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Contact Details	Legislation Review Committee Legislative Assembly Parliament House Macquarie Street Sydney NSW 2000
Telephone	02 9230 3418
Facsimile	02 9230 3052
Email	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc/digests

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.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. FISHERIES MANAGEMENT AMENDMENT BILL 2004

Date Introduced:	31 March 2004
House Introduced:	Legislative Council
Minister Responsible:	The Hon Ian Macdonald MLC
Portfolio:	Agriculture and Fisheries

Purpose and Description

1. This Bill amends the *Fisheries Management Act 1994* in a number of ways, including:

   (a) providing for the issue of further classes of shares in a share management fishery (after the initial issue has taken effect) on the basis of catch history in the fishery;

   (b) providing for the revision and implementation of fishery management strategies;

   (c) revising the definition of ***harm*** for the purposes of offences relating to protected marine vegetation;

   (d) increasing the penalty for unlicensed commercial fishing; and

   (e) allowing provisions of a management plan that are common to a number of fisheries to be contained in a single supporting plan.

2. The Bill also makes consequential amendments to the *Marine Parks Act 1997* and the *Subordinate Legislation Act 1989*.

Background

3. In his second reading speech, the Minister set out the context of the proposed changes. He said that:

> the seafood industry in New South Wales is worth $500 million dollars to the State's economy and employs about 4,000 people.
>
> ... To ensure commercial fishing is conducted in a sustainable manner it is carefully managed against environmental, economic and social objectives. Management tools available under the Fisheries Management Act include fisher and boat licensing arrangements, controls on the types of fishing gear, fishing closures and mechanisms to cap the number of fishers in a fishery.

> The Act also provides for additional incentives that encourage fishers to adopt the most modern fishery management practices, particularly through the allocation of property rights or shares in a fishery. [1]

4. According to the Minister, the amendments made in this Bill follow consultation with the commercial fishing industry, including on the draft Bill itself.

The Bill

Amendment of the *Fisheries Management Act 1994*

Fishing business transfers

5. The Minister stated that, currently under the Act, the term *fishing business*

> refers to all the various components of a fishing business, including the boat or boats, fishing gear and the validated catch history. The concept of fishing business is now well-established within the industry and is used as a basis for managing overall levels of commercial fishing activity.[2]

6. Under the amendments, a *fishing business* is defined as a business determined by the Director-General to be a separate and identifiable fishing business.

   The Director-General may also determine the components of that fishing business, which may include fishing boats, fishing gear, fishing authorities (such as licences, shares and endorsements) and catch history. Any such determination is to be made in accordance with the provisions of the regulations or the management plan for a fishery.

   The Bill regulates the transfer of fishing businesses or components of fishing businesses[3]. Proposed Division 4C extends the restrictions on transfers of fishing businesses that already operate under the Act in relation to restricted fisheries to other commercial fisheries, in particular to share management fisheries.[4]

   There is to be a public register of fishing business determinations made by the Director-General.

7. The amendments authorise the regulations, or the management plan for a fishery, to make provision for the recognition or restriction of fishing rights following the transfer of a fishing business or a component of a fishing business (referred to as *fishing business transfer rules*).

   For instance, the fishing business transfer rules may provide that a person who acquires a component of a fishing business does not acquire any fishing rights unless

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[1] The Hon Ian Macdonald, MLC, Minister for Agriculture and Fisheries, Second Reading Speech, *Parliamentary Debates (Hansard)* Legislative Council, 31 March 2004.

[2] The Hon Ian Macdonald, MLC, Minister for Agriculture and Fisheries, Second Reading Speech, *Parliamentary Debates (Hansard)* Legislative Council, 31 March 2004.

[3] See schedule 1, clause 5.

[4] "*Share management fisheries*" are those set out in Sch 1 to the Act and include abalone, lobster, and ocean trawl and estuary fisheries.

the person acquires *all* components of the fishing business. Such a provision would effectively impose a cap on the number of operators in a fishery.

8. The fishing business transfer rules may authorise the Minister to cancel a fishing authority issued under the Act if a component of the fishing business is transferred in contravention of the rules.[5]

9. Fishing business determinations made before the commencement of the amendments continue notwithstanding these amendments [sch 1, cl 46].

Issue of further classes of shares in share management fishery

10. The amendments authorise further classes of shares in a share management fishery to be issued after the initial share issue has taken effect. Any such shares are to be issued in accordance with the management plan for the fishery and on the basis of catch history [sch 1,cl 22 (proposed section 71A) and cl 25 (a consequential amendment)].

Nominated fishers

11. Currently, section 69 of the Act provides that shareholders in a share management fishery may nominate a commercial fisher to take fish in the fishery on their behalf.

12. However, the Act allows a shareholder in a share management fishery to nominate 2 or more commercial fishers to take fish in the fishery in respect of the same shareholding *only if* authorised to do so under the management plan for the fishery.

    The amendments makes it clear that, before the commencement of the management plan, the Minister may determine the matters that may be provided for by the plan and accordingly may authorise such nominations [sch 1,cl 21].

New category 1 share management fisheries

13. According to the Minister:

> Share management [of fisheries] has been available for use as a management tool since the current Act was proclaimed in 1995. It gives fishers greater security of access to a fishing resource and provides a real incentive for fishers to protect their fishery.
>
> Until recently, abalone and lobster fisheries were the only two of the State's significant commercial fisheries that were administered as category 1 share management fisheries. The shares held by fishers working in abalone and rock lobster fisheries are automatically renewed every 10 years—they are issued in perpetuity. Moreover compensation must be paid if the fishery is removed from the Act as a share management fishery.[6]

[5] See clause 5, proposed section 34T.

[6] The Hon Ian Macdonald, MLC, Minister for Agriculture and Fisheries, Second Reading Speech, *Parliamentary Debates (Hansard)* Legislative Council, 31 March 2004.

14. Recently, the ocean hauling fishery, the ocean trap and line fishery, the estuary general fishery and the estuary prawn trawl fishery were converted from category 2 share management fisheries to category 1 share management fisheries.[7]

The ocean prawn-trawl fishery and part of the ocean fish trawl fishery (also category 2 share management fisheries) were amalgamated into one fishery, now known as the ocean trawl fishery. The amalgamated fishery was also made a category 1 share management fishery.

15. According to the Minister,

> Issuing category 1 shares significantly upgrades the level of tenure fishers have over their access rights to the resource and provides an appropriate incentive to manage their fisheries in a sustainable way. This change provides an important incentive for fishers to make decisions in the long-term best interest of a fishery. The level of permanency and asset security provided by this change significantly improves current arrangements.[8]

16. Currently the Act provides that if a share management fishery is converted from category 2 to category 1, the persons entitled to shares in the new category 1 share management fishery are the persons who are shareholders in the category 2 share management fishery.

However, shares have not yet been issued in those fisheries converted to category 2 share management. Accordingly, the Act is amended to make it clear that the provision applies only if a category 2 share management fishery is converted after shares have taken effect [sch 1,cl 6].

17. All the new category 1 share management fisheries are also *restricted fisheries*.[9] Under the Act, shares are issued in the fisheries on the basis of entitlements to fish in the corresponding restricted fishery[10].

The amendments will also permit shares to be issued, on an equitable basis, to persons who would have been entitled to fish in the restricted fishery had they applied for the proper authority to do so before the fishery ceased to be a restricted fishery [sch 1,cl 47].

18. A provision is included in the descriptions of the share management fisheries in Schedule 1 to the Act to make it clear that the fisheries extend to ocean waters that are managed under an arrangement with the Commonwealth under the Act only while that arrangement has effect [sch 1,cl 44].

19. The amendments also validate anything done or omitted to be done in relation to share management fisheries that would have been validly done or omitted had the

[7] This amendment took effect on 27 March 2004. A "*category 1 share management fishery*" means a fishery specified in Part 1 of Schedule 1 and a "*category 2 share management fishery*" means a fishery specified in Part 2 of Schedule 1.

[8] The Hon Ian Macdonald, MLC, Minister for Agriculture and Fisheries, Second Reading Speech, *Parliamentary Debates (Hansard)* Legislative Council, 31 March 2004.

[9] A "*restricted fishery*" means an exploratory, developmental or other restricted fishery declared under Division 3 of Part 4 of the Act.

[10] See section 50.

amendments to the Act proposed to be made by the Bill been in force at the time it was done or omitted [Sch 1,cl 47, proposed clause 6E].

Fishery management strategies

20. The Act requires the Minister to prepare a fishery management strategy in relation to each designated fishing activity, such as fishing activities in share management fisheries.

Strategies are used as the basis for environmental assessment of fishing activities under the *Environmental Planning and Assessment Act 1979* and as an ongoing management tool.

Strategies may be revised from time to time under subsection 7C(2) of the Act.

The proposed amendments make it clear that such a revision may be effected by including provisions in a later strategy (whether or not for the same activity) that are expressed to amend, replace, or otherwise revise the earlier strategy.

21. The amendments also provide that the Minister may set or revise priorities for the implementation of actions contemplated by strategies, in particular, for the purpose of co-ordinating the implementation of actions that are common to 2 or more strategies [sch 1,cl 4].

Harm to marine vegetation

22. At present, the Act contains offences for harming mangroves, seagrasses and protected marine vegetation in certain areas[11]. However, the current definition of "harm" in the Act *excludes* harm caused by changing the habitat of marine vegetation[12]. The amendments remove that exclusion.

In addition, the amendments extend the definition of *harm* to any action that prevents light from reaching marine vegetation [sch 1,cl 42].

23. According to the second reading speech,

> the current definition of 'harm' does not cover harm to vegetation caused by deliberate alteration of the environment.

The Minister said that:

> Consequently, people are not restricted from making certain changes to the environment that harm vegetation such as mangroves and seagrass, which are important fish nursery and habitat areas.
>
> The shading of seagrass by structures such as jetties that are sometimes built across seagrass beds is one example of the type of activity that this amendment is directed

[11] See Part 7, Division 4 of the Act.

[12] Section 220B of the Act defines "*harm*" as:

(a) in the case of fish—take, injure or otherwise harm the fish; or

(b) in the case of marine vegetation—gather, cut, pull up, destroy, poison, dig up, remove, injure or otherwise harm the marine vegetation, or any part of it;

but in any such case does not include harm by changing the habitat of the fish or marine vegetation.

> towards. The actual construction work [of a jetty] may do very little harm to the seagrass, but the resultant shading from the structure will eventually kill it.[13]

24. Transitional provisions make it clear that the changes do not affect the continuation of existing activities carried out under authorities given under any State law (such as a jetty or other use of land previously authorised under the *Environmental Planning and Assessment Act 1979*).

    An additional transitional provision protects the continuation of any other activities that would be lawful but for these amendments changes, for a period of 5 years [sch 1,cl [48].

Unlicensed commercial fishing

25. Section 102 of the Act makes it an offence for a person to undertake commercial fishing without a licence. The Bill increases the penalty for this offence from 100 penalty units ($11,000) to 1,000 penalty units ($110,000) for an individual.

    It also provides for a higher penalty for this offence when committed by a corporation, namely 2,000 penalty units (currently $220,000) [sch 1,cl 28].

Supporting plans

26. At present, the Act requires a management plan to be prepared in relation to each share management fishery. The amendments allow provisions that may be contained in such a management plan, and that are common to all share management fisheries or a specified class of share management fisheries, to be contained in a single *"supporting plan*".

27. Proposed section 57A provides for supporting plans. Subsection 57A(1) provides that:

> The Minister may arrange for the preparation of a draft plan relating to management of all or any specified class of share management fisheries.

28. A supporting plan, like a management plan, is to be prepared by the Minister following public consultation, consultation with industry and others. It is also made by regulation.

    A management plan for a share management fishery may adopt the provisions of a supporting plan.

    A supporting plan has no effect in relation to a fishery except to the extent that it is adopted by the management plan [sch 1, cls 3 and 9–15].

Amendment to *Subordinate Legislation Act 1989*

29. This amendment is necessary because of the amendment that allows provisions that are common to two or more share management fisheries to be contained in a single

[13] The Hon Ian Macdonald, MLC, Minister for Agriculture and Fisheries, Second Reading Speech, *Parliamentary Debates (Hansard)* Legislative Council, 31 March 2004.

supporting plan rather than in separate management plans. Draft supporting plans are subject to the same public consultation requirements as management plans.

Management plans currently do not require the preparation of a regulatory impact statement under the *Subordinate Legislation Act 1989*. It is proposed to extend the same exemption to supporting plans. See Sch 2.2.

Issues Considered by the Committee

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

Issue: Clause 2 – Commencement by proclamation

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

    While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to an inappropriate delegation of legislative power.

31. The Department has advised the Committee that regulations need to be made before some provisions of the Bill can commence. According to the Department, its aim is to have the Bill proclaimed by July, but this will depend on when the Bill is passed by Parliament and when the regulations are made.

The Committee makes no further comment on this Bill.

2. HEALTH CARE COMPLAINTS AMENDMENT (SPECIAL COMMISSION OF INQUIRY) BILL 2004

Date Introduced:	31 March 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Morris Iemma MP
Portfolio:	Health

Purpose and Description

1. This Bill amends the *Health Care Complaints Act 1993* to facilitate investigations and prosecutions arising from the Walker Special Commission of Inquiry concerning Campbelltown and Camden Hospitals (the Special Commission).

Background

2. According to the Minister in his second reading speech,[14]

> the Government established the Special Commission of Inquiry into the Campbelltown and Camden Hospitals headed by Mr Bret Walker SC after the report of the HCCC[15] in December 2003.
>
> ...
>
> Mr Walker has recommended that the Government introduce special remedial legislation to facilitate the implementation of the further actions recommended in his interim report. This need has arisen because the existing complaints legislation does not contemplate or permit intervention such as the special commission.
>
> Mr Walker has expressed the view that a subsequent prosecution may be subject to an argument that it is unlawful because of this "interference" in the decision-making process. Mr Walker has said that this is by no means an argument that may be safely ignored.
>
> The bill is necessary to prevent legal challenges on this and other technical grounds by health practitioners who will be subject to further investigation.
>
> ... The need for this legislation also arises because of the necessity to prevent further delays in this already lengthy process.

3. Pursuant to a suspension of Standing Orders, the Bill passed all stages in the Legislative Assembly and Legislative Council on 31 March 2004. Under s 8A(2), the Committee is not precluded from reporting on a Bill because it has passed a House of the Parliament or become an Act.

[14] The Hon Morris Iemma MP, Minister for Health, Second Reading Speech, *Parliamentary Debates (Hansard)* Legislative Assembly, 31 March 2004.

[15] HCCC (Health Care Complaints Commission)

The Bill

4. The Bill commenced on the date of assent, 1 April 2004.

5. Under proposed Schedule 5 to the Act, the HCCC is required to conduct investigations recommended by the Special Commission in relation to health practitioners.

   If a recommendation for such an investigation is made, the matter is taken to be a complaint made under the Principal Act and the obligations that ordinarily must be met before an investigation can begin, are taken to have been met [cl 2].

6. On the recommendation of the Special Commission, the HCCC must refer a specified matter in relation to a health practitioner to a registration authority for assessment by a professional or impairment assessment body.[16]

   If a recommendation for such a referral is made, the obligations required to be complied with before a matter is referred taken to have been met [cl 3].

7. The Special Commission is authorised to provide the HCCC, a health registration authority or a professional or impairment assessment body with documents or other information obtained by the Special Commission in the course of its inquiries [cl 4].

8. In addition, the HCCC, any registration authority, any professional or impairment assessment body or any disciplinary body may take into account any matter contained in a report of the Special Commission (or other information used by the Special Commission) in any investigation or other action taken in respect of a health practitioner under the Act or a health registration Act [cl 5].

9. In relation to this clause, the Minister stated that:

> This provision will put beyond doubt that the special commission's material can be considered without the risk of legal challenge. It will remain, however, the responsibility of each relevant body to form its own view on the material it considers.

10. Investigations and disciplinary and other action arising from the recommendations of the Special Commission are protected from certain legal challenges [cl 6].

    For example, such actions cannot be challenged, reviewed, quashed or called into question before any court of law, administrative review body or disciplinary body in any proceedings.

11. According to the Minister, this provision:

> will prevent challenges on the basis that either the special commission or the HCCC has already considered the matters. Similarly, the fact that the special commission has made recommendations in relation to these matters will not be a reason to challenge the decisions of the HCCC or the tribunal.

12. The Bill provides that anything done by the HCCC, before the commencement of the proposed Schedule, with respect to the investigation of a matter in anticipation of a recommendation of the Special Commission, is taken to have been done after that

[16] "Professional assessment body" and "impairment assessment body" are defined in clause 2.

commencement if the recommendation is contained in a report of the Special Commission [cl 7].

Issues Considered by the Committee

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

Issue: Clause 2 – Procedural fairness

13. It may be that clause 2 has the effect, in the context of a recommendation by the Special Commission of investigation by the HCCC, of removing the capacity of health practitioners, the subject of initial complaint, to provide information at the preliminary "assessment" stage of enquiry by the HCCC.

14. The common law requires procedural fairness at even a preliminary stage of report, prior to a determination to proceed to a hearing as a result of which rights may be affected.[17] This is so because even the preliminary assessment might affect reputation.

The purpose of ensuring procedural fairness is not particularly related to putting a case that might dissuade an assessing body from proceeding to a full enquiry, but rather merely the protection of good character.

15. In the case of the complaints now investigated by the Special Commission, whether or not the health practitioners involved have been informed of the assessment and provided information to the HCCC is now irrelevant.

16. The Bill looks to the future. Clause 2(3)(b) and (c) are framed on the basis of the initial assessment and all it entails under Part 4 Division 2 of the Act being deemed to have been performed, and requiring the HCCC to give notice to the relevant health practitioner of the matter now being investigated.

Procedural fairness is provided for in the future process of the investigations envisaged under this Bill.

17. Furthermore, the impact on procedural fairness where the Special Commission has recommended investigation by the HCCC is insubstantial. It is too late at the juncture envisaged by the Bill to be dealing with procedural fairness at the "assessment" stage.

18. The Committee is of the view that clause 2 does not unduly trespass on practitioners' right to procedural fairness.

Clause 4 – Privacy: use of personal information

19. This clause provides for the Special Commission to pass documents obtained by it in the course of its enquiries to the HCCC and various health disciplinary bodies. This power raises the possibility of documents bearing personal material being passed from the body which originally obtained them, to a variety of other bodies.

[17] See *Annetts v McCann* (1990) 170 CLR 596 and *Ainsworth v Criminal Justice Commission* (1992) 175 564.

20. While this clause raises privacy concerns, the Committee is of the view that as the documents were obtained in the first place by the Special Commission under statutory power, it is reasonable for Parliament to provide that such documents will be further available to a discrete group health disciplinary bodies.

21. The Committee is of the view that, on balance, clause 4 does not unduly trespass on the right to privacy.

Non-reviewable decisions [s 8A(1)(b)(iii) *LRA*]

Issue: Clause 6: No review of the actions of the HCCC

22. This clause is a privative clause protecting the actions of the HCCC and the various health disciplinary bodies (being actions recommended by the Special Commission or prosecution that follows from such action) in relation to health practitioners from any form of litigation brought by such practitioners.

23. The terms of subclause 6(3) make clear that the Parliament intends the protection of the HCCC and the health disciplinary bodies (and the Special Commission, complainants and persons associated with them) to be very wide. It purports to protect all these bodies and officers from suit even where compliance with the Act or the Bill, or with the requirements of natural justice (procedural fairness), is in issue.

24. This terminology is on its face of some concern, as it would seem to insulate the various bodies and officers referred to above from litigation even where action was taken that could not be supported by reference to the Act itself.

However, the decision of the NSW Court of Appeal in *Mitchforce v Industrial Relations Commission* (2003) 57 NSWLR 212 makes clear that despite such a wide ranging privative clause, a superior court may still review the actions of persons claiming immunity in the purported performance of statutory powers, where such actions are not performed in good faith by reference to the statutory provisions. To that extent, the public interest is safeguarded.

25. The Committee is of the view that the protection from suit provided for in clause 6 is very broad. It has the potential to deny a person natural justice by removing the opportunity for review of any decision or action by the HCCC or the health disciplinary bodies, even one that is not authorised under the Act.

26. The Committee notes that, notwithstanding clause 6, a superior court may review the actions of the HCCC and the health disciplinary bodies where those actions are not performed in good faith by reference to the Act.

27. The Committee refers to Parliament the question of whether clause 6 makes the right to natural justice unduly dependent on non-reviewable decisions.

The Committee makes no further comment on this Bill.

3. HEALTH LEGISLATION AMENDMENT BILL 2004

Date Introduced:	2 April 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Morris Iemma MP
Portfolio:	Health

Purpose and Description

1. The objects of this Bill are:

(a) to amend the *Dental Technicians Registration Act 1975* to permit a dental technician to perform dental prosthetics as part of an approved course of training to become a dental prosthetist,

(b) to amend the *Human Tissue Act 1983*:

(i) to remove the requirement that businesses that supply blood back to the donor of the blood be authorised to supply blood by the Department of Health;

(ii) to remove the requirement that the consent of a parent is required before a 16 or 17 year old can donate blood;

(iii) to permit the removal of blood from a child under the age of 16 years without the agreement of the child in certain limited circumstances;

(iv) to remove the restriction on the premises at which blood can be collected;

(v) to permit the regulations to prescribe defences against offences or actions in tort or contract brought in relation to infections from prescribed contaminants in blood; and

(vi) to increase certain penalties and to make other minor amendments;

(c) to amend the *Mental Health Act 1990*:

(i) to make it a requirement that the assistance of the police should only be sought in relation to the involuntary admission of a person if there is a serious concern about a person's safety; and

(ii) to permit the Chief Health Officer to delegate his or her functions under the Act;

(d) to amend the *Nurses Act 1991* to permit the Director-General of the Department of Health to approve guidelines that provide for the possession, use, supply or prescription of drugs of addiction by nurse practitioners and midwife practitioners; and

(e) to amend the *Poisons and Therapeutic Goods Act 1966* to permit the Director-General of the Department of Health to approve a nurse practitioner or a midwife practitioner as a prescriber of drugs of addiction.

The Bill

2. The five schedules of the Bill each amend one of the five Acts outlined above.

3. The Bill is to commence on a day or days to be proclaimed.

4. The amendments relating to midwife practitioners cannot be commenced prior to commencement of those parts of the *Nurses Amendment Act 2003* that make provision for midwife practitioners.

Amendments to the *Dental Technicians Registration Act 1975*

5. The Bill permits a dental technician to perform dental prosthetics under the supervision of a dentist or a dental prosthetist as part of an approved course of training to become a dental prosthetist.

6. According to the second reading speech, this amendment is necessary to facilitate a new mechanism of distance education in dental prosthetics that has been developed by TAFE.[18]

Amendments to the *Human Tissue Act 1983*

7. The Bill restructures Parts 3 to 3B of the *Human Tissue Act 1983* so that the proposed Part 3 provides for blood and semen donation (rather than blood and semen donation being dealt with in separate parts) and separates the provisions regulating businesses providing blood and blood products [proposed Part 3A] and businesses supplying semen [proposed Part 3B].

   Under the Bill, only *exempt suppliers* may supply blood and blood products, and only *authorised suppliers* may supply semen.[19]

8. The changes introduced by the Bill include:

   - children aged 16 and 17 no longer requiring a parent's or guardian's consent to donate blood [proposed s 19];
   - a parent or guardian of a child under the age of 16 years being able to consent to the removal of the child's blood without the consent of the child for the purpose of using the blood in the treatment of the child's parent, brother or sister if:
     - a medical practitioner (other than the practitioner treating child's parent or sibling) certifies in writing that the child is unable to understand the nature and effect of the removal of blood and that any risk to the child's health caused by the removal of blood is minimal; and

[18] Mr Bryce Gaudry MP, Parliamentary Secretary, *NSW Legislative Assembly Hansard*, 2 April 2004.

[19] The Bill amends the definitions of ***exempt supplier*** and ***authorised supplier*** in s 4 of the Act as set out in Schedule 2 [1] and [2] of the Bill. Under the Bill, ***exempt supplier*** includes the Australian Red Cross, the governing body of a hospital, and any other body prescribed by regulations and ***authorised supplier*** means a person who is the holder of an authorisation issued in accordance with section 21I authorising the person to carry on a business of supplying semen

- a medical practitioner certifies in writing that the parent, brother or sister is likely to die or suffer serious damage to his or her health unless blood removed from the child is used in the treatment [proposed s 20A];

- the removal of requirements regarding premises where blood may be removed from a person[20] [current s 21 is deleted by schedule 2[3] of the Bill];

- increasing the penalty from 2 to 100 penalty units (ie, from $220 to $11,000) for removing blood or obtaining semen without a certificate signed by the donor relating to the donor's medical suitability [proposed s 20D];

- allowing regulations to prescribe additional defences to prosecutions or actions in tort or contract relating to infections from prescribed contaminants in blood brought against the supplier of the blood or blood product (other than the donor) or the person who carried out the transfusion or treatment [proposed s 20F(2)].

- removing the requirement that businesses supplying blood or blood products to the donor of that blood be authorised by the Department of Health [proposed s 21].

9. According to the second reading speech, these amendments result from a review of the supply of blood and blood products undertaken as part of the Government's obligations under the Competition Principles Agreement.[21]

Amendments to the *Mental Health Act 1990*

10. The Bill amends the *Mental Health Act 1990* to provide that police assistance may only be sought for the transporting of a patient to hospital if a medical practitioner or accredited person considers there to be serious concerns relating to the safety of the person or other persons if a member of the police force does not assist [schedule 3[1] and [3] – [5]].

    The Act currently provides that such assistance can be requested where it is considered necessary. According to the second reading speech, NSW Police has raised concerns that the current wording is too broad and can allow police assistance to be required when it is convenient rather than strictly necessary.[22]

11. The Bill also adds an explicit power for the Chief Health Officer to delegate any of his or her functions under the Act to authorised officers [schedule 3[2]].

Amendments to the *Nurses Act 1991* and the *Poisons and Therapeutic Goods Act 1966*

12. The Bill amends the *Nurses Act 1991* and the *Poisons and Therapeutic Goods Act 1966* to allow the Director-General's guidelines for nurse practitioners or midwife practitioners to make provision for nurse practitioners or midwife practitioners to possess, use, supply or prescribe any drug of addiction, such as methadone [schedules 4 and 5].

[20] Currently blood may only be removed at a hospital, premises used by a body approved by the Minister, or premises prescribed by regulation.
[21] Mr Bryce Gaudry MP, Parliamentary Secretary, *NSW Legislative Assembly Hansard*, 2 April 2004.
[22] Mr Bryce Gaudry MP, Parliamentary Secretary, *NSW Legislative Assembly Hansard*, 2 April 2004.

Issues Considered by the Committee

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

Removal of blood without consent: Proposed s 20A *Human Tissue Act 1983*

13. As outlined above, proposed s 20A of the *Human Tissue Act 1983* allows blood to be taken from a child under the age of 16 who is unable to consent to such a procedure in order to treat a parent or sibling.

14. The Committee notes that this can only be done if:

- a medical practitioner (other than the practitioner treating child's parent or sibling) certifies in writing that the child is unable to understand the nature and effect of the removal of blood and that any risk to the child's health (including psychological and emotional health) caused by the removal of blood is minimal; and
- a medical practitioner certifies in writing that the parent, brother or sister is likely to die or suffer serious damage to his or her health unless blood removed from the child is used in the treatment;

15. Given the safeguards in proposed section 20A of the *Human Tissue Act 1983* as to the child's health and the potential significant benefit to be obtained from removing the blood, the Committee does not consider that this provision trespasses unduly on personal rights or liberties.

Issue: Clause 2 Commencement by proclamation

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

While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to an inappropriate delegation of legislative power.

17. The Department of Health has advised that the delay in commencement was due to the need to prepare appropriate regulations, administrative arrangements and education programs. The Department considered that such action would take at least three months.

18. The Committee considers these to be appropriate reasons for delaying the commencement of the Bill.

The Committee makes no further comment on this Bill.

4. LIQUOR AMENDMENT (PARLIAMENT HOUSE) BILL 2004*

Date Introduced:	1 April 2004
House Introduced:	Legislative Assembly
Member Responsible:	Mr Barry O'Farrell MP
Portfolio:	Private Member's Bill

Purpose and Description

1. Currently, the sale of alcohol in New South Wales Parliament House is exempted from the provisions of the *Liquor Act 1982* (the Act). This Bill proposes to remove that exemption.

Background

2. According to the Member's second reading speech:

> the Liquor Act applies to all bar, restaurant and catering facilities in this city and State that are available to the public, which is why this legislation should also apply to Parliament House. Another reason is that currently under the leadership, care and management of the catering manager at Parliament House, David Draper, we seek to practise the Government's policy of the responsible service of alcohol, which was introduced by the former Minister for Gaming and Racing in 1997. At present the policy is practised in Parliament House as a voluntary code, although it is practised in all other licensed premises across the State as a mandatory code that is statutorily laid down by the Liquor Act 1982.
>
> The Liquor Act sets out the penalties if the code is breached. I am satisfied that David Draper and his staff endeavour to abide by the responsible service of alcohol provisions, particularly in relation to functions held in Parliament House involving members of the public. However, I am concerned that, because the code is voluntary and not mandatory, and because effectively there is no back-up to it, the nature of this place can thwart the intent of the responsible service of alcohol. The responsible service of alcohol code is intended to ensure that inebriated people no longer have access to alcohol. That is set out in section 125C of the *Liquor Act 1982*, which describes "responsible service" thus:
>
> (1) The regulations may make provision for or with respect to requiring or encouraging the adoption of responsible practices in the sale, supply, service and promotion of liquor.
>
> (2) In particular, the regulations may make provision for or with respect to the following:
>
> (a) restricting or prohibiting the conduct of promotions or other activities (including discounting or supply of liquor free of charge) that could result in misuse or abuse of liquor, such as binge drinking or excessive consumption,

(b) the standards to be observed on licensed premises in the sale and service of liquor, for the purpose of preventing misuse or abuse of liquor,

(c) requiring licensees, managers and other persons engaged in the sale, supply, service and promotion of liquor and other activities on the licensed premises to undergo courses of training that will promote responsible practices in those activities.[23]

3. The Member further stated:

> The Bill seeks to remove section s 6(1)(a) of the *Liquor Act.* Secondly, it seeks to provide this place with a ***governor's licence***[24]. In that regard, some residual amendments are made to the *Liquor Act*. The governor's licence exists at a number of other facilities and premises around the State. For instance, it applies to the Trust Box at the Sydney Cricket Ground and the Sydney Football Stadium. More importantly, it ensures that my principal objective is met, which is that the responsible service of alcohol provisions are applied mandatorily in this Parliament House with the same penalties, provisions and sanctions as are applied to any other purveyor of liquor across the State.[25]

The Bill

4. Currently, s 6(1)(a) of the Act provides that

> Nothing in this Act applies to or in respect of the sale of liquor in Parliament House under the control of the proper authority.

5. This Bill omits s 6(1)(a) from the Act [Schedule 1[1]].

6. This Bill also provides that the Governor may, on the recommendation of the Minister and subject to such conditions as the Minister may impose, authorise the Licensing Court to issue a licence authorising the sale of liquor in Parliament House [Schedule 1[2]].

Under the Act, the Minister may not make such a recommendation, however, unless satisfied, on information supplied by the Liquor Administration Board, that practices will be in place at the licensed premises as soon as the licence is issued that ensure, as far as reasonably practicable, that:

(a) liquor is sold, supplied and served responsibly on the premises; and

(b) all reasonable steps are taken to prevent intoxication on the premises

[23] Mr B R O'Farrell MP, *NSW Parliamentary Papers (Hansard),* Legislative Assembly, 1 April 2004.

[24] A *Governor's licence* is a license issued pursuant to s 19 of the *Liquor Act 1982,* which provides that the Governor may, on the recommendation of the Minister and subject to such conditions as the Minister may impose, authorise the court to issue a licence authorising the sale of liquor at, among other places, premises vested in the Crown or a public authority constituted by an Act. A Governor's licence is subject to most requirements of the *Liquor Act 1982,* including the provisions in relation to the responsible service of alcohol, ensuring the quiet and good order of the neighbourhood, underage and intoxication offences, and disciplinary action by police and the Director of Liquor and Gaming. For further information of Governor's licences, refer to the Department of Gaming and Racing's Fact Sheet 15: *Governor's Licences* available at: http://www.dgr.nsw.gov.au/IMAGES/PUBLICATIONS/Liquor%20%26%20Gaming/Fact%20Sheets/15_governor.pdf

[25] Mr B R O'Farrell MP, *NSW Parliamentary Papers (Hansard),* Legislative Assembly, 1 April 2004.

and that those practices will remain in place while the licence is in force [s 19(2A) *Liquor Act 1982*]

7. This Bill is to commence on the day that is three months after the date of assent [Clause 2]. The Member's office informed the Committee that purpose of this delay in commencement is to allow Parliament House sufficient time to prepare for the changes brought about by this Bill.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

5. MINING AMENDMENT (MISCELLANEOUS PROVISIONS) BILL 2004

Date Introduced:	2 April 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Kerry Hickey MP
Portfolio:	Mineral Resources

Purpose and Description

1. This Bill amends the *Mining Act 1992* so as:

   (a) to establish procedures for the regulation of access to private land by holders of mineral claims and opal prospecting licences;

   (b) to provide for the establishment of management funds for mineral claims districts and opal prospecting areas, for the imposition of levies for payment into those funds and for the expenditure of money in those funds;

   (c) to impose restrictions on the granting of mining subleases;

   (d) to provide the landholder of any land with immunity from liability for the acts and omissions of other persons exercising rights under the principal Act in or on the land; and

   (e) to enact other provisions of a minor, consequential or ancillary nature, including provisions of a savings and transitional nature.

Background

2. According to the second reading speech:

> This bill represents the legislative arm of the Government's agenda to reform land access and environmental management on the Lightning Ridge opal fields. The Lightening Ridge area is … the world's number one source of valuable black opal, with a production value of approximately $35 million each year …
>
> … A major government review of mining operations and processes at Lightning Ridge, which reported at the end of 2002, identified a number of issues that needed to be addressed. The review … identified a number of matters that can be addressed only through changes to the Mining Act.
>
> … Considerable consultation has taken place with the opal mining industry and land-holders about these proposed amendments. [26]

3. The Lightning Ridge Mining Board, the Lightning Ridge Miners Association, the Grawin Glengarry Sheepyard Miners Association, the New South Wales Farmers

[26] The Hon Kerry Hickey MP, Minister for Mineral Resources, Second reading speech, Legislative Assembly, *Parliamentary Debates (Hansard),* 2 April 2004.

Association, the Landholders Protection Association, the local community and opal prospectors and miners were consulted in this process.[27]

The Bill

Subleases

4. The Bill limits the subleasing of mining leases to areas not exceeding 100 hectares.

   A sublease that purports to have effect over an area of land that exceeds 100 hectares will be void for all purposes [proposed section 83A].

5. According to the Minister in his second reading speech:

> Under the proposed amendment, companies wishing to enter arrangements similar to a sublease for an area greater than 100 hectares will be required to apply for a lease transfer. Under existing provisions, the Minister has the authority to amend the conditions of a lease. That means that these larger subleases will now be subject to ministerial approval and amendment of conditions. This proposal will bring these large subleases into line with similar provisions for leases and other authorities. The proposed amendment will also abolish the practice of absentee landlords; a practice that is not widespread in the industry, but still one that can cause concern…[28]

Immunity of Crown and others

6. Currently, the Act provides that no action lies against the Crown, the Minister or any person administering the Act in respect of any injury or loss suffered or incurred in relation to the exercise of any rights conferred by an *opal prospecting licence* [section 235].

7. However, there is no equivalent provision in relation to authorities[29] or mineral claims.

   Holders of an authority or a mineral claim are required to indemnify the Crown against any such loss or injury [sections 171 and 218 respectively].

   Sections 171 and 218 are amended to bring them into line with section 235 by removing any right to compensation from the Crown.

Access Management Plans

8. A new part [Part 10A] is inserted into the Act to establish *access management plans* [sch 1, c 32].

9. Access management plans can make provision for a number of matters, including:

   - the rights of access that the holder of a small-scale title has in relation to the land that the plan governs;

[27] The Hon Kerry Hickey MP, Minister for Mineral Resources, Second reading speech, Legislative Assembly, *Parliamentary Debates (Hansard),* 2 April 2004.

[28] The Hon Kerry Hickey MP, Minister for Mineral Resources, Second reading speech, Legislative Assembly, *Parliamentary Debates (Hansard),* 2 April 2004.

[29] An "authority" is defined in the Act as an "exploration licence, an assessment lease or a mining lease". See the Dictionary to the Act.

- the conditions to which the holder of a small-scale title is subject in relation to their exercise of any right of access;
- the manner in which any dispute arising in connection with the plan is to be resolved; and
- how a plan is to be varied or replaced.[30]

10. Access management plans apply to mineral claims and opal prospecting licences (known as "small scale titles") on land within an access management area [proposed subsection 236A(1)].

    Certain native title holders[31] are *exempt* [proposed subsection 236A(2)].

11. The Director-General may, by order published in the Gazette, constitute any land in a mineral claims district or opal prospecting area as an "access management area".

12. An access management plan for land within an access management area may be agreed between a miners' representative and a landholder, or may be determined by the Director General or the Warden's Court.[32]

    A determination by the Director General as to an access management plan[33] is reviewable by the Warden's Court on application by either the miners' representative or the landholder [proposed section 236].

13. Access management plans are to be registered [proposed section 236I].

    The Director General must, as soon as practicable after registration, publish the plan in a local newspaper circulating the area in which the land is situated [proposed section 236J].

14. Access management plans do not 'run with the land'. Unless terminated sooner, they terminate when the landholder ceases to be the landholder, or on the death of the landholder [proposed section 235M].

15. According to the Minister:

> These new arrangements, to be called access management plans, will be negotiated and agreed between a landowner and a representative of the titleholders and title applicants. Each plan will be made to meet the particular circumstances of the land-

[30] See proposed section 236D.

[31] A landholder who is a native title holder need not prepare an access management plan if:
(a) the small-scale title concerned was granted or renewed after compliance with Subdivision P of Division 3 of Part 2 of the Commonwealth Native Title Act; and
(b) the grant or renewal of the title was not an act that attracted the expedited procedure under and within the meaning of that Subdivision.

[32] The Warden's Court is established under section 294 of the Act. Under section 296, the Warden's Court has jurisdiction to hear and determine proceedings relating to a number of matters, including:
(a) the area, dimensions or boundaries of land subject to an authority or mineral claim;
(b) the right to the possession or occupation of any land by virtue of an authority or mineral claim; and
(c) the right to the use and enjoyment of water for prospecting or mining and any dispute or question relating to such a right.
This section is amended by the Bill to add additional matters within the jurisdiction of the Warden's Court. See schedule 1, clause 36.

[33] As authorised by proposed section 236F.

> holder and the titleholders who need to mine or prospect on various parts of the land-holder's property. A plan can include such things as the safety of stock, where titleholders access the property, and how any changes will be made to the plan in the future. Once an access management plan is made it will apply to all the titleholders on the property. The plan will then become a condition of the miners' and prospectors' titles.
>
> These plans will supersede most of the right-of-way provisions that would otherwise apply under the Act. When agreement cannot be reached on a proposed plan, or some part of it, the land-holder or the miners' representative can apply to have his or her differences settled through dispute resolution procedures. Provision is made for the Director-General of the Department of Mineral Resources to assist, through a process of consultation with each party, in arriving at a determined plan. If either the landowner or the titleholders wish to, they can apply to the Warden's Court for a review of that determined plan, and in some circumstances for determination of a plan by the court itself. These new provisions will give the holders of minerals claims and opal prospecting licences a clear process for making a plan. Importantly, the amendments will provide a legislative basis for making an access management plan.[34]

Permits to enter land

16. The amendments extend the persons to whom a permit to enter land may be given to include the holder or prospective holder of an opal prospecting licence. They also extend the purposes for which a permit to enter land may be granted to include the inspection of a proposed mineral claim or opal prospecting block [sch 1, cl 33 & 35].

Restriction on powers of entry to land

17. Under the Act, inspectors and royalty officers may enter land subject to certain conditions, except in cases of emergency [section 255]. These conditions currently do not apply to those members of the public who have the right to enter land.

    The Bill amends the Act to require members of the public to meet the same conditions prior to exercising their authority to enter. These include being in possession of the relevant certificate of authority or permit and giving reasonable notice to the landholder of their intention to exercise the power to enter. However, unlike inspectors and royalty officers, no exception in the case of an emergency applies to members of the public [proposed section 255A].

18. Any damage caused to a landholder by a member of the public while exercising their power of entry is to be recovered by the landholder from the permit holder [proposed section 255A(2)].

    However, damage caused to a landholder by an inspector or royalty officer continues to be recoverable by the landholder from the Crown [current subsection 255(2)].

Fossickers' access to Crown land

19. The Act [section 12] gives fossickers the right to enter land held for grazing purposes under a Crown lease, licence or permissive occupancy.

[34] The Hon Kerry Hickey MP, Minister for Mineral Resources, Second reading speech, Legislative Assembly, *Parliamentary Debates (Hansard),* 2 April 2004.

The Bill amends section 12 so that fossickers no longer have that right [Sch 1, cl. 1].

20. According to the second reading speech:

> Amendments to the Mining Act in 2000 allowed fossickers to access western lands and other Crown leases without having to gain land-holder consent. [The bill ensures that] fossickers obtain land-holder consent before gaining access to these western lands leases. Having to gain land-holder consent to access will bring fossickers in the Western Division into line with fossickers elsewhere in the State.[35]

Landholder immunity

21. The Bill provides that the holder of land within which any other person is authorised to exercise any power or right (whether under the Act, or under an exploration licence, assessment lease, mining lease, mineral claim, opal prospecting licence or permit granted under the Act) is *not* subject to any action, liability, claim or demand arising as a consequence of that other person's acts or omissions in the exercise of any such power or right [proposed section 383C].

22. According to the Minister:

> At present, immunity for land-holders from the actions of titleholders can be established only as a condition of title. Land-holders have expressed concerns about the strength of this immunity.
>
> This bill ... [includes] a general immunity for land-holders. ...For reasons of equity, the immunity will apply not just at Lightning Ridge but to all land-holdings throughout the State and to all titles.[36]

Issues Considered by the Committee

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

Issue: Schedule 1, Clauses 6 and 19 – Immunity of the Crown and others

23. The amendments remove the possibility of a landholder suing the Crown or any person administering the Act for compensation for damage suffered as a result of the exercise of any right conferred by an authority or mineral claim, including acts of negligence.

    Currently, holders of an authority or mineral claim indemnify the Crown against such claims.

24. While the amendments do not remove the compensation rights of landholders, they potentially diminish those rights by requiring the landholder to recover from private persons or corporations. The amendments introduce the possibility that a landholder will be unable to recover sufficient or any compensation from the holder of the authority or mineral claim.

[35] The Hon Kerry Hickey MP, Minister for Mineral Resources, Second reading speech, Legislative Assembly, *Parliamentary Debates (Hansard),* 2 April 2004.

[36] The Hon Kerry Hickey MP, Minister for Mineral Resources, Second reading speech, Legislative Assembly, *Parliamentary Debates (Hansard),* 2 April 2004.

25. The Bill does not provide for a mechanism by which a landholder may obtain compensation in the event that the holder of the authority or mineral claim that caused the damage is unable to pay proper compensation.

26. The Committee is concerned that the amendments may have the effect of unduly trespassing on the rights of the landholder to compensation for loss incurred or damage suffered.

27. Given the extension of Crown immunity under the Bill, the Committee has written to the Minister to seek clarification of the rights of landholders who suffer damage as a result of the exercise of a right conferred on a person under the Act by way of an authority or mineral claim who has insufficient funds to pay proper compensation.

28. The Committee refers to Parliament the question of whether these amendments unduly trespass on the rights of landholders to obtain compensation for such damage.

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

Issue: Clause 2 Commencement by proclamation

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

While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to an inappropriate delegation of legislative power.

30. The Minister's Office has advised the Committee that some provisions of the Bill are urgent[37] and it is expected that these provisions, together with any provisions not requiring regulations, will be proclaimed as soon as possible after passage of the Bill through Parliament.

31. Those provisions that require regulations will be commenced as soon as those regulations have been made. The Minister's Office advised that these regulations should be in place by the end of July, with all remaining provisions of the Bill commencing at that time.

32. In light of this advice, especially the fact that the Minister intends all provisions to be commenced as soon as possible and by the end of July at the latest, the Committee has no further comment to make on this issue.

The Committee makes no further comment on this Bill.

[37] The "urgent" provisions relate to amendments to fossickers' entitlement to access land and landholder immunity. See Schedule 1, clauses 1 and 39 for these amendments.

6. STOCK DISEASES AMENDMENT (ARTIFICIAL BREEDING) BILL 2004

Date Introduced:	2 April 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Ian Macdonald MLC
Portfolio:	Agriculture and Fisheries

Purpose and Description

1. This Bill:

   (a) amends the *Stock Diseases Act 1923* to include in that Act provisions for the prevention and control of disease in stock resulting from the use of artificial breeding material; and

   (b) repeals the *Stock (Artificial Breeding) Act 1985*.

Background

2. According to the second reading speech:

> Artificial breeding of livestock has been regulated in New South Wales since the implementation of the Stock (Artificial Insemination) Act 1948. Because of technological advancements that had occurred in the field of artificial breeding, the Stock (Artificial Insemination) Act 1948 was, by 1985, seriously outdated. Consequently, a new Act, the Stock (Artificial Breeding) Act 1985, was enacted by Parliament. Now, almost 20 years later, it has become apparent that some change is again warranted. The matters addressed in this bill have arisen primarily from a competition policy review of the Act.
>
> This review assessed whether the Act continues to provide net public benefits.
>
> …The review found that most of the provisions of the Act generate public benefits and should be retained. It was considered, however, that it would be more efficient and effective to regulate the artificial breeding industry through the general legislation controlling veterinary practices and stock diseases, rather than through a separate Act. The main concerns in relation to the artificial breeding industry are to prevent the spread of genetic or other diseases of livestock, to protect consumers of the services of that industry, and to protect animal welfare. A further concern is to protect our access to export markets for artificial breeding material.
>
> The only justification found for retaining licensing was the internationally imposed requirement for Australian exporters to be government approved. Since international trade and quarantine is constitutionally a Commonwealth responsibility, the review also recommended that licensing of artificial breeding centres for export purposes should be through a national scheme administered by the Federal Government, rather

than under State legislation. In fact, many participants in the artificial breeding industry are not licensed, and do not have to be.[38]

The Bill

3. Schedule 1 of the Bill amends the *Stock Diseases Act 1923.* In particular, Schedule 1:

- provides for the declaration, by proclamation, that a disease, condition or characteristic that affects stock is a disease in ***artificial breeding material*** [39] [Schedules 1[1] and [6]];
- provides that the powers of inspectors currently applying under the Act in respect of stock and fittings, extends to artificial breeding material and ***artificial breeding equipment*** [40] [Schedules 1[7] to [18]];
- requires veterinary surgeons to notify the discovery, or suspected discovery, of disease in artificial breeding material [Schedules 1[19] to [22]];
- extends to diseases in artificial breeding material various provisions of the Act that deal with:
  - the Minister's power to declare land to be a ***protected area***[41] or a ***protected (control) area***[42] [Schedule 1[23] and [24]];
  - the Governor's power to restrict or prohibit the introduction or importation into the State, things that might be contaminated with disease or might spread or carry disease [Schedules 1[25]];
  - the power of an inspector to stop vehicles, and to enter and search vehicles, vessels, aeroplanes and airships to enable the inspector to exercise any of the powers conferred under the Act or its regulation [Schedule 1[27];
  - quarantine [Schedules 1[28] and [29]]; and
  - power to order destruction [Schedule 1[30] to [32]].
- provides that the Minister may, for *the purpose of preventing the spread of disease resulting from the use of artificial breeding material*, issue a temporary order of up to six months:
  - prohibiting the sale or supply of artificial breeding material or equipment;
  - requiring that specified action be taken in respect of artificial breeding equipment; or

[38] Mr Bryce Gaudry MP, Parliamentary Secretary, *NSW Parliamentary Debates (Hansard),* Legislative Assembly, 2 April 2004.
[39] Defined by Schedule 1[4] of the Bill as meaning semen, ova and embryos of any stock.
[40] Defined by Schedule 1[4] of the Bill as meaning any plant, machinery, equipment, apparatus, utensil, additive, extender, diluent, material or other thing used or intended to be used for or in connection with artificial breeding procedure.
[41] Being an area with a lower prevalence of a disease [s 11A(1B) *Stock Diseases Act 1923*].
[42] Being an area with a moderate prevalence of a disease [s 11A(1A) *Stock Diseases Act 1923*].

- requiring the testing of stock for disease prior to the collection of artificial breeding material from the stock [Schedule 1[33]];

- extends to artificial breeding material and equipment, provisions of the Act dealing with the seizure, sale and destruction of stock or fittings moved in contravention of the Act, or any regulation, proclamation, notification, undertaking, order, notice or permit made, given or issued under the Act [Schedules 1[34] to [36]];

- extends to artificial breeding equipment and material, the provisions of the Act creating the following offences:

Offence	Maximum Penalty
illegal introduction of stock into the state [Schedule 1[37]]	(a) 100 penalty units (currently $11,000) unless (b) or (c) below apply: (b) 200 penalty units (currently $22,000), if at the time of introduction the stock are actually diseased; or (c) 1,000 penalty units (currently $110,000) or imprisonment for 6 months, or both, if at the time of introduction the stock are actually diseased and as a consequence of the introduction of the stock other stock in the State become actually diseased.
illegal movement of stock Schedule 1[38]]	100 penalty units (currently $11,000)
recovery, or attempted recovery, of anything detained or taken possession of by an inspector in accordance with the Act [Schedule 1[39]];	100 penalty units (currently $11,000)
failure to comply with a proclamation, order, undertaking or notice [Schedule 1[40]]	100 penalty units (currently $11,000)
provision of false or misleading information [Schedules 1[41] to [43]]	100 penalty units (currently $11,000)

- extends to artificial breeding equipment and material, provisions in the Act concerning the admissibility of the scientific examination of stock by persons appointed by the Governor to make such examinations, in proceedings for an offence against the Act or regulations [Schedules 1[44] and [45];

- extends the protection against liability for the provision of information or advice in relation to the presence or absence of infection in artificial breeding material, where that advice was provided in good faith [Schedule 1[46]]; and

- provides for the cancellation of all licenses in force under the *Stock (Artificial Breeding) Act 1985,* when that Act is repealed [Schedule 1[56]].

4. This Bill also repeals the *Stock (Artificial Breeding) Act 1985* and the *Stock (Artificial Breeding) Regulation 1995* [Clause 5].

Issues Considered by the Committee

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

Search and seizure without a warrant: Schedules 1 [7] to [9] and Schedule 1[27]

5. This Bill proposes to amend s 7 of the *Stock Diseases Act 1923* to, among other things, give inspectors the authority to:

- enter any land, building, vessel, vehicle, aeroplane or airship for the purpose of inspecting or treating any artificial breeding material, or for enforcing the provisions of the Act or regulations; and
- detain or take possession of any artificial breeding material which is infected, or suspected to be infected, or which in the opinion of the inspector has caused an offence against the Acts or regulations to be committed.

6. The Committee notes that these powers already exist under the *Stock Diseases Act 1923* in regards to stock, carcass, fodder and fittings[43], and under the *Stock (Artificial Breeding) Act 1985*[44] in relation to artificial breeding material.

7. Additionally, the proposed amendment to s 12A(3) gives an inspector the power to enter, and to open any part of, any vehicle, vessel, aeroplane or airship for the purpose of ascertaining whether the any artificial breeding material contained within it is infected or contaminated with disease, or is, or apparently is, being conveyed with, in or by such vehicle, vessel, airship or aeroplane contrary to any provision of the Act or any regulation, proclamation, notification, undertaking, notice or permit made, given or issued under or pursuant to that Act.

8. Again, the Committee notes this pre-existing power of inspectors for the purpose of ascertaining whether any stock, carcass, fodder, fittings and animal product is infected or contaminated with disease[45], and under the *Stock (Artificial Breeding) Act 1985*[46] in relation to artificial breeding material.

9. The Committee considers that the power to enter land, buildings, vessels, vehicles, aeroplanes and airships and seize property without a warrant is a trespass against personal rights and liberties, and such a power should only be given when it is overwhelmingly in the public interest to do so.

10. The Committee regards the power to enter land or buildings where livestock is kept, or vehicles in which livestock may be transported, to enforce the Act without a warrant may be justified by the public interest in preventing the spread of disease in artificial breeding material.

[43] Sections 7(1)(a) and 7(1)(b).
[44] Section 32.
[45] *Stock Diseases Act 1923,* s 12A.
[46] Section 32.

11. The Committee notes, however, that there does not appear to be any constraint on entry powers or the times at which such entry may be made.

12. The Committee is concerned that the amendment may provide inspectors the power to enter private dwellings at anytime to enforce the Act in relation to artificial breeding material.[47]

13. The Committee has written to the Minister to seek his advice as to what limits exist on the places and times inspectors may enter land and buildings as well as the need for such broad powers of entry.

14. The Committee refers to Parliament the question of whether these powers of entry trespass unduly on personal rights and liberties.

Denial of compensation: Schedules 1 [34] to [36]

15. The proposed amendments to s 19 of the *Stock Diseases Act 1923* will allow any artificial breeding material that has been moved contrary to the provisions of that Act, or any regulation, proclamation, notification, undertaking, order, notice or permit made, given or issued under or pursuant that Act to be seized by an inspector or police officer.

16. This material, together with any artificial breeding material which has been taken possession of under s 7(1)(b) (see paragraph 5, above), may, at the discretion of the Minister, be sold or destroyed after, where necessary, being treated or cleansed. The proceeds of any such sale shall, after deducting any expenses incurred in seizing, selling, destroying, treating or cleaning the artificial breeding material be disposed of as the Minister may direct.

17. The Committee notes that this power currently exists in relation to the proceeds of any such sale of stock, carcass, fodder and fittings.[48]

18. The Committee notes that the amendment allows artificial breeding material to be seized and disposed of by administrative discretion.

19. The Committee considers that such forfeiture of property may be justified insofar as it is necessary to ensure the control of disease.

20. However, it is not apparent to the Committee why the owner of such seized material should not have a right to the net proceeds of any sale of the material in the absence of any judicial determination of a failure to comply with the law.

21. The Committee refers to Parliament the question of whether the discretion of the Minister to dispose of such net proceeds as he or she may direct, rather than to the owner, is a trespass on personal rights and liberties.

[47] While the Bill has the effect of moving the provisions relating to entry from one Act to another, the Committee considers that it is nevertheless appropriate to bring these issues to the Parliament's attention before it re-enacts the provisions.

[48] *Stock Diseases Act 1923,* s 19.

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

Commencement by proclamation: Clause 2

22. The ensuing Act is to commence on a day, or days, to be appointed by proclamation.

23. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on whatever day it choses, or not to commence the Act at all.

24. The Parliamentary Secretary's second reading speech indicates that the *Stock Diseases (Artificial Breeding) Act 1985* will not be repealed until:

- the new regulations covering artificial breeding are in place; and
- the Government is confident that an 'effective national system is operating'[49] to replace the current licensing arrangements.

25. The Minister's office has advised the Committee that the Act is scheduled to be proclaimed by 30 June 2005.

26. The Committee considers that the need to ensure that the new regulations are in place, and to ensure that an effective national system of licensing is in operation prior to commencing the new legislative scheme, is an appropriate reason to delay the commencement of the Act.

Parliamentary scrutiny of legislative power [s 8A(1)(b)(v) *LRA*]

Orders and proclamations not subject to Parliamentary Scrutiny: Schedules 1[1], 1[6] and 1[25]

27. The proposed s 4(b) of the Act provides the Governor with the power to declare, by proclamation, that a specified disease or undesirable condition or characteristic that affects stock is a disease in artificial breeding material for the purposes of the provisions of the *Stock Diseases Act 1923.*

28. The Committee notes the existing power to make such a proclamation in relation to stock under the *Stock Diseases Act 1923*[50] and in relation to artificial breeding material under the *Stock Diseases (Artificial Breeding) Act 1985*[51]*.*

29. Likewise, the proposed amendment to s 11B of the *Stock Diseases Act 1923* provides the Governor with the power to, by proclamation published in the gazette, restrict or absolutely prohibit the importation or introduction into the State of any artificial breeding material that, in the Governor's opinion, might carry or spread disease.

30. The Committee again notes the pre-existing power of the Governor in this regard in relation to stock, carcass, fodder, fittings or animal products under the *Stock Diseases*

[49] Mr Bryce Gaudry MP, Parliamentary Secretary, *NSW Parliamentary Debates (Hansard),* Legislative Assembly, 2 April 2004.
[50] Section 4.
[51] Section 4(1).

Act 1923[52] and in relation to artificial breeding material under the *Stock (Artificial Breeding) Act 1985*[53].

31. Since any such proclamation is neither tabled in Parliament nor disallowable, it is *not* subject to Parliamentary scrutiny.

32. The Committee considers that, in general, proclamations expanding the scope of an Act in a significant way should be subject to disallowance by the Parliament.

The Committee notes that the need to be able to urgently make such provisions does not prevent them subsequently being disallowable by the Parliament.

33. The Committee refers to Parliament the question as to whether to make proclamations:

(a) to declare a specified disease or undesirable condition or characteristic that affects stock is a disease in artificial breeding material for the purposes of the *Stock Diseases Act*; or

(b) to restrict or absolutely prohibit the importation or introduction into the State of any artificial breeding material that, in the Governor's opinion, might carry or spread disease

not disallowable by the Parliament insufficiently subjects the exercise of that legislative power to parliamentary scrutiny.

The Committee makes no further comment on this Bill.

[52] Section 1 1B.
[53] Section 27.

7. TRANSPORT ADMINISTRATION AMENDMENT (NEW SOUTH WALES AND COMMONWEALTH RAIL AGREEMENT) BILL 2004

Date Introduced:	31 April 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Michael Costa MLC
Portfolio:	Transport Services

Purpose and Description

1. The object of this Bill is to amend the *Transport Administration Act 1988* (the Principal Act) to:

   (a) enable Rail Infrastructure Corporation (***RIC***) and the State Rail Authority (***SRA***) and other rail authorities to lease or licence to Australian Rail Track Corporation Ltd (***ARTC***) (a private corporation owned by the Commonwealth Government), for a period of up to 60 years, with the approval of the Minister for Transport Services, railway lines predominantly used to transport freight or country railway lines used to transport freight and for non-electrified railway passenger services;

   (b) enable associated agreements to be entered into, with the approval of the Minister, for the construction by ARTC of additional freight lines and facilities and with respect to the secondment of staff to ARTC;

   (c) enable the lease, licence and sale to ARTC of associated rail infrastructure facilities;

   (d) confer on ARTC the rights and responsibilities of a rail infrastructure owner in respect of the leased or licensed railway lines;

   (e) enable RIC, Rail Corporation New South Wales (***RailCorp***) and the SRA to enter into an agreement with ARTC, with the approval of the Minister, for or with respect to the management by ARTC of other railway lines predominantly used to transport freight or country railway lines used to transport freight and for non-electrified railway passenger services; and

   (f) make other consequential amendments and provision of a savings and transitional nature.

Background

2. This Bill provides the legal framework to put into effect an agreement between the Commonwealth and New South Wales Governments whereby the Australian Rail Track Corporation (ARTC) will lease the New South Wales interstate and Hunter Valley lines as part of the national rail network.

3. According to the second reading speech, consistent with an intergovernmental agreement in 1997:

> The ARTC was established as a Corporations Law company with its shares wholly owned by the Commonwealth. It initially took on the railways then owned by the Commonwealth, and shortly afterwards took a lease of the interstate lines in Victoria. It subsequently entered into an arrangement to provide access for operators to the interstate lines in Western Australia.[54]

4. The second reading speech outlined the three key features of the agreement as being:

- a 60-year lease to the ARTC of the non-metropolitan interstate main lines and the Hunter Valley line;
- management by the ARTC of the country regional network; and
- the majority of country rail staff remaining employees of New South Wales.

5. The country regional network (ie, branch lines and non-interstate main lines) will be managed by the ARTC on behalf of New South Wales:

> This network will be managed through an alliance contract between New South Wales and the ARTC. The Rail Infrastructure Corporation [RIC] will retain ownership, and New South Wales will retain funding responsibility for these lines. ... The majority of country infrastructure maintenance and train control staff are to remain employees of the RIC and the State Rail Authority [SRA], though they will work for the ARTC. The ARTC will directly employ its New South Wales management, administrative staff, train control managers and infrastructure team managers or leaders. [55]

6. In relation to staffing:

> Following extensive consultation with the unions and the Labor Council, it was agreed between New South Wales and the ARTC that most employees would remain employees of the New South Wales Government, rather than be transferred. This will allow staff to retain the benefits of being New South Wales public sector employees. ...
>
> The ARTC will be recruiting approximately 290 staff, who will be direct employees of the ARTC. A transfer package has been put in place for country staff who resign from a New South Wales rail entity to take up employment with the ARTC. [56]

The Bill

7. The Bill inserts proposed Part 8A (ARTC Arrangements) into the *Transport Administration Act 1988* and makes various other amendments to that and other Acts as well as a regulation.

[54] Mr Joseph Tripodi MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 31 March 2004.
[55] Mr Joseph Tripodi MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 31 March 2004.
[56] Mr Joseph Tripodi MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 31 March 2004.

8. Amendments proposed by the Bill provide that:

Arrangements between ARTC and rail authorities

- rail authorities may grant leases or licences regarding land to the ARTC for up to 60 years [proposed 88B];
- rail authorities may enter into arrangements for the management by ARTC of freight lines (which may include the sale of plant and equipment) for up to 60 years [proposed 88C – 88H];
- rail infrastructure facilities on land leased or licensed to the ARTC are severed from that land so they can be dealt with as personal property [proposed 88G];
- the Minister may direct that assets, rights or liabilities of a rail authority be transferred to ARTC, or any such assets, rights or liabilities previously transferred be transferred to a rail authority [proposed s 88I(1) – (3)]
- on the termination of an ARTC arrangement, the Minister may direct that rail infrastructure facilities established by the ARTC be transferred to a rail authority [proposed s 88I(4) – (9)];

Rail services, access and infrastructure obligations

- ARTC has a duty to maintain linear continuity of railway lines affected by an arrangement between the ARTC and a rail authority;
- an ARTC arrangement may confer on ARTC responsibility for network control regarding any part of the NSW rail network for which ARTC is a rail infrastructure owner [proposed s 88L(1) – (2)];
- ARTC must give reasonable priority to passenger services in exercising network control [proposed s88L (3)];
- to avoid doubt, the ARTC is the operator responsible under the *Rail Safety Act 2002* for operations it carries out rather than the rail authority owning the rail infrastructure facilities [proposed s 88N];
- both the rail authority and ARTC are required to hold a licence under the *Protection of the Environment Operations Act 1997* for railway systems activities under Schedule 1 of that Act [proposed s 88O];
- under the *Heritage Act 1977*, ARTC is taken to be the owner of land or facilities it has leased or licensed and, for the purposes of ss 170 and 170A of that Act, the ARTC has the functions of a government instrumentality;
- under the *Threatened Species Conservation Act 1995*, ARTC is to be treated as the public authority having responsibility for land or facilities which it has leased or licensed for the purposes of recovery plans or threat abatement plans;
- if ARTC is prescribed as a public authority for the purposes of Part 5 (Environmental Assessment) of the *Environmental Planning and Assessment Act 1979*, regulations may prescribe additional requirements for ARTC regarding environmental impact statements, public consultation, matters to be considered and public availability of documents;

Prohibition on vertical integration

- ARTC and its associates and successor are prohibited from providing rail freight or passenger services, and the Minister may apply for an injunction to prevent such conduct [proposed ss 88S and 88T];

Staffing arrangements

- a rail authority may, with the approval of the Minister, enter into an agreement with ARTC regarding the use of members of staff of the authority for the purposes of an ARTC agreement;
- a rail authority is not required to comply with the *Privacy and Personal Information Protection Act 1998* in respect of the disclosure of information about members of staff placed with the ARTC;
- a member of staff of a rail authority may apply to be temporarily placed with ARTC or the chief executive may direct that a member of staff be so placed [proposed 88V(1) – (3)];
- such a placement may be at a different level of remuneration, but cannot be made at a lower level of remuneration without the consent of the staff member [proposed s 88V(4)];
- responsibility for such temporary staff under the *Rail Safety Act 2002*, *Occupational Health and Safety Act 2000* and certain other employer liability legislation is transferred to ARTC [proposed ss 88X – 88Z];
- regulations may provide for ARTC's responsibilities regarding temporary staff under the Workers Compensation Acts;[57]
- temporary members of staff remain members of staff of the transferring rail authority despite any other law [proposed s 88ZA]; and

State taxes

- regulations may provided ARTC with exemptions from State taxes [proposed s 88ZC];

9. The Bill also makes various provisions facilitating the operation of ARTC agreements, including rights relating to railway buildings, land and rail infrastructure facilities.

Issues Considered by the Committee

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

Privacy: Proposed s 88U(4)

10. The Bill provides that a rail authority is not required to comply with the *Privacy and Personal Information Protection Act 1998* in respect of the disclosure of information

[57] ***Workers Compensation Acts*** mean the *workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and any instruments made under those Acts [proposed s 88ZA(5)].

about members of staff, placed or proposed to be placed, with ARTC [proposed s 88U(4)].

11. While the Committee appreciates that there will need to be a flow of information between a rail authority and ARTC regarding temporary staff, it is not apparent to the Committee why a rail authority should be free from its obligations under the Privacy Act regarding any disclosures to any person in relation to such staff.

12. The Committee understands from the Minister's office that amendments will be introduced to clarify the scope of this provision.

13. Subject to those amendments, the Committee draws the Parliament's attention to the question of whether the provision unduly trespasses on personal rights or liberties.

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

Regulations overriding Acts: Proposed s 88ZA

14. The Bill allows regulations to be made affecting the operation of *Workers Compensation Acts*[58] in relation to temporary staff of the ARTC. This is to allow appropriate allocation of responsibility and liability of the ARTC and transferring rail authorities in relation to transferred staff under those Acts.

15. These regulation-making powers include the power to provide that specified provisions of the Workers Compensation Acts do or do not apply in respect of the transferring rail authority or ARTC [proposed s 88ZA(3)].

16. The Committee notes that allowing regulations to make any provision of the Workers Compensation Acts not apply in relation to certain bodies is an extremely broad power which could, in theory, enable regulations to be made to undermine the operation of those Acts.

17. However, given the obvious intent of the provision of enabling the appropriate apportioning of functions and liabilities under those Acts in relation to temporary ARTC employees, and the Parliament's power to disallow any portion of any regulations made, the Committee does not consider that this comprises an inappropriate delegation of legislative power.

Commencement by proclamation: Clause 2

18. The ensuing Act is to commence on a day, or days, to be appointed by proclamation.

19. The Committee understands from the Minister's office that commencement will be dependent on finalising contractual details with ARTC. It is proposed, however, that the handover occur on 1 July 2004.[59]

The Committee makes no further comment on this Bill.

[58] ***Workers Compensation Acts*** mean the *workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and any instruments made under those Acts [proposed s 88ZA(5)].

[59] Mr Joseph Tripodi MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 31 March 2004.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

8. PREVENTION OF CRUELTY TO ANIMALS AMENDMENT (TAIL DOCKING) BILL 2004

Date Introduced:	10 March 2004
House Introduced:	Legislative Council
Minister Responsible:	The Hon Ian Macdonald MLC
Portfolio:	Agriculture and Fisheries

Background

1. The Committee reported on the *Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004* in Legislation Review Digest No 4 of 2004.

2. The Committee noted that this Bill was to commence by proclamation, and was advised by the Minister's office that the reason for the delay of the commencement of the Act was to allow time to conduct an education campaign to ensure the public's awareness of the new offence and the associated penalties created by the Bill.

3. The Committee wrote to the Minister to seek his advice as to the likely timeframe within which the education campaign will be conducted and the Act proclaimed.

Minister's Reply

4. In a letter dated 5 April 2004 (below), the Minister advised the Committee that the commencement of the Act is scheduled to occur on 1 June 2004.

Committee's Response

5. The Committee thanks the Minster for his reply

The Committee makes no further comment on this Bill.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

16 March 2004

Our Ref: LRC650

The Hon I M Macdonald
Minister for Agriculture and Fisheries
Level 30, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 4 of 2004*.

The Committee notes that this Bill is to commence on proclamation. The Committee considers that, in general, providing for an Act to commence on proclamation delegates to the government the power to commence the Act on whatever day it choses, or not to commence that Act at all. Whilst there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to an inappropriate delegation of legislative power.

The Committee understands from your office that the reason for the delay in the commencement of the Act is to conduct an education campaign to ensure that the public is aware of the new offence and associated penalties created by this Bill.

While the Committee considers that this is an appropriate reason to delay the commencement of the Act, it has resolved to seek your advice as to the likely timeframes within which the education campaign will be conducted, and within which the Act will be proclaimed.

Yours sincerely

BARRY COLLIER MP
CHAIRPERSON

NEW SOUTH WALES

MINISTER FOR AGRICULTURE AND FISHERIES

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- 7 APR 2004
LEGISLATION REVIEW COMMITTEE

Mr Barry Collier MP
Chairperson
Legislation Review Committee
Parliament of New South Wales
SYDNEY NSW 2000

Dear Mr Collier Barry

Thank you for your letter dated 16 March 2004 concerning the Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004.

I wish to advise that the commencement of the Act will be scheduled to occur on 1 June 2004. It is anticipated that this will provide the time needed to inform the public and the interested parties of the new offence and associated penalties created by the Bill.

Yours sincerely

Ian Macdonald

IAN MACDONALD MLC
NSW MINISTER FOR AGRICULTURE AND FISHERIES

LEVEL 30 GOVERNOR MACQUARIE TOWER 1 FARRER PLACE SYDNEY NSW 2000 AUSTRALIA
TELEPHONE: (02) 9228 3344 FACSIMILE: (02) 9228 3452
E-MAIL: office@macdonald.minister.nsw.gov.au

9. THOROUGHBRED RACING LEGISLATION AMENDMENT BILL 2004

Date Introduced:	12 March 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Grant McBride MP
Portfolio:	Gaming and Racing

Background

1. The Committee reported on the *Thoroughbred Racing Legislation Amendment Bill 2004* in Legislation Review Digest No 4 of 2004.

2. The Committee noted that this Bill was to commence on proclamation, and therefore wrote to the Minister for Gaming and Racing to seek his advice as to the reasons for commencement by proclamation and the likely commencement date of the Act.

Minister's Reply

3. In a letter dated 7 April 2004 (below), the Minister advised that the reason for the delay in the commencement of the Act is because:

   - the Bill provides for a change of name for the Thoroughbred Racing Board to Racing NSW, although a consideration pending that change is that another entity (i.e. NSW Racing Pty Ltd) needs to have a name change for the purpose of avoiding confusion, and the Bill will be commenced after that name change occurs; and
   - the Bill proposed significant changes in relation to the *Racing Appeals Tribunal Act 1983* and its regulations. Accordingly, new regulations will need to be made, the commencement of which is scheduled to coincide with the commencement of the Bill.

4. The Minister further advised that the proposed date for proclamation of this Bill is 1 July 2004.

Committee's Response

5. The Committee thanks the Minster for his reply

The Committee makes no further comment on this Bill.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

16 March 2004

Our Ref: LRC653

The Hon Grant McBride MP
Minister for Gaming and Racing
Level 13 55 Hunter Street
Sydney NSW 2000

Dear Minister

Thoroughbred Racing Legislation Amendment Bill 2004

Pursuant to its obligations under s 8A of the Legislation Review Act 1987, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its Legislation Review Digest No 4 of 2004.

The Committee notes that this Bill commences on a day or days to be proclaimed.

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

The Committee has therefore resolved to seek your advice as to the reasons for commencement by proclamation and the likely commencement date of the Act.

Yours sincerely

BARRY COLLIER MP
CHAIRPERSON

New South Wales

Minister for Gaming and Racing

RML 04/0433
RML 04/0434

Mr B Collier MP
Chairperson
Legislation Review Committee
Parliament of New South Wales
SYDNEY 2000

07 APR 2004

Dear Mr Collier

Thank you for your letter dated 16 March 2004 in which you raise the matter of the commencement date for the *Thoroughbred Racing Legislation Amendment Bill 2004.*

As you are aware, the Bill is to commence on proclamation.

The proposed date for proclamation is 1 July 2004.

The reasons for this are:

(i) The Bill provides for a change of name for the *Thoroughbred Racing Board* to *Racing NSW*. That change was sought by the Board so that its corporate image would be in line with the practice in other Australian jurisdictions. However, a consideration pending that change is that another entity, ie NSW Racing Pty Ltd (which is a company formed by the three codes of racing to represent it in dealings with TAB Limited) needs to have a name change for the purpose of avoiding confusion between the two.

Accordingly, it is intended that the Bill be commenced after that change of name occurs.

(i) The Bill also proposes significant amendments in relation to the *Racing Appeals Tribunal Act 1983* and its regulations (see Schedule 2 of the Bill). Accordingly, there is a need to make new regulations, the commencement of which will coincide with the commencement of the Bill.

I trust that the above advice assists the Committee with its inquiries in relation to the *Thoroughbred Racing Legislation Amendment Bill 2004.*

Yours sincerely

Grant McBride MP
Minister for Gaming and Racing

Level 13, 55 Hunter Street, Sydney 2000, NSW Australia
Telephone: (02) 9237 2555 • Facsimile: (02) 9237 2500 • Email: mindgr@dgr.nsw.gov.au

Part Two – Regulations

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

10. OCCUPATIONAL HEALTH AND SAFETY AMENDMENT (ACCREDITATION AND CERTIFICATION) REGULATION 2003

Gazette reference:	19/12/2003, page 11335.
Commencement:	19/12/2003
Last date for disallowance:	LA 30/03/2004; LC 11/05/2004
Minister:	The Hon John Della Bosca MLC
Portfolio:	Commerce

Background

1. The regulation was made in response to recent Independent Commission Against Corruption investigation into the conduct of training and certification processes in the building industry relevant to safety and compliance with the *Occupational Health and Safety Act 2000.*

2. The Committee wrote to the Minister on 26 March 2004 (letter below) expressing its concern that clause 284(2A), which gives WorkCover power to refuse an application for accreditation "for such reasons as it considers sufficient", is too broad and that the regulation should set out the grounds under which WorkCover can refuse an application.

3. The Committee sought the Minister's advice as to why such grounds are not included in the Regulation.

Clause 284

4. Clause 284 of the *Occupational Health and Safety Regulation 2001* is set out below. That part in bold is what is inserted by the *Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003*.

284 Accreditation of assessors

(1) Any person may apply to WorkCover for accreditation as an assessor.

(2) The application:

(a) must be in the approved form, and

(b) must be accompanied by such material or information to support the application as WorkCover may require, and

(c) must be accompanied by the fee fixed for the time being by WorkCover to cover expenses in connection with the regulation of assessors.

(2A) WorkCover may accredit the applicant as an assessor or may refuse the application for such reason as it considers sufficient, even if it is satisfied that the applicant is competent to carry out the functions of an assessor under this Chapter.

(3) WorkCover must not accredit a person as an assessor unless it is satisfied that the applicant is competent to carry out the functions of an assessor under this Chapter.

(4) If WorkCover accredits a person as an assessor, it must issue to the person a certificate of accreditation for the kinds of assessments for which the person is accredited.

(5) If an application is refused, WorkCover must ensure that written notice of the refusal, and of the reasons for the refusal, are given to the applicant.

Minister's Reply

5. The Committee received the Minister's response on 15 April 2004 (letter below). In response to the Committee's specific concern, the Minister stated that:

> The clause was drafted broadly to enable WorkCover to take into consideration a broad range of issues which have proved to be relevant to the accreditation process from the Independent Commission Against Corruption public hearings. It is important that WorkCover have the power to refuse an application where any issue affecting the credit and honesty of the applicant comes to attention. To define this power more narrowly would not promote the appointment of honest and competent assessors and hence the integrity of the accreditation system.

6. The Minister also advised that:

> The review of the assessor accreditation system will not be completed until WorkCover has carefully considered any recommendations handed down by the Independent Commission Against Corruption.
>
> However, [the Minister anticipates] that any revision supporting a robust, corruption-resistant process will include a policy statement that addresses issues of procedural fairness, such as the right to know the grounds on which an application has been refused, to be made widely available.

Comment

7. The Committee considers that it is important that WorkCover have the appropriate degree of discretion to refuse accreditation and that the legislation not be overly prescriptive.

   However, the Committee also considers that clause 284(2A) is unnecessarily broad notwithstanding the Minister's explanation.

8. The Minister stated that there were a broad range of issues which proved to be relevant to the accreditation process from the Independent Commission Against

Corruption hearings. The Committee considers that it would be appropriate to prescribe those issues within the Regulation.

9. By failing to provide any guidance as to the kind of matters WorkCover may take into account in determining whether to refuse accreditation, the regulation leaves open the possibility that WorkCover will refuse accreditation on irrelevant or inappropriate grounds. It also makes the applicants for accreditation unduly dependent on an insufficiently defined administrative power.

Issues for the attention of Parliament

10. The Committee considers that legislation should prescribe issues that may be taken into consideration by an official when deciding issues of such significance as whether a person may be granted accreditation under the Regulation.

11. The Committee considers that clause 284(2A) makes the rights of accreditation applicants unduly dependent on insufficiently defined administrative powers by failing to prescribe what matters may be taken into consideration.

12. The Committee has written to the Minister to recommend that the regulation be amended to clarify what matters are relevant to such considerations and may be considered by the officer making determinations regarding accreditation.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

26 March 2004

Our Ref:LRC577

Hon J J Della Bosca MLC
Minister for Commerce
Level 30 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister John

Occupational Health and Safety Amendment
(Accreditation And Certification) Regulation 2003

Pursuant to its obligations under s 9 of the *Legislation Review Act 1987*, the Committee has considered the above Regulation.

The Committee notes that the Regulation amends the *Occupational Health and Safety Regulation 2001* by inserting a new cl 284(2A), which provides for the refusal of an application for accreditation as an assessor under that Regulation for such reason that WorkCover "considers sufficient". Clause 284(2A) provides no guidance as to what may constitute such grounds.

The Committee considers that the new cl 284(2A) is excessively broad, and that the Regulation should set out the grounds pursuant to which WorkCover can refuse an application for accreditation as an assessor.

The Committee seeks your advice as to why the grounds which WorkCover may consider sufficient for refusing accreditation as an assessor are not included in the Regulation.

The Committee would be grateful of your advice on this as a matter of urgency.

Yours sincerely

BARRY COLLIER MP
CHAIRPERSON

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia
Telephone (02) 9230 2899 · Facsimile (02) 9230 3052 · Email legislation.review@parliament.nsw.gov.au

Special Minister of State
Minister for Commerce
Minister for Industrial Relations
Assistant Treasurer and
Minister for the Central Coast

Ref: WC00466/04

Mr Barry Collier MP
Chairperson
Legislation Review Committee
New South Wales Parliament
Macquarie Street
SYDNEY NSW 2000

15 APR 2004

Dear Mr Collier

Thank you for your letter of 26 March 2004 regarding the *Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003*.

I can advise that clause 284(2A) was inserted in the Amendment Regulation as WorkCover is currently reviewing the assessor accreditation system with the intention of making significant changes. The evidence regarding the practices of accredited assessors given at the Independent Commission Against Corruption public hearings in 2003 prompted this review.

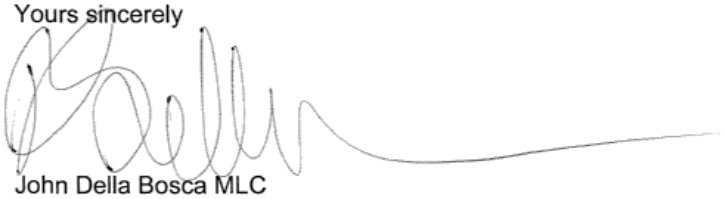
The clause was drafted broadly to enable WorkCover to take into consideration a broad range of issues which have proven to be relevant to the accreditation process from the Independent Commission Against Corruption public hearings. It is important that WorkCover have the power to refuse an application where any issue affecting the credit and honesty of the applicant comes to attention. To define this power more narrowly would not promote the appointment of honest and competent assessors and hence the integrity of the accreditation system.

The review of the assessor accreditation system will not be completed until WorkCover has carefully considered any recommendations handed down by the Independent Commission Against Corruption. However, I anticipate that any revision supporting a robust, corruption-resistant process will include a policy statement that addresses issues of procedural fairness, such as the right to know the grounds on which an application has been refused, to be made widely available.

Level 30 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000, Australia
Tel: (02) 9228-4777 Fax: (02) 9228-4392 E-Mail: office@smos.nsw.gov.au

I will write to you again with further detail on WorkCover's changes to the accreditation process in due course. In the interim, should you wish to obtain further information on this matter, the WorkCover contact is Ms Bernadette Grant, Director of WorkCover's Legal Group. Ms Grant can be contacted by telephone on (02) 8258 7119.

Yours sincerely



John Della Bosca MLC

11. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (CERTIFIER ACCREDITATION) REGULATION 2003

Gazette reference:	07/11/2003, page 10369.
Commencement:	07/11/2003
Last date for Disallowance:	LA 25/02/2004; LC 16/03/2004
Minister:	The Hon Diane Beamer MP
Portfolio	Planning Administration

Background

1. Clause 204 of the principal rule sets out the grounds for refusing, withdrawing or suspending accreditation of a person as a certifier.

2. This Regulation amends clause 204 of the principal rule to provide for additional grounds for refusing, withdrawing or suspending accreditation by an accreditation body [clause 204(1A)]. Currently the accreditation body in NSW is the Director-General of the Department.

3. Clause 204(1A) of the Regulation sets out a non-exhaustive list of grounds the accreditation body may consider in deciding whether a certifier is a fit and proper person to be accredited. These include the grounds that an applicant for accreditation has contravened a law, or failed to comply with a statutory duty or contractual obligation imposed by law.

   Clause 204(1A) provides

   (1A) Without limiting any other grounds on which a person may be found not to be fit and proper, an accreditation body may be satisfied that a person is not a fit and proper person to be an accredited certifier on the ground that the person:

   (a) has contravened a law, whether or not a New South Wales law, and whether or not the contravention is an offence, or

   (b) has failed to comply with a statutory or other duty, or a contractual obligation, imposed on the person by or in accordance with a law, whether or not a New South Wales law, or

   (c) is an undischarged bankrupt, or

   (d) has represented himself or herself as being an accredited certifier when the person was not an accredited certifier, or

   (e) has contravened any code of conduct of an accreditation body.

4. Neither the parent Act nor the regulation provides for administrative review of a decision by the accreditation body to withdraw, or refuse to grant, accreditation on the ground of fit and proper person or on any other ground set out in sub-clause 204(1).

5. The Committee wrote to the Minister on 5 March 2004 (see letter below) expressing its concern that amendments made by clause 204(1A), paragraphs (a) and (b), are overly broad and require clarification. Also, that the regulation fails to provide administrative review rights to an applicant of a decision to withdraw, refuse or cancel a person's accreditation.

6. The Committee recommended that the Regulation be amended to narrow the scope of clause 204(1A)(a) and (b), and to provide administrative review rights.

Minister's Reply

7. In her reply (see letter below), received by the Committee on 15 April 2004, the Minister advised the Committee that:

> The Regulation was made to ensure than an accreditation body could have regard to relevant past conduct to refuse, withdraw or suspend a certifier's accreditation. Without the amendment to clause 204 a certifier's past illegal acts could not have been a relevant consideration for an accreditation body in making a decision wether to continue that certifier's accreditation.

8. In relation to the Committee's specific concern about the wording of clause 204(1A), the Minister responded that:

> the Committee's view to restrict the relevant breaches of laws to 'offences for which the person has been found guilty or to which the person has pleaded guilty' will prevent accreditation bodies from obtaining information that may be relevant to the question of whether a certifier should continue to be accredited. The continued absence of a provision like clause 204(1A)(a) would have been a serious lacuna in the regime controlling the accreditation of certifiers.
>
> …
>
> The Department is administering the provision by seeking specific information from accredited certifiers about proven criminal offences and established breaches of the EP&A Act.

9. In answer to the Committee's recommendation that the legislation provide explicitly for administrative review of a decision to withdraw or refuse to grant accreditation, the minister advised that she:

> … has asked the Department to consider [the Committee's] concerns in the context of the general review of the accreditation system flowing from the establishment of the Building Professionals Board.

Comment

10. The Committee considers it important that accreditation bodies be able to take into account all relevant information, including relevant past illegal acts, when determining if a person is a fit and proper person to be accredited.

However, the Committee considers that clause 204(1A), as currently worded, covers many activities and events that may be *irrelevant* to the determination of the suitability of a person to be an accredited certifier. It also covers relatively minor contraventions of the law. For example, minor traffic infringements such as parking illegally, would be covered by this formulation.

11. For this reason, the Committee is of the view that the formulation in clause 204(1A) is unnecessarily broad and should be amended to prescribe only those issues that are relevant for a determination by an accreditation body as to the fitness of a person to be an accredited certifier.

12. In addition, the consequences for a person's livelihood and reputation if their accreditation is withdrawn or they are refused accreditation on this ground are potentially quite serious. The Committee takes the view that it is appropriate that the legislation explicitly provide for administrative review of a decision by the accreditation body to withdraw or refuse to grant accreditation to a person on this ground or any other ground.

Issue for the attention of Parliament

13. The Committee is of the view that the legislation should set out those issues that are relevant to determinations by accreditation bodies.

14. The Committee is also of the view that the current formulation of subclause 204(1A) leaves open the possibility that accreditation bodies will refuse or withdraw accreditation on irrelevant or inappropriate grounds.

15. The Committee considers it appropriate that the legislation explicitly provide for administrative review of a decision by an accreditation body to withdraw or refuse to grant accreditation to a person on this ground or any other ground under clause 204.

16. The Committee has written to the Minister again to express its view that the Regulation should prescribe or indicate to accreditation bodies the kinds of contraventions of law or breaches of contractual or statutory duties that are relevant in determining if a person is a fit and proper person for the purposes of accreditation.

17. The committee has also sought further advice from the Minister as to the guidance provided to accreditation bodies when determining whether a person is fit and proper for the purposes of accreditation.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

5 March 2004

Our Ref: LRC494

The Hon D Beamer MP
Minister Assisting the Minister for Infrastructure
and Planning (Planning Administration)
Level 33 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (CERTIFIER ACCREDITATION) REGULATION 2003

The Committee has considered this regulation and resolved to write to you to recommend that the Regulation be amended to address certain concerns held by the Committee.

Firstly, the Committee considers that the wording of the new subparagraph 204(1A)(a) is overly broad in scope. In particular, the formulation in subparagraph (a) potentially covers many activities that may be irrelevant to the determination of the suitability of a person to be an accredited certifier. It also covers relatively minor contraventions of the law, with which a person may not have been charged, let alone found guilty. For example, minor traffic infringements such as parking illegally, would be covered by this formulation.

The Department has advised the Committee that similar rules in other jurisdictions (eg, Queensland) are not as broad in scope.

The Committee is of the view that the clause should be limited to offences for which the person has been found guilty or to which they have pleaded guilty.

Secondly, the legislation does not appear to provide for administrative review of a decision by the accreditation body (currently the Director-General) to withdraw, or refuse to grant, accreditation on the ground of fit and proper person, or on any other ground set out in sub-clause 204(1) for that matter.

Your Department has advised the Committee that internal review of such a decision is available pursuant to Ministerial Guidelines. However, the Committee is of the view that review provided for under these Guidelines is insufficient as it effectively involves the Director-General reviewing her own decision.

Given the potentially serious consequences for a person's livelihood and reputation if their accreditation is withdrawn or they are refused accreditation on this ground, the Committee is of the view that it is appropriate that the legislation explicitly provide for administrative review of such decision.

The Committee recommends that clause 204(1A)(a) be amended to narrow its scope so that it covers offences to which the person has pleaded guilty or of which they have been found guilty.

The Committee also recommends that the legislation provide explicitly for administrative review of a decision by the accreditation body to withdraw or refuse to grant accreditation to a person on this ground or any other ground set out in sub-clause 204(1).

Yours sincerely

BARRY COLLIER MP
CHAIRPERSON

cc. The Hon C Knowles MP, Minister for Infrastructure and Planning

Minister for Juvenile Justice
Minister for Western Sydney
Minister Assisting the Minister for
Infrastructure and Planning (Planning Administration)

D04/1748

Mr Barry Collier MP
Chairperson
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

- 1 APR 2004

Dear Mr Collier,

I refer to your letter of 5 March 2004 about the *Environmental Planning & Assessment Amendment (Certifier Accreditation) Regulation 2003*.

The regulation forms part of the government's commitment to the ongoing reform of the regulation of building professionals in New South Wales. On 1 January this year the government established the Building Professionals Board as an administrative unit within the Department of Infrastructure, Planning & Natural Resources to strengthen the regulation of building professionals, including accredited certifiers.

The regulation was made to ensure that an accreditation body could have regard to relevant past conduct to refuse, withdraw or suspend a certifier's accreditation. Without the amendment to clause 204 a certifier's past illegal acts would not have been a relevant consideration for an accreditation body in making a decision whether to continue that certifier's accreditation. The continued absence of a provision like clause 204(1A)(a) would have been a serious lacuna in the regime controlling the accreditation of certifiers. As certifiers carry out duties as public officials, the protection of the public and the maintenance of public confidence in the accreditation of certifiers are significant matters of concern to the government.

I note your committee's concern with the terms of the new clause 204(1A)(a). However, I believe that the committee's view to restrict the relevant breaches of laws to 'offences for which the person has been found guilty or to which the person has pleaded guilty' will prevent accreditation bodies from obtaining information that may be relevant to the question of whether a certifier should continue to be accredited. For example, the current provision enables accreditation bodies to investigate whether the certifier has breached any provisions of the *Environmental Planning & Assessment Act 1979* (EP&A Act) and whether or not the breach constitutes an offence, in carrying out their functions as a certifier. This information could not be obtained under the restrictive formulation the committee proposes.

Level 33, Governor Macquarie Tower,
1 Farrer Place, Sydney NSW 2000
Tel: (02) 9228 4130 Fax: (02) 9228 4131
Email Address: office@beamer.minister.nsw.gov.au

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The Department is administering the provision by seeking specific information from accredited certifiers about proven criminal offences and established breaches of the EP&A Act. I believe that the Department's approach is reasonable in the circumstances.

I turn to the committee's other concern relating to a review of the accreditation body's decision on reaccreditation of certifiers. I have asked the Department to consider your concerns in the context of the general review of the accreditation system flowing from the establishment of the Building Professionals Board.

Yours sincerely

The Hon. Diane Beamer MP

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003	07/11/03	10369	05/03/04 30/04/04	01/04/04
Inclosed Lands Protection Regulation 2002	06/12/02	10370	29/05/03 12/09/03	29/08/03 11/03/04
Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003	19/12/03	11335	26/03/04 30/04/04	15/04/04
Passenger Transport (Drug and Alcohol Testing) Regulation 2004	05/03/04	957	30/04/04	
Road Transport (General) Amendment (Impounding Fee) Regulation 2003	17/10/03	10045	13/02/04	

Appendix 1: Index of Bills Reported on in 2004

	Digest Number
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	2
Appropriation (Budget Variations) Bill 2004	5
Botany Bay National Park (Helicopter Base Relocation) Bill 2004	5
Children (Detention Centres) Amendment Bill 2004	4
Civil Liability Amendment (Offender Damages) Bill 2004	5
Community Protection (Closure of Illegal Brothels) Bill 2003*	1
Crimes Legislation Amendment Bill 2004	3
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003	1
Cross-Border Commission Bill 2004	3
Education Amendment (Non-Government Schools Registration) Bill 2004	2
Electricity (Consumer Safety) Bill 2003	1,2
Fair Trading Amendment Bill 2004	4
Fisheries Management Amendment Bill 2004	6
Food Legislation Amendment Bill 2004	3
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	2
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	6
Health Legislation Amendment Bill 2004	6
Legal Profession Legislation Amendment (Advertising) Bill 2003	1
Liquor Amendment (Parliament House) Bill 2004	6
Local Government Amendment (Council and Employee Security) Bill 2004	5
Mining Amendment (Miscellaneous Provisions) Bill 2004	6
National Competition Policy Amendment (Commonwealth Financial Penalties) Bill 2004	2
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	1
Parliamentary Electorates and Elections Amendment (Prohibition on Voting by Criminals) Bill 2004*	5
Partnership Amendment (Venture Capital Funds) Bill 2004	3
Police Amendment (Crime Reduction and Reporting) Bill 2004	3
Prevention of Cruelty to Animals (Tail Docking) Bill 2004	4,6
Public Lotteries Legislation Amendment Bill 2004	2
Retirement Villages Amendment Bill 2004	3
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	1
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	1

	Digest Number
Snowy Mountains Cloud Seeding Trial Bill 2004	5
Stock Diseases Amendment (Artificial Breeding) Bill 2004	6
Stock Diseases Amendment (False Information) Bill 2004	4
Strata Schemes Management Amendment Bill 2003	1,3
Superannuation Administration Amendment Bill 2003	1
The Synod of Eastern Australia Property Amendment Bill 2004	2
Thoroughbred Racing Legislation Amendment Bill 2004	4,6
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	6
Wool, Hide and Skin Dealers Bill 2004	2

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

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Bail Amendment (Firearms and Property Offences) Bill 2003	Attorney General	28/11/03	12/01/04	7	1
Catchment Management Authorities Bill 2003; Natural Resources Bill 2003 and Native Vegetation Bill 2003	Minister for Infrastructure, Planning and Natural Resources	18/11/03	19/03/04	6	5
Child Protection Legislation Amendment Bill 2003	Minister for Community Services	12/09/03	07/11/03	2,5	
Civil Liability Amendment Bill 2003	Minister for Health	28/11/03	22/12/03	7	1
Civil Liability Amendment (Offender Damages) Bill 2004	Minister for Justice	26/03/04			5
Coroners Amendment Bill 2003	Attorney General	07/11/03	27/11/03	5,7	
Courts Legislation Amendment Bill 2003	Attorney General	07/11/03	25/11/03	5,7	
Crimes Legislation Further Amendment Bill 2003	Attorney General	28/11/03	16/12/03	7	1
Electricity (Consumer Safety) Bill 2003	Minister for Fair Trading	13/02/04	18/02/04		1,2
Environmental Planning and Assessment (Development Consents) Bill 2003	Minister for Infrastructure and Planning	24/10/03	19/03/04	4	5
Environmental Planning and Assessment Amendment (Planning Agreements) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	28/11/03	19/03/04	7	5
Environmental Planning and Assessment (Quality of Construction) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	18/11/03	19/03/04	6	5
Gaming Machines Amendment (Miscellaneous) Bill 2003	Minister for Gaming and Racing	10/10/03	26/11/03	3,7	
Independent Commission Against Corruption Amendment (Ethics Committee) Bill 2003	Premier	07/11/03	27/11/03	5,7	
Legal Profession Legislation Amendment (Advertising) Bill 2003	Attorney General	13/02/04	23/03/04		1,5
Local Government Amendment Bill 2003	Minister for Local Government	28/11/03		7	
Lord Howe Island Amendment Bill 2003	Minister for the Environment	07/11/03	28/11/03	5	1
Mining Amendment (Miscellaneous Provisions) Bill 2004	Minister for Mineral Resources	30/04/04			6

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Motor Accidents Legislation Amendment Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1
National Parks and Wildlife Amendment (Kosciuszko National Park Roads) Bill 2003	Minister for the Environment	07/11/03	08/12/03	5	1
Partnership Amendment (Venture Capital Funds) Bill 2004	Attorney General	05/03/04	23/03/04		3,5
Police Legislation Amendment (Civil Liability) Bill 2003	Minister for Police	18/11/03	24/12/03	6	1
Powers of Attorney Bill 2003	Attorney General	12/09/03	07/10/03	2,4	
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004	Minister for Agriculture and Fisheries	16/03/04	05/04/04		4,6
Privacy and Personal Information Protection Amendment Bill 2003	Attorney General	24/10/03	25/02/04	4	3
Registered Clubs Amendment Bill 2003	Minister for Gaming and Racing	28/11/03	25/02/04	7	3
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	Minister for Roads	13/02/04	23/03/04		1,5
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	Minister for Roads	13/02/04			1
State Revenue Legislation Further Amendment Bill 2003	Treasurer	28/11/03	15/12/03	7	1
Stock Diseases Amendment (Artificial Breeding) Bill 2004	Minister for Agriculture and Fisheries	30/04/04			6
Stock Diseases Amendment (False Information) Bill 2004	Minister for Agriculture and Fisheries	16/03/04			4
Strata Schemes Management Amendment Bill 2003	Minister for Fair Trading	13/02/04	27/02/04		1,3
Superannuation Administration Amendment Bill 2003	Treasurer	13/02/04	18/03/04		1,5
Sydney Water Amendment (Water Restrictions) Bill 2003	Minister for Energy and Utilities	24/10/03	27/10/03	4,5	
Thoroughbred Racing Legislation Amendment Bill 2004	Minister for Gaming Racing	16/03/04	07/04/04		4,6
Transport Administration Amendment (Rail Agencies) Bill 2003	Minister for Transport Services	18/11/03		6	
Transport Legislation Amendment (Safety and Reliability) Bill 2003	Minister for Transport Services	07/11/03	21/11/03	5,7	
Veterinary Practice Bill 2003	Minister for Agriculture and Fisheries	07/11/03	03/11/03	5	1
Workers Compensation Amendment (Insurance Reforms) Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2004

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	N				
Botany Bay National Park (Helicopter Base Relocation) Bill 2004				N	
Civil Liability Amendment (Offender Damages) Bill 2004	R			C	
Community Protection (Closure of Illegal Brothels) Bill 2003	R				
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003				N	
Education Amendment (Non-Government Schools Registration) Bill 2004				N	
Electricity (Consumer Safety) Bill 2003	N,R				C
Fair Trading Amendment Bill 2004				N	
Fisheries Management Amendment Bill 2004				N	
Food Legislation Amendment Bill 2004				N	
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	N			N	
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	N		R		
Health Legislation Amendment Bill 2004	N			N	
Legal Profession Legislation Amendment (Advertising) Bill 2003	C, R		C, R	N	
Local Government Amendment (Council and Employee Security) Bill 2004	N			N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Mining Amendment (Miscellaneous Provisions) Bill 2004	C, R			N	
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	N				
Parliamentary Electorates and Elections Amendment (Prohibition on Voting Rights by Criminals) Bill 2004*	R				
Partnership Amendment (Venture Capital Funds) Bill 2004	C			C	
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004				C	
Public Lotteries Legislation Amendment Bill 2004				N	
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	N,C				
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003				C	
Snowy Mountains Cloud Seeding Trial Bill 2004				N	
Stock Diseases Amendment (Artificial Breeding) Bill 2004	C,R			N	N
Stock Diseases Amendment (False Information) Bill 2004	C			C	
Strata Schemes Management Amendment Bill 2003				N,C	
Superannuation Administration Amendment Bill 2003	N			C	
Thoroughbred Racing Legislation Amendment Bill 2004				C	
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	R			N	
Wool, Hide and Skin Dealers Bill 2004				N	

Key

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

Appendix 4: Index of correspondence on regulations reported on in 2004

Regulation	Minister/Correspondent	Letter sent	Reply	Digest Number
Children and Young Persons (Savings and Transitional) Amendment (Out-of-Home Care) Regulation 2003 & Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003	Minister for Community Services	13/02/04	N/A	1
Crimes (Forensic Procedures) Amendment (DNA Database Systems) Regulation 2003	Attorney General	07/11/03	03/12/03	1
Determination of Regulatory Fee Increases	Premier	24/10/03	18/03/04	5
Landlord and Tenant (Rental Bonds) Regulation 2003	Minister for Fair Trading	24/10/03 18/11/03 23/12/03	05/11/03 10/02/04	1
Pawnbrokers and Second-hand Dealers Regulation 2003	Minister for Fair Trading	24/10/03 18/11/03 23/12/03	05/11/03 10/02/04	1
Radiation Control Regulation 2003	Minister for the Environment	24/10/03	23/01/04	1
Road Transport (General) (Penalty Notice Offences) Amendment (Interlock Devices) Regulation 2003 and Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Privacy Commissioner	24/10/03	27/11/03	1