental Health (Forensic Provisions) Act 1990 No 10
Mining Amendment Act 2008 No 19
Museum of Applied Arts and Sciences Act 1945 No 31
Pesticides Act 1999 No 80
Police Act 1990 No 47
Privacy and Personal Information Protection Act 1998 No 133
Protection of the Environment Operations Act 1997 No 156
Real Property Act 1900 No 25
Registered Clubs Act 1976 No 31
Residential Parks Act 1998 No 142
Residential Tenancies Act 1987 No 26
State Property Authority Act 2006 No 40
Strata Schemes Management Act 1996 No 138
Subordinate Legislation Act 1989 No 146
Supreme Court Act 1970 No 52
Sydney Opera House Trust Act 1961 No 9
Threatened Species Conservation Act 1995 No 101
Water Act 1912 No 44
Water Management Act 2000 No 92

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

SECTION B: POSPONEMENT OF REPEAL OF REGULATIONS

Notification of Postponement

S. 11 Subordinate Legislation Act 1989

Paper No: 3361a

NOTIFICATION OF THE PROPOSED POSTPONEMENT OF THE REPEAL OF THE INDUSTRIAL RELATIONS (GENERAL) REGULATION 2001; EMPLOYMENT PROTECTION REGULATION 2001

File Ref: LRC 2820

Attorney General and Minister for Industrial Relations

Issues

1. By correspondence received on 11 June 2009, the Attorney General and Minister for Industrial Relations advised the Committee that he is proposing to postpone the staged repeal of the above regulations.

Recommendation

2. That the Committee write to the Attorney to advise that it has considered the reasons provided by the Minister for the postponement of the staged repeal of the above regulations and does not have any concerns with this proposal.

Comment

Industrial Relations (General) Regulation 2001

3. The Minister has proposed the fourth repeal postponement of the *Industrial Relations (General) Regulation 2001*, due for automatic repeal on 1 September 2009.

4. The *Industrial Relations (General) Regulation 2001* contains provisions essential to the operation of the *Industrial Relations Act 1996*, for example matters relating to unfair dismissal exemptions.

5. In his letter received on 11 June 2009, the Minister wrote that:

> The continuing structure and content of the Industrial Relations Act (and correspondingly the supporting Regulation) is receiving on-going analysis extending into 2009-10 in terms of the ultimate effect that the new Commonwealth Government's Fair Work Act 2009 will have on NSW's industrial relations system. I believe that this situation amounts to 'exceptional circumstances' justifying non

interference with the present NSW industrial relations regulatory arrangements through the staged repeal program.

Employment Protection Regulation 2001

6. The Minister has proposed the fourth repeal postponement of the *Employment Protection Regulation 2001*, due for automatic repeal on 1 September 2009.

7. The *Employment Protection Regulation 2001* controls the operation of the employment termination notice requirements of the *Employment Protection Act 1982* by specifying the factors when notice of termination of employment is not required.

8. In his letter received on 11 June 2009, the Minister proposed the postponement of the repeal of the above regulation on the basis of 'exceptional circumstances' due to the on-going analysis of the effect that the new Commonwealth Government's Fair Work Act 2009 will have on NSW's industrial relations system.

New South Wales

ATTORNEY GENERAL
MINISTER FOR INDUSTRIAL RELATIONS

OIR No: 09MIN0211
Min Ref: AG09/02662

9 JUN 2009

Mr A Shearan MP
Chairperson
Legislation Review Committee
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Shearan

I refer to the *Industrial Relations (General) Regulation 2001 and the Employment Protection Regulation 2001* which are scheduled for automatic repeal under the staged repeal program of the *Subordinate Legislation Act 1989* on 1 September 2009.

Pursuant to section 11(4) of the Subordinate Legislation Act, I advise the Legislation Review Committee that it is proposed that these two Regulations will be the subject of a repeal postponement recommendation to the Governor. This will be the fourth repeal postponement occasion for each Regulation. For the reasons explained below, these Regulations cannot be allowed to lapse or be re-made before 1 September 2009.

Industrial Relations (General) Regulation 2001

The Industrial Relations (General) Regulation contains provisions essential to the operation of the Industrial Relations Act 1996. It includes matters relating to unfair dismissal exemption situations; notification of parties to enterprise agreements; pay slip and employer records requirements; union prosecution rights; issue of penalty notices; Industrial Relations Commission, Industrial Magistrate and union machinery matters; deemed employment situations; and Commission fee prescriptions.

The continuing structure and content of the Industrial Relations Act (and correspondingly the supporting Regulation) is receiving on-going analysis extending into 2009-10 in terms of the ultimate effect that the new Commonwealth Government's Fair Work Act 2009 will have on NSW's industrial relations system. I believe that this situation amounts to 'exceptional circumstances' justifying non-interference with the present NSW industrial relations regulatory arrangements through the staged repeal program.

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Employment Protection Regulation 2001

The Employment Protection Regulation importantly controls the operation of the employment termination notice requirements of the Employment Protection Act 1982 by specifying the factors when notice is not required (eg work unregulated by an award/agreement, severance payments already within an award/agreement or equivalent to a Schedule standard, short-term employees). Additionally, the Regulation prescribes the forms of notice and their manner of service.

Postponement of repeal of this related industrial relations Regulation is sought on the same 'exceptional circumstances' basis as for the Industrial Relations (General) Regulation.

Any inquiries which your officers may have in relation to this matter may be directed to Peter Boland of the Office of Industrial Relation, Legal Branch on telephone number 90204628 or by e-mail Peter.Boland@oir.commerce.nsw.gov.au.

Yours sincerely

(John Hatzistergos)

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Appendix 1: Index of Bills Reported on in 2009

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Crimes (Criminal Organisations Control) Bill 2009	5
Crimes (Forensic Procedures) Amendment Bill 2009	7
Crimes (Sentencing Procedure) Amendment (Council Law Enforcement Officers) Bill 2009	5
Criminal Legislation Amendment Bill 2009	6
Criminal Organisations Legislation Amendment Bill 2009	6
Education Amendment Bill 2009	3

	Digest Number
Education Amendment (Educational Support For Children With Significant Learning Difficulties) Bill 2008*	1
Education Amendment (Publication of School Results) Bill 2009	9
Electricity Supply Amendment (Energy Savings) Bill 2009	7
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	8
Energy Legislation Amendment (Infrastructure Protection) Bill 2009	7
Food Amendment (Meat Grading) Bill 2008*	1
Game and Feral Animal Control Amendment Bill 2009	8
Garling Inquiry (Clinician and Community Council) Bill 2009*	5
Gas Supply Amendment (Ombudsman Scheme) Bill 2009	5
Government Information (Information Commissioner) Bill 2009	9
Government Information (Public Access) Bill 2009	9
Government Information (Public Access) (Consequential Amendments and Repeal) Bill 2009	9
GreyHound Racing Bill 2009	5
Harness Racing Bill 2009	5
Hawkesbury-Nepean River Bill 2009	4
Health Legislation Amendment Bill 2009	4
Heritage Amendment Bill 2009	7
Home Building Amendment (Insurance) Bill 2009	6
Hurlstone Agricultural High School Site Bill 2009	3, 6
Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009	4
Land Acquisition (Just Terms Compensation) Amendment Bill 2009	7
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	2
Liquor Amendment (Special License) Conditions Bill 2008	1
Mining Amendment (Safeguarding Land And Water) Bill 2009*	7

	Digest Number
Motor Accidents Compensation Amendment Bill 2009	6
Motor Accidents (Lifetime Care And Support) Amendment Bill 2009	7
Motor Sports (World Rally Championship) Bill 2009	9
NSW Lotteries (Authorised Transaction) Bill 2009	8
NSW Trustee and Guardian Bill 2009	8
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	2
National Parks and Wildlife (Broken Head Nature Reserve) Bill 2009	9
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	8
Parking Space Levy Bill 2009	3
Personal Property Securities (Commonwealth Powers) Bill 2009	9
Racing Legislation Amendment Bill 2009	5
Real Property and Conveyancing Legislation Amendment Bill 2009	4
Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009	8
Road Transport Legislation Amendment (Traffic Offence Detection) Bill 2009	9
Rookwood Necropolis Repeal Bill 2009	8
Rural Lands Protection Amendment Bill 2009	8
State Emergency and Rescue Management Amendment Bill 2009	8
State Emergency Service Amendment Bill 2009	9
State Revenue Legislation Amendment Bill 2009	9
State Revenue Legislation Further Amendment Bill 2009	9
Statute Law (Miscellaneous Provisions) Bill 2009	9
Surveillance Devices Amendment (Validation) Bill 2009	4
Succession Amendment (Intestacy) Bill 2009	5
Telecommunications (Interception and Access) (New South Wales) Amendment Bill 2008	1

	Digest Number
Transport Administration Amendment (CountryLink Pensioner Booking Fee Abolition) Bill 2009	3
Western Lands Amendment Bill 2008	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1		
Civil Liability Legislation Amendment Bill 2008	Attorney General	28/10/08			12	
Contaminated Land Management Amendment Bill 2008	Minister for Climate Change and the Environment	22/09/08	03/12/08		10	1
Crimes (Administration of Sentences) Amendment Bill 2008	Attorney General and Minister for Justice	2/12/07			15	
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	6/02/09		9	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07	13/2/09	1		2
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1	
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning		12/06/08		8	
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7		
Home Building Amendment	Minister for Fair Trading		30/10/08		10, 13	
Liquor Legislation Amendment Bill 2008	Minister for Gaming and Racing	24/11/08	5/01/09		14	2
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07	22/01/09	1		2
Parking Space Levy Bill 2009	Minister for Transport	23/03/09	26/05/09			3, 8
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1, 2		
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1		
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2009

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Associations Incorporation Bill 2009		N, R			N, R
Barangaroo Delivery Authority Bill 2009	N				
Biofuel (Ethanol Content) Amendment Bill 2009	N			N	N, R
Courts and Other Legislation Amendment Bill 2009	R, N				
Crimes (Criminal Organisations Control) Bill 2009	R, N		R		
Crimes (Forensic Procedures) Amendment Bill 2009	N				
Criminal Legislation Amendment Bill 2009		N			
Criminal Organisations Legislation	R, N			N	
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	N				
Game and Feral Animal Control Amendment Bill 2009	R, N				
Gas Supply Amendment (Ombudsman Scheme) Bill 2009				N	
GreyHound Racing Bill 2009				N	
Harness Racing Bill 2009				N	
Hawkesbury-Nepean River Bill 2009				N	
Health Legislation Amendment Bill 2009	N				
Heritage Amendment Bill 2009	N			N, R	
Home Building Amendment (Insurance) Bill 2009	N				
Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009				N	
Land Acquisition (Just Terms Compensation) Amendment Bill 2009	N				
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	N, R, C	R			
Liquor Amendment (Special Licence) Conditions Bill 2008				N, R	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Motor Accidents Compensation Amendment Bill 2009				N	
Motor Sports (World Rally Championship) Bill 2009	N				
NSW Lotteries (Authorised Transaction) Bill 2009	R, N				
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	N		N	N	
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	R, N				
Parking Space Levy Bill 2009				N	N, C
Racing Legislation Amendment Bill 2009				N	
Real Property and Conveyancing Legislation Amendment Bill 2009	N, R				
Succession Amendment (Intestacy) Bill 2009	N			N	
Surveillance Devices Amendment (Validation) Bill 2009	N, R				
Western Lands Amendment Bill 2008				R	

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

Appendix 4: Index of correspondence on regulations

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008	Digest 2009
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12	
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08	5/01/09	10	2
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10	