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Legislation Review Committee

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

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

9 Functions with respect to Regulations:

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

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

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

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

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

Section B: Ministerial correspondence – Bills previously considered

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

Part Two – Regulations

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

Appendix 1: Index of Bills Reported on in 2010

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

Appendix 2: Index of Ministerial Correspondence on Bills

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

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2010

This table specifies the action the Committee has taken with respect to Bills that received comment in 2010 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

Appendix 4: Index of correspondence on Regulations reported on

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

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Carers Recognition Bill 2010*

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

2. Carers (Recognition) Bill 2010

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

3. Charter Of Budget Honesty Amendment (Independent Election Costings) Bill 2010*

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

4. Companion Animals Amendment (outdoor Dining Areas) Bill 2010

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

5. Environmental Planning and Assessment Amendment (Development Consents) Bill 2010

Issue: Limiting of Review Rights – Retrospectivity

14. The Committee is concerned that the Bill restricts consent authorities from reviewing development applications whose development consent lapses after one to four years and which are subsequently resubmitted, by extending the validity of the development consent to five years. In this respect, the Bill narrows the de facto review rights consent authorities presently have to evaluate the progress of commencing developments and determine their ongoing appropriateness to the community. Further, the Committee is concerned that the Bill applies to development consents already on foot, therefore acting with retrospective force and denying the certainty provided in the initial development consent. The Committee refers these matters to the Parliament for its consideration.

6. Mining and Petroleum Legislation Amendment (Land Access) Bill 2010

Issue: Retrospectivity

25. The Committee is aware that the court decision in *Brown and Alcorn* has raised questions about the validity of existing access arrangements. The Committee appreciates the need to correct unintended consequences of legislation to clarify the legislative purpose. However, it is incumbent upon the Committee to point out the effect of retrospective application to affirm the validity of access arrangements that might otherwise contravene the *Mining Act 1992* or *Petroleum (Onshore) Act 1991* as it currently stands. The Committee has always been concerned to identify provisions with retrospective application and notes its potential to unduly trespass on personal rights and liberties.

26. The Committee is also concerned by the Bill's effect of quashing the finding of the Court in *Brown and Alcorn* and facilitating a rehearing of the case according to different rules. Bills that take place with retrospective force deprive the public from the legislative certainty that is expected when laws are made. Generally, the public should have full confidence that the given laws at any date should remain in force as laws for that date, in perpetuity.

27. The Committee refers the matters pertaining to the retrospective application of this Bill to Parliament for its consideration.

Issue: Property Rights

32. The Committee is always concerned when legislation is introduced that may adversely impact on property rights.

33. Firstly, the Committee is concerned that in excluding secondary landholders from discussions about access arrangements, it may adversely affect their right to be informed of, and have input in, matters relating to property in which they have an interest.

34. Secondly, this Bill relates to the ability of mining and petroleum companies to obtain access to land for exploration activities, particularly in rural areas, and largely seeks to make the access procedures less cumbersome. As such, this Bill potentially restricts the rights of a class of individuals to enjoyment of their property and to be largely free from external interference.

7. National Park Estate (Riverina Red Gum Reservations) Bill 2010

12. The Committee has not identified any issues under s8A(1)(b) of the *Legislation Review Act 1987.*

8. NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010

Issue: Denial Of Compensation – Schedule 2 [12] Amendment Of *Home Building Act 1989* – insertion of Part 17 in Schedule 4, Division 2 – proposed sections 90 (3) and (4):

20. The Committee is usually of the view that the right to seek damages or compensation is an important individual right. Therefore, the Committee asks Parliament to consider whether subsections (3) and (4) of proposed section 90 to be inserted by the new Part 17, Division 2 in Schedule 4 of the *Home Building Act 1989*, may lead to a denial of compensation and form an undue trespass to personal rights and liberties.

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

22. Therefore, the Committee has not identified any issues regarding Clause 2(2) under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

9. Paediatric Patient Oversight (Vanessa's Law) Bill 2010*

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

10. Relationships Register Bill 2010

Issue: Clause 16 – Excessive Punishment

Issue: Clause 2 – Commencement by proclamation – Provides the executive with unfettered control over the commencement

19. The Committee recognises the difficulties in determining commencement dates for projects that are contingent on procedures being established, including the drafting of forms and setting of fees. The Committee also notes that only part of the proposed Act is to be commenced by proclamation, with the remainder by assent. It has therefore not identified any issues under s 8(1)(b)(iv) of the *Legislation Review Act 1987.*

11. State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010

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

12. Trees (Disputes Between Neighbours) Amendment Bill 2010

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

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CARERS RECOGNITION BILL 2010*

Date Introduced:	22 April 2010
House Introduced:	Legislative Council
Minister Responsible:	Hon Robyn Parker MLC
Portfolio:	Private Member - Liberal Party

Purpose and Description

1. This Bill provides for the recognition of carers; and for other purposes.

2. The objects of this Bill are:

> (a) to recognise the valuable contribution of carers to our society and to the people they care for,
> (b) to recognise the benefit, including the social and economic benefit, provided by carers to the community,
> (c) to ensure the provision of services necessary to enable carers to achieve their maximum potential as members of the community,
> (d) to provide, through carers' assessments, for the interests, needs and choices of carers to be considered in decisions about the provision of services that impact on their role,
> (e) to identify and address specific needs of families with children and young people who are carers,
> (f) to deliver culturally appropriate services for Aboriginal and Torres Strait Islander carers and carers from culturally and linguistically diverse backgrounds.

Background

3. *Digest number 3*, dated 16 March 2010, has reported on the same Bill introduced to the Legislative Assembly by the Member for Bega on 12 March 2010.

4. This Bill seeks to recognise the contribution of carers and to the people they care for. A carer is defined, for the purposes of this Bill, an individual who provides ongoing care or assistance to a person in the target group in the *Disability Services Act 1993* such as a person with a mental illness or chronic illness or a person who, because of frailty, requires assistance to carry out everyday tasks. However, a carer does not include designated service providers under that Act or persons providing care or assistance under a contract of service or as a volunteer. A person is also not a carer solely because the person has a relationship of spouse, de facto, parent or guardian with the person that they are for.

5. NSW government agencies will be required under this Bill to take action to reflect the principles of the NSW Carers Charter when providing services that affect carers. The Charter is set out in Schedule 1.

6. It also proposes for the establishment of the Ministerial Advisory Council for Carers which will prepare a report for the Minister with regard to the performance by NSW government agencies of their obligations under the proposed Act and the compliance or non-compliance of NSW government agencies with the proposed Act.

The Bill

7. The objects of the Bill are:

(a) to enact a NSW Carers Charter to recognise the contribution to society of persons who care for other persons who have a disability, mental illness or chronic illness or are frail with an aim to enable carers to achieve their maximum potential as members of the community, and

(b) to require NSW government agencies to take action to reflect the principles of the Charter when providing services that affect carers, and

(c) to establish a Ministerial Advisory Council for Carers.

8. Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
Clause 3 sets out the objects of the proposed Act which include to recognise the valuable contribution of carers to our society and to the people they care for and to enable carers to achieve their maximum potential as members of the community.
Clause 4 defines certain words and expressions used in the proposed Act.
Clause 5 defines the term ***carer*** for the purposes of the proposed Act. The term means an individual who provides ongoing care or assistance to a person in the target group referred to in the *Disability Services Act 1993*, a person with a mental illness or chronic illness or a person who, because of frailty, requires assistance to carry out everyday tasks. A carer does not include designated service providers under that Act or persons providing care or assistance under a contract of service or as a volunteer. A person is not a carer solely because the person has a relationship of spouse, de facto, parent or guardian with the person that he or she cares for.

Part 2 NSW Carers Charter

Clause 6 provides that the NSW Carers Charter is the Charter set out in proposed Schedule 1.
Clause 7 requires a NSW government agency to take reasonable steps to ensure that its officers, employees and agents are aware of, and understand, the Charter and that the agency takes action to reflect the principles of the Charter when providing services that affect carers.
Clause 8 makes it clear that the proposed Act does not give rise to any civil action.

Part 3 Ministerial Advisory Council for Carers

Clause 9 establishes a Ministerial Advisory Council for Carers.
Clause 10 provides that the Advisory Council consists of the Minister administering the proposed Act, other Ministers who are responsible for providing key support services to carers and persons appointed by the Minister as members who have knowledge of, and experience in, matters relevant to carers. A majority of members must be primary carers.
Clause 11 sets out the functions of the Advisory Council which include to work to advance the interests of carers and promote compliance by NSW government agencies with the proposed Act.
Clause 12 requires the Advisory Council to prepare a report each year for the Minister, and at such other times as the Minister requests, on certain matters including the performance by NSW government agencies of their obligations under the proposed Act.

Part 4 Miscellaneous

Clause 13 enables the Governor to make regulations for the purposes of the proposed Act.
Clause 14 provides for the review of the proposed Act in 5 years.

Schedule 1 NSW Carers Charter
Schedule 1 sets out the provisions of the NSW Carers Charter.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

2. CARERS (RECOGNITION) BILL 2010

Date Introduced:	21 April 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Carmel Tebbutt MP
Portfolio:	Deputy Premier; and Health

Purpose and Description

1. This Bill provides for the recognition of carers; and for other purposes.

2. It sets out the principles that should be followed by agencies when providing services to carers or the persons they care for and ensures that carers' interests will be considered when agencies are considering legislative or policy proposals that affect carers.

3. The Bill will establish a carers advisory council to be appointed by the Minister to advance the interests of carers and to review and make recommendations on legislation, policy or other matters having a significant impact on carers that have been referred to it.

4. The Carers Charter establishes 13 principles relating to carers to guide agencies in supporting carers. The Charter will require all public sector agencies to ensure staff are aware of and understand the charter, as well as consult with carers groups when developing policies that significantly impact on carers and to develop their internal human resource policies to have regard to the charter. It will require human service agencies of those public sector agencies that provide services aimed at carers or persons being cared for, to take action that reflect the principles in the charter and to report annually on their compliance with the legislation.

5. The Carers Charter includes principles such as: giving carers' health and wellbeing due consideration; taking into account the views and needs of carers and the views, needs and best interests of the persons they are caring for in the assessment, planning and delivery of services provided to the persons they care for; and referring carers to appropriate services to assist carers in their caring role.

Background

6. According to the Agreement in Principle speech:

> The New South Wales Government is delivering a broad range of programs and services to recognise and support carers and the contribution they make to our community. These actions are outlined in the whole-of- government New South Wales Carers Action Plan 2007-2012. The Carers Action Plan supports a range of strategies, which aim to increase the respect and recognition of carers to reach out to family members who may not see themselves as carers, to encourage agencies to view carers as partners in care and to support carers to combine work and caring.

7. The Carers Charter recognises that carers have their own needs and they should be referred to relevant services as part of the holistic assessment of the needs of the person for whom they are caring or, as a separate assessment.

8. The aim of this principle is to ensure that carers are referred to, and receive, available support services that they may require.

9. This Bill aims to avoid unnecessary administrative burden by requiring human service agencies to report on their compliance with the legislation in their annual reports, rather than in a separate reporting instrument.

10. The Commonwealth's Carer Recognition Bill may regulate many of the non-government organisations if the Federal Parliament passes their Commonwealth Bill.

11. The Agreement in Principle speech described this Bill as having greater consistency with the Commonwealth's Carer Recognition Bill. For example, both Bills require agencies to consider the carers charter when developing internal human resources policies and both impose stronger requirements on agencies that have a direct interface with carers and the people they care for.

The Bill

12. The objects of this Bill are:

> (a) to enact a NSW Carers Charter to recognise the role and contribution to our community of persons who care for other persons who have a disability, a medical condition (such as a terminal or chronic illness), a mental illness or are frail and aged, and
> (b) to require certain public sector agencies to take action to reflect the principles of the NSW Carers Charter when providing services that affect carers, and
> (c) to establish a Carers Advisory Council.

13. Outline of provisions

Part 1 Preliminary:

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
Clause 3 sets out the objects of the proposed Act which include to enact a Carers Charter to recognise the role and contribution of carers to our community and to the people they care for and to increase the awareness of the valuable contribution that carers make to our community.
Clause 4 defines certain words and expressions used in the proposed Act.
Clause 5 defines the term ***carer*** for the purposes of the proposed Act. The term means an individual who provides ongoing personal care, support and assistance to a person in the target group (as referred to in section 5 (1) of the *Disability Services Act 1993*), a medical condition (including a terminal or chronic illness), a mental illness or is frail and aged. The term does not include persons providing care, support and assistance under a contract of service (or a contract for the provision of services) or in the course of doing voluntary work for a charitable, welfare or community organisation or as part of the requirements of a course of education or training. The proposed section provides that a person is not a carer merely because the person is the spouse or de facto partner of, or parent, guardian, child or other relative of, the other person or lives with the other person.

Part 2 NSW Carers Charter:

Clause 6 provides that the NSW Carers Charter is the Charter set out in proposed Schedule 1.

Clause 7 requires each public sector agency:

(a) to take all reasonable steps to ensure that the members of staff and agents of the agency have an awareness and understanding of the NSW Carers Charter, and

(b) to consult with such bodies representing carers as the agency considers appropriate when developing policies that impact on carers, and

(c) to ensure that the agency's internal human resources policies, so far as they may significantly affect the role of a member of staff of the agency as a carer, are developed having due regard to the NSW Carers Charter.

Clause 8 places additional obligations on public sector agencies that provide services directed at carers or persons being cared for by carers (***human service agencies***). The proposed section requires each human service agency:

(a) to take all reasonable steps to ensure that the agency, and the members of staff and agents of the agency, take action to reflect the principles of the NSW Carers Charter, and

(b) to prepare a report on its compliance with the proposed Act in each reporting period which is to be included in the agency's annual report for the reporting period.

Clause 9 makes it clear that the proposed Act does not give rise to any civil action.

Part 3 Carers Advisory Council:

Clause 10 establishes a Carers Advisory Council.

Clause 11 provides that the Carers Advisory Council is to consist of not more than 10 members appointed by the Minister administering the proposed Act (***the Minister***) who, in the opinion of the Minister, are representatives of key carers groups or are representatives of carer interests.

Clause 12 sets out the functions of the Carers Advisory Council which are the following:

(a) to advance the interests of carers,

(b) to review and make recommendations to the Minister on any legislative or policy proposal, or any other matter, relating to carers referred to the Carers Advisory Council by the Minister,

(c) to carry out such other functions relating to carers as may be directed by the Minister.

Part 4 Miscellaneous:

Clause 13 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 14 contains a transitional provision.

Clause 15 provides for the review of the proposed Act in 5 years.

Schedule 1 NSW Carers Charter:

Schedule 1 sets out the provisions of the NSW Carers Charter.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

3. CHARTER OF BUDGET HONESTY AMENDMENT (INDEPENDENT ELECTION COSTINGS) BILL 2010*

Date Introduced:	23 April 2010
House Introduced:	Legislative Assembly
Member Responsible:	Mike Baird MP
Portfolio:	Private Members' Bill

Purpose and Description

1. The object of this Bill is to amend the *Charter of Budget Honesty (Election Promises Costing) Act 2006* as follows:

> (a) to require the Auditor-General to prepare costings of election policies and the budget impact statements that are released 5 days before a State election, instead of the Secretary of the Treasury, who currently prepares the costings and statements,
>
> (b) to enable the Premier and the Leader of the Opposition to request a costing of an election policy by the Auditor-General at any time after the latest State election before a State election, not only in the period 60 days before a State election.
>
> (c) to enable the Premier and the Leader of the Opposition to discuss, in confidence, the budgetary impact of an election policy with a member of the Auditor-General's staff.

Background

2. This is a Private Members' Bill introduced by Shadow Treasurer, Mike Baird MP. The Bill has been introduced as a result of perceived concerns that the process involved when costing an election policy has become the subject of intense debate, at the expense of discussion related to the substance of the policy itself.

3. This Bill also addresses perceived community expectations that the costing process of an election campaign should involve rigour and independence by enabling leaders of the major parties to seek advice from the Auditor-General's office on the costs of election policies. According to the Agreement in Principle speech, '[the community] wants to know that policies are costed properly, with due process and having regard to expert advice'. The rationale behind this approach is that public debate can then shift to the merits of the policy by enabling the public to have full confidence that policies have been costed properly and by an expert authority.

4. The Bill seeks to expand the time frame in which advice can be sought from the Auditor-General to enable the major parties further time to consider the financial implications of projects that go beyond the immediate budget cycle.

5. The Bill provides for confidential discussions to take place between the leaders of the major parties and the Auditor-General's office, to ensure full and frank disclosures about election policies and their financial implications.

The Bill

6. Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act. Charter of Budget Honesty Amendment (Independent Election Costings) Bill 2010

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

Schedule 1 gives effect to the object of the Bill set out in paragraph (a) of the Overview above.

Schedule 2 [5] gives effect to the object of the Bill set out in paragraph (c) of the Overview above.

Schedule 2 [4] gives effect to the object of the Bill set out in paragraph (b) of the Overview above. **Schedule 2 [1]–[3]** are related amendments

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

4. COMPANION ANIMALS AMENDMENT (OUTDOOR DINING AREAS) BILL 2010

Date Introduced:	22 April 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Barbara Perry MP
Portfolio:	Local Government

Purpose and Description

1. This Bill amends the *Companion Animals Act 1998* to allow dogs in outdoor dining areas in certain circumstances.

2. It will provide a limited exemption to the existing prohibition on dogs in food consumption areas. It will maintain the prohibition on dogs in any food preparation areas and human food consumption areas that are not outdoor dining areas.

3. This Bill also provides an explicit right for operators of outdoor dining areas to decide, when allowed under a licence agreement or development consent, whether they will allow dogs into their outdoor dining areas. It does not provide dog owners with an absolute right to enter any outdoor dining area with their dog.

4. Where the operator of an outdoor dining area decides to allow dogs in an outdoor dining area, mandatory conditions must be complied with. The outdoor dining area must not be enclosed and must be able to be entered by the public without passing through an enclosed area. An area is enclosed if it is substantially or completely enclosed by a ceiling or roof and walls and windows. A dog that is in the outdoor dining area must be under the effective control of a competent person and be restrained by a chain, cord or leash attached to the dog.

5. This means the dog must be under the direct control of a competent person at all times. Dogs must be on the ground at all times. This ensures that dogs are not on tables or chairs where food is consumed. Dogs must not be provided with food in order to minimise public health risks as well as avoid situations where a dog attack could occur. Providing water to a dog will be acceptable. Dangerous and restricted dogs are not permitted in outdoor dining areas.

6. The Minister for Primary Industries has agreed to use his powers under the *Food Act* to make a regulation to modify a provision in the *Food Standards Code*. This will allow dogs in outdoor dining areas where it is permissible under the *Companion Animals Act*.

Background

7. According to the Agreement in Principle speech:

> The *Companion Animals Act* was developed to strike a balance between the benefits of owning a companion animal and the protection of the community from animals that may represent a nuisance or risk to public health and safety. This bill has been drafted

> to maintain this balance. While dog owners may wish to have greater liberties for their dogs, the Government understands that this needs to be tempered with the need of the community to be able to walk the streets in safety and not have their public health put at risk.

8. The Agreement in Principle speech stated that:

> Advice from the NSW Food Authority is that there is no more risk of transmission of disease from dogs than from birds that often fly around an outdoor dining area. As long as dogs are kept on the ground, and interaction between dogs and other people who are eating food is minimised, the food safety risks are low.

9. The Government consulted with the Restaurant and Caterers Association of New South Wales and the Local Government and Shires Associations, which support the proposal to give restaurant operators a right to choose whether they allow dogs into their outdoor dining areas. As public liability is dealt with through the licence agreement or development consent between the outdoor dining operator and the landowner, which in many cases is the local council, the Agreement in Principle speech explained that it was unnecessary for this Bill to deal with any potential liability issues that may arise from allowing dogs in outdoor dining areas.

The Bill

10. The object of this Bill is to amend the *Companion Animals Act 1998* to allow dogs in outdoor dining areas in certain circumstances.

11. Outline of provisions

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

Schedule 1 Amendment of *Companion Animals Act 1998* No 87:

Schedule 1 provides that section 14 (1) (b) of the *Companion Animals Act 1998*, the *Food Act 2003* and the Food Standards Code under that Act do not prohibit a dog (other than a dangerous or restricted dog) from being in an outdoor dining area if:

> (a) the dog is under the effective control of a person and is restrained by means of an adequate chain, cord or leash that is attached to the dog, and
> (b) the person does not feed the dog or permit the dog to be fed, and
> (c) the dog is kept on the ground.

The proposed provision does not confer any entitlement on a person accompanied by a dog to use any table and chairs or other apparatus provided in an outdoor dining area by a food business without the permission of the operator of the food business.

An ***outdoor dining area*** is defined as an area that is used for the consumption of food by humans that is not enclosed and that can be entered by the public without passing through an enclosed area in which dogs are prohibited by the *Companion Animals Act 1998*, the *Food Act 2003* or the Food Standards Code under that Act, but does not include any part of an area that is used for the preparation of food.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

5. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (DEVELOPMENT CONSENTS) BILL 2010

Date Introduced:	22 April 2010
House Introduced:	Legislative Council
Minister Responsible:	The Hon. Tony Kelly MLC
Portfolio:	Planning

Purpose and Description

1. The object of this Bill is to facilitate the carrying out of development that has previously been approved by removing in certain circumstances any reduction of the maximum period of 5 years during which the development consent does not lapse pending the carrying out of the development.

Background

2. Development consents tend to be granted with a lapsing period of two years, rather than the maximum five years allowed by the Act. Generally speaking, this means that if a development consent is not physically commenced within two years, it will lapse.

3. The recent global financial crisis has had an adverse affects on the building and construction industry, particularly with the ability of developers to obtain appropriate finance in tight timeframes. This is evident in the 14% reduction in the number of construction certificates issued in 2008 – 09 compared with the previous financial year.

4. To allow developers ample time to seek finance before a development consent expires, the Bill extends the lapsing period to five years for development consents in cases where they have been reduced. To this extent, the Bill overrides any previous reductions to the five-year lapsing period made by a consent authority.

5. The Bill also provides that from the commencement of the Act until the 1 July 2011 any development consents granted by a consent authority will be subject to the maximum five-year lapsing period.

6. The Bill also provides for the Minister of Planning to make regulations to prevent consent authorities from reducing the lapsing period to less than five years in the future, as well as refining the test for determining whether a development has physically commenced.

The Bill

7. Overview of Provisions

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

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

Clause 3 amends the *Environmental Planning and Assessment Act 1979* (the ***Principal Act***) in relation to the lapsing of development consents. Under section 95 of the Principal Act, a development consent lapses 5 years after the date from which it operates if the development is not commenced within that period. However, a consent authority may reduce that period when it grants development consent. The amendment made by clause 3 (1) ensures that any reduction that applies to an existing development consent that operates before, and lapses after, 22 April 2010 (the date the Bill is introduced into Parliament) is to be disregarded, so that the maximum lapsing period of 5 years will apply to the development consent instead.

The amendment also ensures that a reduction in the maximum lapsing period of 5 years cannot be made for any development consent granted after the commencement of the proposed Act and before 1 July 2011. The amendment also enables the regulations to make similar provision in future, so that the maximum lapsing period of 5 years will also apply to development consents that operate during future periods prescribed by the regulations. The Bill does not apply to development consents that were subject to a reduction and that lapsed before 22 April 2010. Section 95 (4) of the Principal Act provides that a consent for the erection of a building, the subdivision of land or the carrying out of a work does not lapse if building, engineering or construction work is physically commenced on the land before the date the consent would otherwise lapse. The amendment in clause 3 (2) enables the regulations to set out circumstances in which work is or is not taken to be physically commenced. This amendment was originally included in an uncommenced amendment made by the *Environmental Planning and Assessment Amendment Act 2008* but is removed from that Act by clause 4.

Clause 4 removes from the *Environmental Planning and Assessment Amendment Act 2008* the uncommenced amendment to section 95 (4) of the Principal Act. That part of the uncommenced amendment that would also have provided that development consent would lapse if work was not substantially commenced within 2 years of the date the consent would otherwise have lapsed, is not being carried forward.

Issues Considered by the Committee

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

Issue: Limiting of Review Rights – Retrospectivity

8. Clause 3 of the Amendment Act provides that reductions made to the 5-year development consent period will be disregarded where the development consent operates before, and lapses after, the commencement of the Act. Further, all future development consents that are initiated before 1 July 2011 will be subject to a five-year development consent period, with any reduction made by consent authorities to be disregarded.

9. The Committee notes that it is commonplace for councils – as consent authorities – to reduce the consent periods for development applications. Although the standard time frame differs between consent authorities and depends on the types of development applications submitted, there are a significant number of development

applications on foot that are subject to a time frame of between one to four years. The Committee understands that once development consent lapses, it is common practice that developers are required to submit an application for renewal of development consent, should they choose to progress the development. This enables consent authorities to re-evaluate a development consent previously provided and subsequently approve, vary or reject resubmitted development applications, often within one to four years after a development consent initially provided.

10. The Committee notes that the intention of this Bill is to push out the validity of a development consent to the full five-year period. The effect of this is twofold:

11. Firstly, the Bill restricts consent authorities from reviewing development applications whose development consent lapses after one to four years and which are subsequently resubmitted, by extending the validity of the development consent to five years. In this respect, the Bill narrows the de facto review rights consent authorities currently have to determine the suitability of a development application being renewed.

12. Secondly, the Bill requires that five-year development consent timeframes take place to all development consents on foot. In other words, a development consent that was approved in 2009 and subject to a two-year timeframe to lapse in 2011 will now be extended to 2014, effectively operating with retrospective force. In the interests of fairness and certainty, the Committee generally prefers that legislation does not include provisions that apply retrospectively.

13. The Committee is aware that consent authorities are best placed to review the progress of commencing developments and their ongoing appropriateness to the community. The re-submission of a development application provides consent authorities with a second opportunity to consult with the community on the intended development, enabling the community to comment or object and allowing consent authorities to make informed decisions based on current circumstances. Development applications that are approved today may also not be suitable in five years. For example, consent authority interests might change, as well as the interests of the community that the development is to take place in. The Committee is also aware that individuals have a right to certainty that a development will either commence or not commence when it is nearby their property.

14. The Committee is concerned that the Bill restricts consent authorities from reviewing development applications whose development consent lapses after one to four years and which are subsequently resubmitted, by extending the validity of the development consent to five years. In this respect, the Bill narrows the de facto review rights consent authorities presently have to evaluate the progress of commencing developments and determine their ongoing appropriateness to the community. Further, the Committee is concerned that the Bill applies to development consents already on foot, therefore acting with retrospective force and denying the certainty provided in the initial development consent. The Committee refers these matters to the Parliament for its consideration.

The Committee makes no further comment on this Bill.

6. MINING AND PETROLEUM LEGISLATION AMENDMENT (LAND ACCESS) BILL 2010

Date Introduced:	21 April 2010
House Introduced:	Legislative Council
Minister Responsible:	Ian Macdonald
Portfolio:	Minister for Mineral and Forest Resources

Purpose and Description

1. The object of the Bill is to amend the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* in relation to access to land by the holders of prospecting titles over the land following the decision of the Supreme Court in *Brown & Anor v Coal Mines Australia; Alcorn v Coal Mines Australia Pty Ltd* [2010] NSWCC 143. The Bill:

(a) removes the obligation, before prospecting activities are carried out, for an access arrangement to be made with certain secondary landholders whose interests are recorded on the land register but who are not entitled to possession of the land (such as a financial institution holding a registered mortgage over the land), but retains the obligation on holders of those titles to pay compensation to those secondary landholders for compensable loss caused by their prospecting activities.

(b) Enables separate land access arrangements to be made where there are multiple landholders of particular land and removes provision for the termination of any arrangement with multiple landholders whenever one of those landholders ceases to be a landholder or when an additional person becomes a landholder, and

(c) makes a person who becomes an additional landholder of land for which there is an existing access arrangement subject to that arrangement unless the person objects within 7 days after being notified of the arrangement and, if he or she objects, until an access arrangement is agreed or determined or a period of 28 days expires without any such agreement or determination, and

(d) provides for access arrangements to make provision for the notification to the holder of the prospecting title of particulars of additional landholders and makes it clear that additional provisions may be included in the arrangements if they are not matters already required by or under the Act or the conditions of the prospecting title, and

(e) enables access arrangements to be varied by agreement of the parties, by the arbitrator who determined the arrangement or by the Land and Environment Court, and

(f) repeals an uncommenced provision of the *Mining Amendment Act 2008* that would have required the specification of the amount of compensation that is payable in the event of compensable loss before prospecting activities are carried out (in addition to requiring a land access arrangement before those activities are carried out), and

(g) excludes secondary landholders from various other provisions that require landholders to be notified before leases and other authorities are granted or areas constituted for prospecting, and

(h) validates existing land access arrangements and leases and other authorities if they comply with the revised requirements set out in the proposed Act.

Background

2. The *Mining and Petroleum Legislation Amendment (Land Access) Bill 2010* is a direct response to the decision of the court in *Brown & Anor v Coal Mines Australia; Alcorn v Coal Mines Australia Pty Ltd* ('Brown and Alcorn').

3. The Brown and Alcorn Decision arose in the following context. A mining company was the holder of an exploration licence under the *Mining Act 1992* which allowed exploration on farming land owned by the Browns and Alcorns.

4. The Mining Act requires holders of exploration titles to give notice to landholders of their intention to obtain an access arrangement in respect of the land. 'Landholders' are defined to include a person that has an interest in the land.

5. Once notice is provided, the holder of an exploration licence can negotiate with the landholders to agree to the access arrangements and, if access cannot be agreed, to request the landholders to agree to the appointment of an arbitrator to resolve the access dispute.

6. The company served Brown and Alcorn, as the registered proprietors of the relevant land, with notice of its intention to obtain an access arrangement in respect of the land. However the land owned by Brown and Alcorn was subject to a registered mortgage, giving the mortgagee an interest in the land. The company failed to provide notice to the mortgagee.

7. Negotiations for the company to obtain access to the land failed and the matter was referred to an arbitrator for dispute resolution.

8. The arbitrator granted the company access to the land. In response, Brown and Alcorn appealed to the Mining Warden who upheld the grant of access, but subject to conditions.

9. Brown and Alcorn appealed to the Supreme Court arguing that the requisite notices in relation to access had not been served on the mortgagees.

10. The Supreme Court found that all landholders with a registered interest in the land, not just the owner or occupier, must make a single access arrangement with the exploration company. This means that entities such as banks that hold mortgages

and utilities that hold easements must therefore be included in the negotiation of a single access arrangement to a property.

11. The court decision potentially affects the validity of hundreds of access arrangements on foot where more than one person has an interest in the land. In the Agreement in Principle speech, the Government indicated its concern that these access arrangements would have to be renegotiated – with all interested parties – and in the interim, there would be significant disruption to mineral exploration activity. The Government further deemed that the effects of the Bill would be a restriction of negotiation power for landholders if parties with secondary interests are required to attend the negotiations.

12. The Bill narrows the definition of 'landholder', essentially restricted to registered mortgagees in possession, lessees and other persons with an exclusive right to occupy the land. The Bill removes the obligation for an access arrangement to be made with a new class of landholder termed 'secondary landholder'. Secondary landholders will include registered mortgagees and holders of easements and rights of way, although these parties will still be eligible for compensation for damage or loss caused by exploration activities.

13. The Bill also allows for separate access arrangements where there are multiple landholders. According to the Agreement in Principle speech, this is designed so that 'each party with an interest can negotiate their own arrangement and landholders can maintain confidentiality of their arrangements'.

14. Lastly, the Bill streamlines requirements where there is a change in landholder. For example, the Bill ensures that access arrangements do not terminate when one landholder exits as an interested party to the property. Other provisions make arrangements when there is a new landholder to the property where an access arrangement is already operating, with conditions, and there are provisions that ensure an access arrangements does not run with the property, so that sale of the property requires a new access arrangement.

The Bill

15. Outline of Provisions

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

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

Schedule 1 Amendment of *Mining Act 1992* No 29

Currently, the definition of ***landholder*** under the *Mining Act 1992* (the ***Mining Act***) includes a person identified in any register or record kept by the Registrar-General as a person having an interest in the land. **Schedule 1 [1]** amends the definition of ***landholder*** to provide that in order to qualify as a person who falls within that part of the definition of landholder, the person must be a mortgagee in possession, the holder of a lease, or other person entitled to an exclusive right of occupation, a Minister or public authority having an interest under a covenant imposed under the *Crown Lands Act 1989* or under a conservation, natural heritage or biobanking agreement or a person prescribed by the

regulations. Any person who does not hold any such interest in the land but who is identified in the land register as a person having an interest in the land (such as a financial institution holding a registered mortgage over the land) is a secondary landholder. This amendment removes the obligation, before prospecting activities are carried out, for an access arrangement to be made with secondary landholders. It also removes various obligations under the Mining Act to notify those landholders before leases and other authorities are granted or certain prospecting areas are constituted (eg cl 21 of Schedule 1; s 177; s 200; s 221).

Schedule 1 [8] and [9] amend sections 255A, 262, 269 and 271 of the *Mining Act* to retain the obligation on holders of prospecting titles to give notice to secondary landholders prior to entering their land and to pay compensation to those secondary landholders for compensable loss caused by their prospecting activities. **Schedule 1 [10]** amends section 383C of the Mining Act to retain a general immunity for secondary landholders from any action, liability, claim or demand arising as a consequence of any act or omission of a person authorised to exercise any power or right under the Mining Act or under a prospecting title. **Schedule 1 [2]** inserts a definition of ***secondary landholder*** for the purpose of the proposed amendments.

Currently, section 140 of the *Mining Act* requires the holder of a prospecting title to enter into an access arrangement in relation to land that is agreed between the holder of the title and each landholder prior to carrying out prospecting operations on that land. **Schedule 1 [3]** substitutes section 140 to enable separate land access arrangements to be made where there are multiple landholders of particular land, where prospecting occurs progressively in different areas of the same landholding or where separate arrangements are required to preserve the confidentiality of certain provisions in the arrangements. **Schedule 1 [5]** amends section 142 to make provision for circumstances in which some, but not all, landholders of particular land have agreed to an access arrangement with the holder of a prospecting title. In particular, a landholder who has agreed to an access arrangement will not be a party to a hearing before an arbitrator in relation to the landholders who have not agreed to an access arrangement, unless the landholder requests to be made a party to the hearing.

Schedule 1 [4] amends section 141 of the *Mining Act* to provide that access arrangements may make provision for the notification to the holder of the prospecting title of particulars of additional landholders and to make it clear that additional provisions may be included in the arrangements if they are not matters already required by or under the Act or the conditions of the prospecting title.

Schedule 1 [6] inserts proposed section 155 (6A) which provides that a review of a determination made by an arbitrator is to be by way of rehearing in the Land and Environment Court.

Schedule 1 [7] substitutes sections 157 and 158 of the *Mining Act.* Proposed section 157 enables an access arrangement to be varied or terminated by the agreement of the parties to the arrangement, by the arbitrator who determined the arrangement or by the Land and Environment Court. Proposed section 158 provides that an access arrangement does not terminate if a person becomes a landholder of all or any part of the land concerned after the arrangement was agreed or determined, or if one landholder to an arrangement with 2 or more landholders ceases to be a landholder of the land concerned.

A person who becomes an additional landholder of land for which there is an existing access arrangement is subject to that arrangement unless the person objects within 7 days after being notified of the arrangement and, if he or she so objects, until an access arrangement is agreed or determined, or a period of 28 days expires without any such arrangement or determination. If land subject to an access arrangement ceases to be subject to a particular prospecting title, and instead becomes subject to another prospecting title that is either held by the same title holder or by a person who is assigned the rights of the holder under the access arrangement, the access arrangement does not terminate and the arrangement becomes an access arrangement in respect of that other prospecting title.

Schedule 1 [11] permits, in addition to the regulation of arbitrator's costs, the making of provisions to regulate the procedure of any arbitration conducted under the Mining Act.

Schedule 1 [12] permits regulations under the Mining Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [13] contains savings and transitional provisions consequent on the enactment of the proposed Act, which validate existing land access arrangements and leases or other authorities if they comply with the revised requirements set out in the proposed Act.

Schedule 2 Amendment of *Mining Amendment Act 2008* No 19

Schedule 2 [2] amends an uncommenced provision of the *Mining Amendment Act 2008* (the ***2008 Act***) to retain the obligation on the holder of a prospecting title to pay compensation to a secondary landholder for compensable loss caused by the holder's prospecting activities.

Schedule 2 [3] and [4] repeal uncommenced provisions of the 2008 Act that would have required the specification of the amount of compensation that is payable in the event of compensable loss before prospecting activities are carried out.

Schedule 2 [1] and [5] repeal uncommenced provisions of the 2008 Act consequential on the amendments made by Schedule 1 to the proposed Act.

Schedule 3 Amendment of *Petroleum (Onshore) Act 1991* No 84

Currently, the definition of ***landholder*** under the *Petroleum (Onshore) Act 1991* (the ***Petroleum Act***) includes a person identified in any register or record kept by the Registrar-General as a person having an interest in the land. **Schedule 3 [1]** amends the definition of ***landholder*** to provide that in order to qualify as a person who falls within that part of the definition of landholder, the person must be a mortgagee in possession, the holder of a lease, or other person entitled to an exclusive right of occupation, a Minister or public authority having an interest under a covenant imposed under the *Crown Lands Act 1989* or under a conservation, natural heritage or biobanking agreement or a person prescribed by the regulations.

Any person who does not hold any such interest in the land but who is identified in the land register as a person having an interest in the land (such as a financial institution holding a registered mortgage over the land) is a secondary landholder. This amendment removes the obligation, before prospecting activities are carried out, for an access arrangement to be made with secondary landholders. It also removes various obligations under the *Petroleum*

Act to obtain the consent of those landholders before certain operations under leases may be carried out (eg s 71). **Schedule 3 [8]** amends section 101 of the Petroleum Act to retain the obligation on holders of prospecting titles to give notice to secondary landholders prior to entering their land. **Schedule 3 [2]** inserts a definition of ***secondary landholder*** for the purpose of the proposed amendments.

Currently, section 69C of the *Petroleum Act* requires the holder of a prospecting title to enter into an access arrangement in relation to land that is agreed between the holder of the title and each landholder prior to carrying out prospecting operations on that land. **Schedule 3 [3]** substitutes section 69C to enable separate land access arrangements to be made where there are multiple landholders of particular land, where prospecting occurs progressively in different areas of the same landholding or where separate arrangements are required to preserve the confidentiality of certain provisions in the arrangements. **Schedule 3 [5]** amends section 69E to make provision for circumstances in which some, but not all, landholders of particular land have agreed to an access arrangement with the holder of a prospecting title. In particular, a landholder who has agreed to an access arrangement will not be a party to a hearing before an arbitrator in relation to the landholders who have not agreed to an access arrangement, unless the landholder requests to be made a party to the hearing.

Schedule 3 [4] amends section 69D of the Petroleum Act to provide that access arrangements may make provision for the notification to the holder of the prospecting title of particulars of additional landholders and to make it clear that additional provisions may be included in the arrangements if they are not matters already required by or under the Act or the conditions of the prospecting title.

Schedule 3 [6] inserts proposed section 69R (6A), which provides that a review of a determination made by an arbitrator is to be by way of rehearing in the Land and Environment Court.

Schedule 3 [7] substitutes sections 69T and 69U of the Petroleum Act. Proposed section 69T enables an access arrangement to be varied or terminated by the agreement of the parties to the arrangement, by the arbitrator who determined the arrangement or by the Land and Environment Court.

Proposed section 69U provides that an access arrangement does not terminate if a person becomes a landholder of all or any part of the land concerned after the arrangement was agreed or determined, or if one landholder to an arrangement with 2 or more landholders ceases to be a landholder of the land concerned.

A person who becomes an additional landholder of land for which there is an existing access arrangement is subject to that arrangement unless the person objects within 7 days after being notified of the arrangement and, if he or she so objects, until an access arrangement is agreed or determined, or a period of 28 days expires without any such arrangement or determination. If land subject to an access arrangement ceases to be subject to a particular prospecting title, and instead becomes subject to another prospecting title that is either held by the same title holder or by a person who is assigned the rights of the holder under the access arrangement, the access arrangement does not terminate and the arrangement becomes an access arrangement in respect of that other prospecting title.

Schedule 3 [9] allows the making of regulations to regulate arbitrator's costs and the procedure of any arbitration conducted under the Petroleum Act.

Schedule 3 [10] inserts proposed section 141 to provide a general immunity to landholders (including secondary landholders) from any action, liability, claim or demand arising as a consequence of any act or omission of a person authorised to exercise any power or right under the Petroleum Act or under a petroleum title.

Schedule 3 [11] allows regulations under the Petroleum Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 3 [12] contains savings and transitional provisions consequent on the enactment of the proposed Act, which validate existing land access arrangements and petroleum titles if they comply with the revised requirements set out in the proposed Act.

Issues Considered by the Committee

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

Issue: Retrospectivity

16. Clause 13 of Schedule 1 and clause 12 of Schedule 3 of the Bill provide that a land access arrangement that was entered into or determined under the access arrangements provisions of the respective *Mining Act 1992* or *Petroleum (Onshore) Act 1991*, that took place before the commencement of the amending Act, and that would have been a valid arrangement if agreed or determined after that commencement of the amended Act is taken to be (and always to have been) a valid arrangement. In other words, this provision enables the access arrangements of the Bill to have retrospective effect and all access arrangements, including those already made, will be taken to be subject to the conditions set out in this Bill.

17. These clauses further provide that any action that flowed from the access arrangements made under the unamended Act that would be valid were it made under the amended Act, is similarly taken to have been made under the amended Act.

18. The Committee is aware that the court decision in *Brown and Alcorn* has raised questions about the validity of existing access arrangements, particularly where interested secondary landholders – such as banks that hold mortgages on the property or utilities that have easements – were not subject to the access arrangement negotiations. The Committee recognises that these legitimate legal issues require clarification to ensure access arrangements between landholders and prospective titleholders are appropriate and can be applied with certainty.

19. However, the Committee is concerned with the effect of retrospective application to affirm the validity of access arrangements that might otherwise contravene the *Mining Act 1992* or *Petroleum (Onshore) Act 1991* as it currently stands. Whilst the Committee appreciates the need to correct unintended consequences of legislation to clarify the legislative purpose, the Committee has always been concerned to identify provisions with retrospective application and notes its potential to unduly trespass on personal rights and liberties.

20. Further, the clauses mentioned above also provide that a party to any access arrangement which has been determined by an arbitrator but then set aside by a

court may apply to the Land and Environment Court for the determination of an access arrangement as amended by this Bill. Essentially, the effect of this provision would be to set aside the Court's findings in *Brown and Alcorn* and enable the prospective titleholders in that case to lodge an application to have the matter reheard according to access arrangement provisions set out in this Bill. Given the landholders were the successful party in *Brown and Alcorn,* the Bill is therefore more favourable to the prospective titleholders.

21. Whilst the Committee appreciates the ability of the Government to make or amend legislation in response to a court ruling, the Committee is concerned by this Bill's effect of quashing the finding of the Court in *Brown and Alcorn* and facilitating a rehearing of the case according to different rules. Bills that take place with retrospective force deprive the public from the legislative certainty that is expected when laws are made. Generally, the public should have full confidence that the given laws at any date should remain in force as laws for that date, in perpetuity.

22. Further, the Committee notes that it is unfair for the successful party in actions that have been litigated, financed and decided upon, such as the matter in *Brown and Alcorn,* to be subsequently invalidated by an Act of Parliament.

23. Whilst the Committee appreciates the ability of the Government to make or amend legislation in response to a court ruling, the Committee is concerned by this Bill's effect of quashing the finding of the Court in *Brown and Alcorn* and facilitating a rehearing of the case according to different rules. Bills that take place with retrospective force deprive the public from the legislative certainty that is expected when laws are made. Generally, the public should have full confidence that the given laws at any date should remain in force as laws for that date, in perpetuity.

24. Further, the Committee notes that it is unfair for the successful party in actions that have been litigated, financed and decided upon, such as the matter in *Brown and Alcorn,* to be subsequently invalidated by an Act of Parliament.

25. The Committee is aware that the court decision in *Brown and Alcorn* has raised questions about the validity of existing access arrangements. The Committee appreciates the need to correct unintended consequences of legislation to clarify the legislative purpose. However, it is incumbent upon the Committee to point out the effect of retrospective application to affirm the validity of access arrangements that might otherwise contravene the *Mining Act 1992* or *Petroleum (Onshore) Act 1991* as it currently stands. The Committee has always been concerned to identify provisions with retrospective application and notes its potential to unduly trespass on personal rights and liberties.

26. The Committee is also concerned by the Bill's effect of quashing the finding of the Court in *Brown and Alcorn* and facilitating a rehearing of the case according to different rules. Bills that take place with retrospective force deprive the public from the legislative certainty that is expected when laws are made. Generally, the public should have full confidence that the given laws at any date should remain in force as laws for that date, in perpetuity.

27. The Committee refers the matters pertaining to the retrospective application of this Bill to Parliament for its consideration.

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

Issue: Property Rights

28. The Committee understands that the Crown owns most of the mineral and petroleum resources in the State. Whilst surface land may be owned privately, and in areas of mining exploration are often held by agricultural interests, the mineral and petroleum resources that lie beneath the surface remain property of the Crown in the vast majority of cases. In order to properly identify where these resources are, the Government authorises mining and petroleum companies to access land to explore for minerals and petroleum.

29. The Committee notes that the intent and effect of the Bill is to limit the class of landholders who can enter into access arrangements with prospective titleholders and, in doing so, exclude a class of interested parties from being subject to the negotiations. These interested parties – or secondary landholders – generally include registered mortgagees and holders of easements or rights of way, but may also include individuals with a caveat on the property. This exclusion may deprive secondary landholders of information about access arrangements relating to property in which they have an interest, as well as the ability to have input in how those access arrangements are framed and therefore how the property is managed. This is especially concerning when access arrangements may affect land values of the property, or where there are concerns about possible environmental damage to the property. In this respect, the Committee is concerned that this exclusion will adversely affect the property rights of secondary landholders.

30. Further, by limiting the parties in which a prospective titleholder needs to engage with and seek agreement from, the impediments to mineral or petroleum exploration are lessened.

31. The Committee is always concerned when legislation is introduced that may adversely impact on property rights. This Bill relates to the ability of mining and petroleum companies to obtain access to land for exploration activities, particularly in rural areas, and largely seeks to make the access procedures less cumbersome. As such, this Bill potentially restricts the rights of a class of individuals to enjoyment of their property and to be largely free from external interference.

32. The Committee is always concerned when legislation is introduced that may adversely impact on property rights.

33. Firstly, the Committee is concerned that in excluding secondary landholders from discussions about access arrangements, it may adversely affect their right to be informed of, and have input in, matters relating to property in which they have an interest.

34. Secondly, this Bill relates to the ability of mining and petroleum companies to obtain access to land for exploration activities, particularly in rural areas, and largely seeks to make the access procedures less cumbersome. As such, this Bill potentially restricts the rights of a class of individuals to enjoyment of their property and to be largely free from external interference.

The Committee makes no further comment on this Bill.

7. NATIONAL PARK ESTATE (RIVERINA RED GUM RESERVATIONS) BILL 2010

Date Introduced:	22 April 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Frank Sartor MP
Portfolio:	Environment and Climate Change

Purpose and Description

1. The objects of the Bill are:

> (a) to transfer to the national park estate certain river red gum State forest lands in the Riverina area, and
>
> (b) to enable the transfer to Aboriginal ownership and conservation of certain other State forest lands in the Riverina area, and
>
> (c) to enable forestry operations to continue on land in the Riverina area remaining as State forest (including in part of the Millewa State forest on a transitional basis until the land is transferred to the national park estate on 1 July 2015), and
>
> (d) to enable payments to be made from the Environmental Trust Fund, established under the *Environmental Trust Act 1998,* for the purpose of implementing forestry restructure and assistance programs and schemes in the Riverina area, and
>
> (e) to enable the collection of firewood for non-commercial purposes to continue in areas reserved as regional parks under the proposed Act and to make other miscellaneous provisions.

Background

2. In July 2009, the NSW Government requested the Natural Resources Commission ('the Commission') to undertake a regional forest assessment and to make recommendations on the use and management of the public land in the Riverina.

3. In December 2009, the Commission handed down the 'Riverina Bioregion Regional Forest Assessment River Red Gums and Woodland Forests' Final Report.

4. The Commission made numerous findings and recommendations to attempt to address the decline of the river red gums habitat and the industries and social systems, supported by the forests and that are affected by its decline.

5. The Government has indicated its intention to adopt nearly every recommendation of the report, including those recommendations that are being implemented through this Bill.

6. Key features of the Bill include the establishment of over 100,000 hectares of new protected areas, including the establishment of Indigenous protected areas, the funding of the National Parks and Wildlife Service for the adequate, active management of the new reserves, the funding of trials focused on ecological thinning and structural adjustment packages for the possible exiting of timber-based industries. The Bill also provides for continued, managed logging operations to take place until July 2015.

7. According to the Agreement in Principle speech, the structural adjustment package will not be based on the difference between past logging allocations and future allocations. Instead, payments will be based on the amount of sustainable yield lost during the creation of the new nature reserves.

8. Also noted in the Agreement in Principle speech is that funding has been set aside for worker assistance payments for those employees that lose their jobs during the restructure. $81,360 has been set aside per worker plus an additional $10,000 for retraining. Additional monies are to be set aside in a regional employment and community development fund for the Riverina region.

9. The Bill allows a phasing out of logging activities in the Millewa group of forests, with a transitory period that will expire in mid 2015. This logging activity is to be supported by a Millewa transition forestry code, to be gazetted. The code will prescribe the annual limit on the volume of timber to be harvested and the harvesting techniques to be employed.

10. The Bill provides further measures for the collection and use of firewood subject to strict conditions.

The Bill

11. Outline of provisions

Part 1 Preliminary

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

Clause 2 provides for the commencement of the proposed Act on 1 July 2010.

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

Part 2 Land transfers

Clause 4 revokes the dedication as State forest of lands that are to be reserved as national park or regional park or vested in the Minister for Climate Change and the Environment for the purposes of Part 11 of the *National Parks and Wildlife Act 1974*. The dedication of the lands specified in Schedules 1, 3 and 5 is revoked on 1 July 2010 and the dedication of lands specified in Schedules 6 and 7 is revoked on 1 July 2015.

Clause 5 reserves, on 1 July 2010, certain lands in revoked State forests as national park or regional park. The lands concerned are set out in Schedule 1.

Clause 6 reserves, on 1 July 2010, certain Crown lands as state conservation area. The lands concerned are set out in Schedule 2.

Clause 7 vests, on 1 July 2010, certain lands in revoked State forests in the Minister for Climate Change and the Environment for the purposes of Part 11 of the *National Parks and Wildlife Act 1974*. The lands concerned are set out in Schedule 3.

Clause 8 reserves, on 1 July 2010, certain lands controlled by the Forestry Commission (and taken to be State forest) as national park. The lands concerned are set out in Schedule 4.

Clause 9 vests, on 1 July 2010, certain lands in revoked State forests in the Crown as Crown land, which will be subject to the *Crown Lands Act 1989* (with an assessed preferred use for the purposes of nature conservation). The lands concerned are set out in Schedule 5.

Clause 10 reserves, on 1 July 2015, certain lands in part of Millewa revoked State forest as national park or regional park. The lands concerned are set out in Schedule 6.

Clause 11 vests, on 1 July 2015, certain lands in revoked State forests in the Minister for Climate Change and the Environment for the purposes of Part 11 of the *National Parks and Wildlife Act 1974*. The Minister may revoke the dedication of the State forest of any of the lands earlier than 1 July 2015 if the lands are to be vested in an Aboriginal landholding body. The lands concerned are set out in Schedule 7.

Clause 12 reserves, on 1 July 2010, certain lands that had been vested in the Minister for Climate Change and the Environment for the purposes of Part 11 of the *National Parks and Wildlife Act 1974* as state conservation area.

Clause 13 changes the names of, and consolidates, certain reserved lands that are currently within national parks, nature reserves and state conservation areas.

Clause 14 enables the Director-General of the Department of Environment, Climate Change and Water (the ***Director-General***) to adjust the descriptions of land in Schedules 1–8 in order to alter the boundaries of the land for the purposes of effective management of national park estate land and State forest land, to adjust boundaries to public roads, to adjust descriptions of easements or to provide a more detailed description of the boundaries of the land.

Part 3 Forestry operations on land remaining as State forest

Clause 15 defines certain words and expressions used in proposed Part 3. ***Riverina forestry operations*** is defined to mean forestry operations within the meaning of the *Forestry and National Park Estate Act 1998* to which Part 4 of that Act applies that are carried out in Riverina State forests, but it does not include Millewa transitional forestry operations. ***Millewa transitional forestry operations*** are forestry operations carried out in the Millewa State forest (the lands set out in Schedule 6 to the proposed Act) before 1 July 2015.

Clause 16 provides that an integrated forestry operations approval may be granted under Part 4 of the *Forestry and National Park Estate Act 1998* for Riverina forestry operations.

Clause 17 applies to Millewa transitional forestry operations. The Minister may, by order published in the Gazette, make provision for or with respect to the carrying out of Millewa transitional forestry operations (referred to as the ***Millewa Transitional Forestry Code***). Forestry operations may be carried out only in accordance with the Code. The Code is required to include provision with respect to certain matters, including logging operation methods, prohibition of logging of certain river red gum trees, retention of habitat and recruitment trees, protection of threatened species of animals and plants, prevention of water pollution, and consultation with local Aboriginal communities.

Part 4 Miscellaneous

Clause 18 provides that firewood may be collected from land reserved as regional park or other land reserved under the *National Parks and Wildlife Act 1974* in certain circumstances. The firewood is not to be collected for commercial purposes. It must be collected only by an individual or not-for-profit organisation, licensed by the Director-General, and must be collected from firewood collection zones as determined by the Director-General. The collection of firewood must comply with any conditions of a licence issued to the person or the organisation and any regulations.

Clause 19 provides that the proposed Act binds the Crown.

Clause 20 enables the making of regulations for the purposes of the proposed Act.

Schedule 1 State forests reserved as national park or regional park on 1 July 2010

This Schedule sets out the lands within State forests (whose dedication as State forest is revoked) that are, on 1 July 2010, reserved as national or regional park.

Schedule 2 Crown lands reserved as state conservation area on 1 July 2010

This Schedule sets out the Crown lands that are, on 1 July 2010, reserved as state conservation area.

Schedule 3 State forests vested in NPW Minister on 1 July 2010

This Schedule sets out the lands (whose dedication as State forest is revoked) that are, on 1 July 2010, vested in the Minister for Climate Change and the Environment for the purposes of Part 11 of the *National Parks and Wildlife Act 1974*.

Schedule 4 Forestry Commission controlled land reserved as national park on 1 July 2010

This Schedule sets out the lands controlled by the Forestry Commission that are, on 1 July 2010, reserved as national park.

Schedule 5 State forests made subject to *Crown Lands Act 1989* on 1 July 2010

This Schedule sets out the lands (whose dedication as State forest is revoked) that are, on 1 July 2010, vested in the Crown as Crown land and subject to the *Crown Lands Act 1989*.

Schedule 6 State forests reserved as national park or regional park on 1 July 2015

This Schedule sets out lands (whose dedication as State forest is revoked) that are reserved on 1 July 2015 as national park or regional park.

Schedule 7 State forests vested in NPW Minister on 1 July 2015 (unless earlier transferred to Aboriginal ownership)

This Schedule sets out the lands (whose dedication as State forest is revoked) that are, on 1 July 2015, vested in the Minister for Climate Change and the Environment for the purposes of Part 11 of the *National Parks and Wildlife Act 1974*, unless earlier transferred to Aboriginal ownership.

Schedule 8 Land vested in the NPW Minister reserved as state conservation area on 1 July 2010

This Schedule sets out the lands vested in the Minister for Climate Change and the Environment that are, on 1 July 2010, reserved as state conservation area.

Schedule 9 Change of names and consolidation of national parks, nature reserves and state conservation areas on 1 July 2010

This Schedule sets out the land affected by the changes in the national park estate referred to in clause 13.

Schedule 10 Land transfers—ancillary and special provisions

This Schedule makes ancillary and special provisions with respect to land transferred under the proposed Act.

Schedule 11 Amendment of Acts

Schedule 11.1 amends the *Forestry and National Park Estate Act 1998* to remove the requirement for a forest agreement to be prepared under that Act before an integrated forestry operations approval can be prepared under that Act in respect of the Riverina area. The amendments also extend the definition of ***forestry operations*** to include operations for the production or collection of firewood. This definition is used in Part 3 of the proposed Act in relation to forestry operations in Millewa State Forest and the Riverina area.

Schedule 11.2 amends the *Forestry Restructuring and Nature Conservation Act 1995* to enable payments to be made to the Consolidated Fund from the Environmental Trust Fund, established under the *Environmental Trust Act 1998*, to offset expenditure from the Consolidated Fund for the purposes of implementing forestry restructure and assistance programs and schemes in the Riverina area. The total amounts paid from the Fund in respect of the Riverina area must not exceed $38,813,000 and payments from the Fund in respect of the Riverina area can only be made until 30 June 2015. The Minister for Climate Change and the Environment and the Minister for Mineral and Forest Resources are to prepare a joint report on expenditure in the Riverina area for each financial year and the report is to be tabled in Parliament.

Schedule 11.3 amends the *Native Title (New South Wales) Act 1994* to preserve native title rights and interests in respect of a reservation or vesting of, or declaration over, land or waters by the operation of the proposed Act.

Issues Considered by the Committee

12. The Committee has not identified any issues under s8A(1)(b) of the *Legislation Review Act 1987.*

The Committee makes no further comment on this Bill.

8. NSW SELF INSURANCE CORPORATION AMENDMENT (HOME WARRANTY INSURANCE) BILL 2010

Date Introduced:	21 April 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Eric Roozendaal MLC
Portfolio:	Treasurer

Purpose and Description

1. This Bill amends the *NSW Self Insurance Corporation Act 2004* to provide for the NSW Self Insurance Corporation to be the sole home warranty insurer for the State; and to make consequential amendments to the *Home Building Act 1989*.

2. The Bill will establish a government insurer as the sole provider of home warranty insurance in New South Wales. It will establish functions for the New South Wales Self Insurance Corporation [SICorp] in connection with the provision of home warranty insurance, and enable SICorp to enter into commercial contracts with insurance agents for the provision of services related to providing home warranty cover. It will also establish a home warranty insurance fund and provide for the use and investment of money deposited into that fund.

3. It makes consequential amendments to the *Home Building Act 1989* that establish:

    - the New South Wales Self Insurance Corporation as the sole home warranty insurance provider in New South Wales,

    - to enable the Minister for Fair Trading to issue guidelines for market practices or claims handling procedures after consultation with the Home Warranty Scheme Board and the Minister administering the New South Wales Self Insurance Corporation Act 2004 and

    - to withdraw existing approved insurers' authorisation to issue home warranty insurance from 1 July 2010.

4. The Bill amends the *New South Wales Self Insurance Corporation Act 2004* to include specific functions that the SICorp requires to carry on the business of providing home warranty insurance for building work done in New South Wales. The range of functions includes:

    - entering into contracts or agreements with providers including reinsurers for services relating to home warranty

    - the management of the Home Warranty Insurance Fund and

- entering into arrangements to appoint insurance agents to act for the government insurer.

5. It aims to continue similar insurance arrangements to ones that currently exist, with the additional benefit of a government underwriter offering security and transparency for builders and consumers. SICorp will finance and underwrite the scheme and set premiums and service standards. It will engage private insurance firms, or scheme agents, to issue policies, to collect premiums and to undertake claims management.

Background

6. From the Agreement in Principle speech:

> The home warranty insurance market has experienced periods of uncertainty over recent years with the collapse of HIH. Last year saw the exit of CGU Insurance and Lumley General from the home warranty market, as well as the announcement by Vera of its intention to withdraw from the market. Market analysis and consultation with the industry indicated a lack of capacity among the remaining insurers, or any potential new insurers, to fill the gap. In November 2009, the New South Wales Government announced reforms to home warranty insurance arrangements with the Government taking responsibility of becoming the sole insurance provider and providing the necessary capital backing.

7. A single government insurer aims to allow premiums to be priced consistently across the State. There will be one set of eligibility conditions for all builders. This contrasts with the current arrangements where different rules apply depending on the insurer.

8. According to the Agreement in Principle speech:

> SICorp will be required to comply with Market Practice Guidelines that set the service standards applicable to builders and consumers. This is consistent with current industry practice. The Market Practice Guidelines will continue to be made public, providing full transparency for builders and consumers. Agents appointed to provide home warranty services will be subject to the direction and control of SICorp. The Home Warranty Insurance Fund will be subject to audit by the Auditor-General. SICorp will be required to comply with the *Public Finance and Audit Act 1983*. Insurance agents or intermediaries acting on behalf of SICorp will be exempt from sections 12, 13 and 18 of the *Public Finance and Audit Act 1983*. This exemption is necessary to ensure a smooth transition to the new arrangements for builders and consumers and is consistent with current industry practice.

9. The Agreement in Principle speech explained that:

> A Home Warranty Insurance Fund is to be established in the Special Deposits Account. Moneys received by SICorp for home warranty purposes that are to be paid into this fund include insurance premiums, all money recovered in respect of any right of recovery for moneys expended, money received under any security or guarantee that has been provided by a builder as a condition of issuing a policy, proceeds of any investments of money in the fund, and all money advanced to the Self Insurance Corporation by the Minister or appropriated by Parliament for the purposes of the fund. Moneys for the following purposes can be paid from the fund: home warranty claims by consumers, operating and administrative costs including risk management, actuarial and other services, repayment of the Government's capital advance of $15.6 million. The Self Insurance Corporation may invest money in the Home Warranty Fund as authorised by the *Public Finance and Audit Act 1983*.

10. To protect the home warranty insurance funds that are handled by agents and intermediaries in the course of providing services to builders and consumers, agents and intermediaries will be required to meet strict controls and have appropriate risk management systems in place. In addition, insurance agents and intermediaries will be required to meet certain criteria, hold relevant insurances for the protection of home warranty insurance funds and will be subject to audit.

11. With regard to the Home Warranty Insurance Fund, consultations with the construction and insurance industries showed that a small number of builders present a greater financial risk than others in relation to the performance of the fund. Some of the builders new to the industry may not be able to meet the eligibility criteria to obtain insurance. In order to address this, a panel of building management service providers will be established. Where necessary, SICorp will request some small to medium builders to engage the services of one of these providers as a condition of providing home warranty cover. These building management service providers will then give the additional support needed by this group of builders to ensure that they meet their contractual obligations with consumers, and reduce the risk to the Home Warranty Insurance Fund.

12. The Agreement in Principle speech explained that under the changes:

> …builders who do not demonstrate financial capacity for the level of cover they want will have the choice to increase the equity in their business through paid up capital; provide a security or guarantee; or opt for a managed builder arrangement. These options will allow a greater opportunity for new builders to enter the market. A minimal number of builders will be unable to obtain cover. If the financial situation of these builders improves they will be able to request consideration of cover again.

13. The consequential amendments to the *Home Building Act 1989* will implement the new insurance arrangements from 1 July 2010.

The Bill

14. The objects of this Bill are:

> (a) to amend the *NSW Self Insurance Corporation Act 2004* to enable the NSW Self Insurance Corporation (***SICORP***) to be the sole provider of home warranty insurance required for certain building work under the *Home Building Act 1989*, and
> (b) to make consequential amendments to the *Home Building Act 1989*.

15. Outline of provisions

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

Schedule 1 Amendment of *NSW Self Insurance Corporation Act 2004* No 106:

Home warranty insurance functions of SICORP:

Schedule 1 [4] inserts proposed sections 8A and 8B in the *NSW Self Insurance Corporation Act 2004*.

Proposed section 8A provides for the functions of SICORP in connection with the provision of home warranty insurance for the purposes of Part 6 of the *Home Building Act 1989*. The proposed section also enables SICORP to engage insurance agents to assist in providing home warranty insurance.
Proposed section 8B specifically authorises, for the purposes of Part IV of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*, certain matters in connection with the provision of home warranty insurance by or on behalf of SICORP.

Schedule 1 [12] amends section 13 of the *NSW Self Insurance Corporation Act 2004* to enable the Governor to make regulations for or with respect to certain matters concerning insurance agents and brokers and other intermediaries used by such agents and the conduct of building management service providers who provide services to builders whose work is insured by SICORP.

Schedule 1 [1] and [3] amend section 3 of the *NSW Self Insurance Corporation Act 2004* to insert definitions of certain new terms and expressions and to provide that the new notes to be included in the Act do not form part of the Act.

Home Warranty Insurance Fund:

Schedule 1 [11] inserts a proposed Division in Part 4 of the *NSW Self Insurance Corporation Act 2004* to provide for the establishment of a Home Warranty Insurance Fund in the Special Deposits Account and the use and investment of money deposited in the Fund.

The Fund will be managed by SICORP and all money paid to or recovered by SICORP in connection with its home warranty insurance business will be paid into the Fund. The Fund will be used to finance the home warranty insurance business of SICORP.

Schedule 1 [2] and [5]–[10] make amendments to the *NSW Self Insurance Corporation Act 2004* that are consequential on the insertion of the proposed Division and the establishment of the Fund.

Savings and transitional provisions:

Schedule 1 [13] amends clause 1 of Schedule 1 to the *NSW Self Insurance Corporation Act 2004* to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the amendments to the Act that are made by the proposed Act.

Schedule 1 [14] inserts proposed Part 3 in Schedule 1 to the *NSW Self Insurance Corporation Act 2004*. The proposed Part provides for certain contracts, agreements and other arrangements entered into by the Minister in anticipation of SICORP acquiring its home warranty insurance functions to become binding on SICORP once it acquires those functions.

Schedule 2 Amendment of *Home Building Act 1989* No 147:

SICORP to be sole home warranty insurance provider:

Schedule 2 [5] amends section 102 of the *Home Building Act 1989* to provide for home warranty insurance required under Part 6 of that Act to be provided by SICORP instead of insurers approved by the Minister administering that Act (as is currently the case). **Schedule 2 [1], [3] and [6]–[10]** make consequential amendments to that Act.

Schedule 2 [4] inserts proposed section 91A in the *Home Building Act 1989* to enable the Minister to issue guidelines with respect to appropriate market practices or claims handling procedures (or both) in connection with the provision of home warranty insurance by or on behalf of SICORP. **Schedule 2 [2]** makes a consequential amendment to section 89G of the Act.

Savings and transitional provisions:

Schedule 2 [11] amends clause 2 of Schedule 4 to the *Home Building Act 1989* to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the amendments to the Act that are made by the proposed Act.

Schedule 2 [12] inserts proposed Part 17 in Schedule 4 to the *Home Building Act 1989*. The proposed Part contains provisions of a savings or transitional nature consequent on amendments made to the Act by the proposed Act. In particular, the proposed Part provides for:

> (a) SICORP to become the only insurer authorised to issue new home warranty insurance in respect of residential building work or owner-builder work done in New South Wales on and from the day on which Schedule 2 [5] to the proposed Act commences (the ***new scheme day***), and
> (b) any existing approved insurers to cease to be authorised to issue new home warranty insurance on and from the new scheme day, and
> (c) certain obligations of existing or former approved insurers concerning the provision of information and compliance with the insurance industry deed to which they were a party to be continued in effect in relation to contracts of insurance entered into before the new scheme day.

Issues Considered by the Committee

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

Issue: Denial Of Compensation – Schedule 2 [12] Amendment Of *Home Building Act 1989* – insertion of Part 17 in Schedule 4, Division 2 – proposed sections 90 (3) and (4):

16. Schedule 2 [12] inserts proposed Part 17 in Schedule 4 to the *Home Building Act 1989*. The proposed Part contains provisions of a savings or transitional nature consequent on amendments made to the Act by the proposed Act. In particular, the proposed Part provides for:

> (a) SICORP to become the only insurer authorised to issue new home warranty insurance in respect of residential building work or owner-builder work done in New South Wales on and from the day on which Schedule 2 [5] to the proposed Act commences (the *new scheme day*), and
> (b) any existing approved insurers to cease to be authorised to issue new home warranty insurance on and from the new scheme day, and

(c) certain obligations of existing or former approved insurers concerning the provision of information and compliance with the insurance industry deed to which they were a party to be continued in effect in relation to contracts of insurance entered into before the new scheme day.

17. The Committee notes that proposed section 90 (1) of Division 2 of the new Part 17 reads: On and from the new scheme day, any existing approved insurer ceases by force of this clause to be authorised to issue new home warranty insurance.

18. However, proposed section 90 (3) reads that: No compensation is payable by or on behalf of the Crown to any existing approved insurer for any loss or damage arising directly or indirectly from the operation of this clause (or amendments made to this Act by the amending Act).

19. Proposed section 90 (4) continues that: Accordingly, no proceedings for damages or other relief (whether grounded on the provisions of any contract or otherwise arising at law or in equity) for the purpose of obtaining compensation in respect of any such loss or damage may be instituted or maintained.

20. The Committee is usually of the view that the right to seek damages or compensation is an important individual right. Therefore, the Committee asks Parliament to consider whether subsections (3) and (4) of proposed section 90 to be inserted by the new Part 17, Division 2 in Schedule 4 of the *Home Building Act 1989*, may lead to a denial of compensation and form an undue trespass to personal rights and liberties.

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

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

21. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee notes from the Agreement in Principle speech that the consequential amendments to the *Home Building Act 1989* will implement the new insurance arrangements from 1 July 2010. The Agreement in Principle speech further illustrated the time process arising from:

> Any suggestions from stakeholders about changing home warranty policy, for example, issues of coverage, thresholds or otherwise, will be considered through the review of the *Home Building Act 1989* that is currently underway. The consultation period for this review recently closed and the Office of Fair Trading is considering submissions received from stakeholders. It is important to allow that review to run its course. A process will be established whereby the Minister responsible for the Self Insurance Corporation concurs with the Minister for Fair Trading responsible for the *Home Building Act 1989* on any changes to guidelines or procedures. It will be a requirement that these guidelines are published in the *Government Gazette*, ensuring transparency. Amendments that clarify the obligations of former approved insurers once SICorp commences as the sole provider are required.

22. Therefore, the Committee has not identified any issues regarding Clause 2(2) under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

The Committee makes no further comment on this Bill.

9. PAEDIATRIC PATIENT OVERSIGHT (VANESSA'S LAW) BILL 2010*

Date Introduced:	23 April 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Jillian Skinner MP
Portfolio:	Private Member - Liberal Party

Purpose and Description

1. This Bill ensures that children who are admitted to adult wards in major hospitals are under the care and supervision of a paediatrician.

Background

2. *Digest number 15*, dated 2 December 2008, has reported on a similar Bill introduced to the Legislative Assembly by the Member for North Shore on 28 November 2008.

3. This Bill has now defined a child as a person under the age of 16 years, the previous 2008 Bill defined a child as a person under the age of 18 years.

4. The previous 2008 Bill ensured that the medical management of the child be assessed and approved by a paediatrician within 24 hours of the child being admitted in an adult ward of a major public hospital. This 2010 Bill ensures that the child is assessed and approved by a paediatrician within 48 hours of the child being admitted in an adult ward of a major public hospital.

5. The Bill pays tribute to the family of Vanessa Anderson (16 years old), who died after being hit in the head by a golf ball in 2005. This led to a Special Commission of Inquiry into the state of acute care services in New South Wales (known as the Garling Report). The Garling Report made 130 recommendations.

6. This Bill aims to ensure that children will be given specific treatment and medication different from adults, especially when they are admitted to adult hospital wards.

The Bill

7. The object of this Bill is to impose a duty on the governing body of a major public hospital to ensure that a paediatrician oversights the medical management of any person under the age of 16 years who is admitted as a patient in an adult ward of the hospital within 48 hours of the person's admission.

8. Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
Clause 3 imposes the duty described in the Overview above.

Clause 4 contains definitions for the purposes of the proposed Act, including a list of the major public hospitals in respect of which the duty imposed by the proposed Act will apply.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

10. RELATIONSHIPS REGISTER BILL 2010

Date Introduced:	23 April 2010
House Introduced:	Legislative Council
Member Responsible:	The Hon. John Hatzistergos
Portfolio:	Attorney General

Purpose and Description

1. The object of this bill is to provide for the legal recognition of relationships of couples, regardless of sex, by registration of the relationships. The Bill also aims to recognise registered relationships, include those registered interstate, as de facto partnerships for the purposes of State legislation.

Background

2. This Bill is the latest in a tranche of reforms designed to make it easier for unmarried couples to demonstrate that they are in committed or de facto relationships and to facilitate easier access to legal entitlements, particularly for same-sex relationships.

3. The first statutory recognition of de facto couples in NSW occurred with passage of the *De Facto Relationships Act* in 1984, which gave statutory rights to people living in de facto relationships to seek court orders for adjustment to property interests when their relationships broke down.

4. In 1999, these earlier reforms were built upon when the *Property (Relationships) Act 1999* was passed to further deal with adjusting property interests when a relationship breaks down or during the administration of an estate during inheritance matters.

5. Further, in 2008, a suite of same-sex relationship reforms was introduced, providing for a consistent definition of 'de facto' partner across most areas of New South Wales. These reforms widened the access same-sex couples have to legal rights and entitlements.

6. Passage of the *Relationships Register Bill 2010* will enable de facto partners to register their relationships, on payment on a fee and in a prescribed form, with the Registry of Births, Deaths and Marriages. Certain conditions apply, including that the both parties must voluntarily agree to the registration and the parties cannot be related or married.

7. The establishment of the register will enable de facto couples to be automatically recognised as de facto partners for the purposes of both Commonwealth and NSW legislation, enabling access to entitlements and coverage by legal rights. The relationships register also creates a mechanism to provide certainly in identifying parties to a relationship to address any doubt that the relationship exists for legal purposes.

8. The registration of relationships does not affect existing framework for de facto couple relationships. According to the Agreement in Principle speech 'the current

system will be preserved as an alternative, based on a requirement that couples live together and on an assessment of the nature of their relationship and the degree of their commitment'.

9. However, the Bill provides for a new definition of 'de facto' partner that will become the standard for most NSW laws. The new definition will recognise two categories of relationships, those that have had their relationships registered, either in NSW or interstate, and those who have not registered their relationship but still meet a list of factors used to determine the existence of a relationship. Consequential amendments to 120 pieces of legislation in NSW mirror or refer to this new definition.

The Bill

10. Outline of provisions

Part 1 Preliminary

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

Clause 2 provides for the commencement of the proposed Act (other than the amendments made by **Schedule 2.2** and **Schedule 3**) on a day or days to be appointed by proclamation. Those amendments will commence on the date of assent to the proposed Act.

Clause 3 states the object of the proposed Act, which is to provide for the legal recognition of persons in a relationship as a couple, regardless of their sex, by registration of the relationship.

Clause 4 defines certain words and expressions used in the proposed Act.

Part 2 Registration of relationships

Clause 5 entitles 2 adults who are in a relationship as a couple to apply to the Registrar of Births, Deaths and Marriages (the ***Registrar***) for registration of their relationship in the Register kept under the *Births, Deaths and Marriages Registration Act 1995* (the ***Register***). At least one of them must reside in New South Wales. A relationship cannot be registered if either adult is married, is in a registered relationship or a relationship as a couple with another person or the adults are related by family.

Clause 6 provides for the requirements for applications for registration of a relationship, including a statutory declaration as to the requirements for registration.

Clause 7 enables the Registrar to require further information to be provided by applicants for registration of a relationship.

Clause 8 provides that each application for registration is subject to a 28 day cooling off period, after which the relationship may be registered.

Clause 9 requires the Registrar to register a relationship in the Register as soon as practicable after the end of the cooling off period if satisfied that the relationship may be registered under the proposed Act and that the registration application has not been withdrawn.

Part 3 End of registration of relationships

Clause 10 provides that registration of a relationship is revoked on the death of a person in the relationship or on the marriage of a person in the relationship.

Clause 11 enables one or both parties to a registered relationship to apply for revocation of the relationship and provides for the requirements for applications for revocation of registration of a relationship.

Clause 12 provides that each application for revocation of registration is subject to a 90 day cooling off period, after which the registration may be revoked.

Clause 13 requires the Registrar to revoke the registration of a registered relationship as soon as practicable after the end of the cooling off period if an application is made in accordance with the proposed Part and the application has not been withdrawn.

Clause 14 makes registration of a registered relationship void if it was prohibited when it was registered, the agreement to registration of a party was obtained by fraud, duress or other improper means or (at registration) either party was mentally incapable of understanding the nature and effect of the registration. A court may make an order declaring the registration of a relationship void.

Clause 15 provides for the Registrar to cancel the entry of a registration in the Register if the registration is revoked or is void.

Part 4 Miscellaneous

Clause 16 enables regulations to be made declaring registered relationships under laws of other States or Territories to be interstate registered relationships for the purposes of the proposed Act. Among other things, this has the effect of recognising parties to such a relationship as de facto partners for the purposes of New South Wales legislation (see amendments to the *Interpretation Act 1987* in **Schedule 2.2**).

Clause 17 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 18 confers a right to appeal to the Administrative Decisions Tribunal for a review of a decision of the Registrar made in the exercise or purported exercise of functions under the proposed Act.

Clause 19 makes it an offence to disclose information obtained in the administration or execution of the proposed Act, except with consent, in connection with the administration or execution of the proposed Act or in other specified circumstances.

Clause 20 provides for offences under the proposed Act or regulations under the proposed Act to be dealt with summarily before the Local Court.

Clause 21 provides for the review of the proposed Act in 5 years.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Acts relating to relationship register

Births, Deaths and Marriages Registration Act 1995 No 62

Schedule 2.1 [1] amends the objects of the *Births, Deaths and Marriages Registration Act 1995* to include a reference to the functions conferred by the proposed Act.

Schedule 2.1 [2] applies the *Births, Deaths and Marriages Registration Act 1995* to the registration of relationships under the proposed Act. The effect of this is to apply general provisions of that Act relating to the registration of events such as deaths or marriages, and the operation of the Register, to the registration of relationships.

Schedule 2.1 [3] and [4] include the Registrar's functions under the proposed Act in the Registrar's general Register functions and enable the Registrar's functions under the proposed Act to be delegated.

Schedule 2.1 [5] enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

Interpretation Act 1987 No 15

Schedule 2.2 inserts proposed section 21C into the *Interpretation Act 1987*. The proposed section defines the expressions ***de facto partner*** and ***de facto relationship*** for the purposes of State legislation and instruments made under State legislation. A person is defined as being a de facto partner of another person if the person is in a registered relationship or interstate registered relationship with the person or is in a de facto relationship with the person. A person is defined as being in a de facto relationship with another person if the person is in a relationship as a couple with the person and living together and they are not married to one another or related by family. The provision sets out circumstances that can be taken into account when determining whether there is a relationship as a couple, including the duration of the relationship, whether a sexual relationship exists and the degree of mutual commitment to a shared life. The circumstances generally reflect those currently applied under the *Property (Relationships) Act 1984* in determining whether a de facto relationship exists.

Property (Relationships) Act 1984 No 147

Schedule 2.3 amends the *Property (Relationships) Act 1984* to include registered relationships and interstate registered relationships as de facto relationships for the purposes of that Act. That Act deals with property rights under State law for persons in de facto relationships within the meaning of that Act.

Schedule 3 Amendment of Acts and instruments relating to de facto partners

Schedule 3 amends various Acts and instruments for the following purposes:

(a) to replace definitions of ***de facto partner*** and ***de facto relationship***, that currently adopt the definitions contained in the *Property (Relationships) Act 1984*, with references that adopt the new definitions inserted in the *Interpretation Act 1987* by **Schedule 2.2**. In cases where the new definition of ***de facto partner*** is adopted, references will now also apply to registered relationships and interstate registered relationships, whether or not other criteria for identifying a de facto relationship are met,

(b) to preclude the application of some Acts and instruments to registered relationships and interstate registered relationships, where parties do not live together, by applying those Acts and instruments only to de facto relationships within the meaning of the new definition inserted in the *Interpretation Act 1987*. That definition does not refer to registered relationships or interstate registered relationships. Such relationships are likely (because of their nature) to fall within that definition but will not qualify merely because of registration.

In the Acts as amended, a mere reference to a de facto partner or a de facto relationship will automatically adopt the reference to the *Interpretation Act 1987*, without any need to expressly refer to that Act.1

Issues Considered by the Committee

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

Issue: Clause 16 – Excessive Punishment

11. Clause 16 of the Bill provides that a person must not disclose any information obtained in connection with the administration of the proposed Act unless that disclosure is made with the consent of the person from whom the information was obtained, in connection with the administration or execution of the Act or for any other legislatively prescribed purpose.

12. The Bill provides that the maximum penalty for disclosure offences is 50 penalty units, 12 months imprisonment, or both.

13. The Committee is always concerned about penalties that may be deemed oppressive. In certain circumstances, providing a penalty of up to 12 months imprisonment for the disclosure of information may be considered excessive punishment, disproportionate to the offence committed.

14. However, the Committee also recognises the obligations incumbent on the NSW Registry of Births, Deaths and Marriages to maintain the privacy of parties who choose to register their relationships. In particular, the Committee notes the potentially adverse consequences that the disclosure of information obtained under the proposed Act may have on affected individuals – for example – disclosing information that two people of the same-sex have registered their relationship in circumstances where their preference is for such information to be kept confidential. The Committee recognises the intention of this provision is to maximise the privacy and security of concerned parties and appreciates the public interest in ensuring that such safeguards are maintained.

15. Further, the proposed offence aligns closely with existing prohibitions against similar types of disclosures provided for under section 60 of the *Births, Deaths and Marriages Registration Act 1995* and the penalties proposed are similarly aligned. In this respect, the Committee is aware that should the penalties for the disclosure of information obtained under the *Relationships Register Bill 2010*, such as the existence of a registered same-sex relationships, be less than the disclosure of information obtained under the *Births, Deaths and Marriages Registration Act 1995*, such as the existence of a (heterosexual) marriage, then a double standard would likely apply. A differentiated standard may provide the impression that information relating to heterosexual relationships are more worthy of protection than information relating to same-sex relationships.

Delegation of Legislative Power [s 8A(1)(b)(iv) *LRA*]

Issue: Clause 2 – Commencement by proclamation – Provides the executive with unfettered control over the commencement

16. The Committee notes that all provisions except Schedule 2.2 and Schedule 3 of the proposed Act are to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses, or not at all.

17. However, the Committee notes that the provisions to commence by proclamation relate to the establishment of a relationships register, including the drafting of an approved form, the setting of fees to be prescribed by regulation and other related procedures. The Committee recognises that there is difficulty in determining the commencement date for this scheme given its contingency on the establishment of procedures that are yet to be finalised.

18. The Committee also notes that the remaining provisions, which provide for consequential amendments to 120 statutory instruments, commence on assent, providing immediate legislative consistency and certainty.

19. The Committee recognises the difficulties in determining commencement dates for projects that are contingent on procedures being established, including the drafting of forms and setting of fees. The Committee also notes that only part of the proposed Act is to be commenced by proclamation, with the remainder by assent. It has therefore not identified any issues under s 8(1)(b)(iv) of the *Legislation Review Act 1987.*

The Committee makes no further comment on this Bill.

11. STATE EMERGENCY SERVICE AMENDMENT (VOLUNTEER CONSULTATIVE COUNCIL) BILL 2010

Date Introduced:	22 April 2010
House Introduced:	Legislative Assembly
Member Responsible:	The Hon. Steve Whan MP
Portfolio:	Emergency Services

Purpose and Description

1. The object of this Bill is to amend the *State Emergency Service Act 1989* to establish the Volunteer Joint Consultative Council and make provision for the its functions, membership and procedure.

Background

2. This Bill has been introduced as a way of recognising the importance that volunteers play in the State Emergency Service ('the Service'). The Government has indicated its belief that the opinions and experiences of volunteers are 'vital to the evolution and development of the Service into the future'.

3. The principal aim of the new consultative body is to give frontline Service volunteers a formal role in helping guide the service's polices and processes.

4. The new council will provide a formal forum for the volunteers to be consulted and their views incorporated into the Service's decision-making and management as it continues to develop and expand.

The Bill

5. Outline of provisions

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

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

Schedule 1 Amendment of *State Emergency Service Act 1989* No 164

Schedule 1 [3] inserts Part 5B (proposed sections 24Z–24ZC) into the *State Emergency Service Act 1989* (the ***principal Act***). Proposed section 24Z provides for the establishment of the Consultative Council. Proposed section 24ZA provides for the Consultative Council to consist of 7 members, being the Commissioner, 3 staff members of the State Emergency Service appointed on the recommendation of the Commissioner, the President of the New South Wales State Emergency Service Volunteers Association Incorporated and 2 persons appointed on the recommendation of that Association (with one of those persons being a volunteer officer who is a deputy to a region controller or is a local controller or unit controller). Proposed section 24ZB provides that the Consultative Council has the function of advising and reporting to the Commissioner on any matter

relevant to volunteer members of SES units. Proposed section 24ZC requires certain membership information to be included in the annual report of the State Emergency Service.

Schedule 1 [7] inserts Schedule 3 into the principal Act. Schedule 3 makes provision in relation to the terms of office of the members of the Consultative Council appointed by the Minister, remuneration of members, the appointment of deputies of members, vacancies in office, the Chair of the Consultative Council and other matters relating to the constitution of the Consultative Council. Schedule 3 also makes provision in relation to the procedure of the Consultative Council including matters such as requirements for a quorum, voting, subcommittees and the minutes of meetings.

Schedule 1 [1] inserts a definition of ***Consultative Council*** into the principal Act.

Schedule 1 [2] provides that ***SES expenditure*** includes recurrent expenditure incurred during the year in respect of the administrative costs of the Consultative Council. Part 5A of the principal Act requires the Minister to prepare an estimate of SES expenditure for each financial year, provides for the payment of SES contributions to meet SES expenditure and allows for payments to be made in respect of SES expenditure.

Schedule 1 [4] and [5] provide for protection from personal liability for members of the Consultative Council in relation to the exercise of the functions of the Consultative Council (provided that the matter or thing in question was done in good faith).

Schedule 1 [6] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Freedom of Information Regulation 2005

Schedule 2 makes an amendment to ensure that the Consultative Council is taken to be included in the State Emergency Service (rather than being treated as a separate entity) for the purposes of complying with the requirements contained in the *Freedom of Information Act 1989*.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

12. TREES (DISPUTES BETWEEN NEIGHBOURS) AMENDMENT BILL 2010

Date Introduced:	21 April 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General

Purpose and Description

1. This Bill amends the *Trees (Disputes Between Neighbours) Act 2006* to provide for the resolution of disputes about high hedges that block sunlight or views and to make further provision in relation to the enforcement of orders and the jurisdiction of the Land and Environment Court under that Act; and for other purposes.

2. It gives the Land and Environment Court a new jurisdiction to hear disputes about high hedges that severely block sunlight to a window of a dwelling on adjoining land, or views from such a dwelling. According to the recommendation made by the review, this Bill will give the Land and Environment Court a new, limited jurisdiction in relation to these hedges, by inserting a new part 2A into the *Trees (Disputes Between Neighbours) Act 2006*.

3. The object of the new part 2A is to create a process by which neighbour disputes about high hedges can be heard and disposed of in a proportionate way. Firstly, by balancing the competing rights of neighbours to enjoy their property and, secondly, by ensuring that the existence and health of urban trees can be maintained. However, people will not be able to make an application in relation to a single tree; rather, the new part applies to groups of two or more trees that are planted to form a hedge and rise to a height of at least 2.5 metres.

4. Proposed section 14F sets out specific factors for the court to consider before determining an application, including: any contribution of the trees to the natural landscape and the scenic value of the land or locality; any impact of the trees on soil stability, the water table or other natural features of the land or locality; any contribution of the trees to privacy, landscaping, garden design, heritage values, and protection from the sun, wind, noise, smells or smoke, or the amenity of the land on which they are situated.

5. Proposed section 14F also requires the court to consider whether the trees existed prior to the applicant's dwelling, and whether the trees grew to a height of 2.5 metres or more while the applicant owned or occupied the land. As with the current part 2 of the Act, a relevant authority, such as a council or the Heritage Council, will have a right of appearance in any proceedings where the consent or authorisation of the authority to interfere with the trees would, in the absence of the Act, otherwise be required.

6. It also extends the operation of part 2 of the Act to trees on land that is zoned rural-residential. Currently, the Act only applies to urban land, such as land zoned residential, township or industrial.

7. This Bill amends the Act to allow councils, if they elect to enforce a court order, to recover a prescribed administration fee, in addition to the costs of carrying out the work to satisfy the order; as well as to provide that any enforcement costs and fees payable to a council may be registered as a charge on the tree owner's land.

8. It will also ensure that if the court makes an order under part 2 of the Act in relation to trees that have caused, are causing or are likely to cause damage or which pose a risk of injury to a person, the applicant's immediate successor will be entitled to the same rights and benefits as the applicant in respect of the order.

Background

9. The *Trees (Disputes Between Neighbours) Act 2006* established a new procedure in the Land and Environment Court for resolving disputes about urban trees which are causing damage to property or which pose a risk of injury. Prior to the Act, such disputes could only be resolved by suing in the tort of nuisance either in the Local Court, District Court or Supreme Court.

10. In accordance with section 23 of the Act, the legislation was reviewed two years after its assent. The aim of the review was to determine whether the policy objectives of the Act remained valid and, whether the terms of the Act remained appropriate for meeting those objectives. The review received over 230 submissions. The review found that the policy objectives of the Act remained valid. However, recommendations were made to improve the operation of the Act. The Government accepted all of the recommendations of the review. The aim of this Bill is to implement recommendations arising out of that review.

11. At present, the *Trees (Disputes Between Neighbours) Act 2006* only permits the Land and Environment Court to make orders in relation to trees that have caused, are causing, or are likely to cause, damage to the applicant's property or which are likely to cause injury to a person. More than half the submissions to the review requested that the Act be expanded to cover trees that block sunlight and views. The most frequent and serious concerns raised in submissions related to high, dense hedges on immediately adjoining private properties, which severely obstruct sunlight to windows, and views from dwellings.

12. In the statutory review, submissions also raised concerns that the types of zoning to which the Act applies are not sufficiently broad. Examples were given of cases involving unsafe trees that had been dismissed in the Land and Environment Court because the tree was on land zoned rural-residential. To address these concerns, the Bill extends the application of the Act to trees on land that is zoned rural-residential, or an equivalent land use zone. This applies only to disputes about trees that have caused, are causing, or are likely to cause, damage to property or are likely to cause injury. It will not apply to the new high hedges jurisdiction.

13. This Bill makes changes to support the enforcement of court orders made under the Act. At present, if a person does not comply with a court order under the Act, the other party can ask their local council to do the work instead. If the council chooses to intervene, it can recover the cost of the work from the person who was subject to the order. However, the review found that councils have been reluctant to intervene in some matters. Councils currently only have a power to recover the "reasonable costs

of undertaking the work". Therefore, this may not compensate councils for the full costs of arranging for the work to be carried out, including insurances, and the time spent trying to recover the debt from the owner of the trees.

14. The Bill also allows an applicant's immediate successor in title to enforce certain orders made under the Act. At present, a person who successfully applies for an order under the Act can ensure that any new owner of the land on which the tree is situated is also bound by the order, by giving the new owner a copy of the order. However, the Act makes no provision for the applicant's successor to enforce an order if the applicant sells their land before the work is carried out.

15. Schedule 2.1 gives the Land and Environment Court jurisdiction to hear and determine matters arising under the *Dividing Fences Act 1991* in certain circumstances. The court will have this jurisdiction where an application has been made under the *Trees (Disputes Between Neighbours) Act 2006* in relation to a tree that has caused, is causing or is likely to cause damage to a dividing fence, or a tree is itself part of a dividing fence, and has caused, is causing, or is likely to cause damage to the applicant's property, or is likely to cause injury to a person. This will mean that where dividing fences issues arise in tree proceedings before the Land and Environment Court, parties will not have to make and pay for a separate application and attend a separate hearing before a Local Court or a local land board.

16. The Bill makes it clear that an application to the Land and Environment Court can still be made after the removal of a tree that has caused the damage or injury giving rise to the application under part 2 of the Act. In *Robson v Leischke* [2008] NSWLEC 152, the Land and Environment Court found on 1 May 2008 that it has no jurisdiction to make orders to remedy damage to property, or require payment for compensation for damage caused by a tree, if that tree has been wholly removed. Section 7 of the Act uses the present tense when describing the location of the tree on adjoining land. It refers to "a tree... that is situated on adjoining land".

17. Submissions to the review suggested that the Act should be amended to allow the Court jurisdiction where the tree has been wholly removed. The review found that it is preferable for all cases of damage caused by trees in eligible zonings to be dealt with by the Land and Environment Court under the Act, rather than have those cases heard under the common law in other Courts just because the tree in question has been wholly removed. The Bill therefore amends the Act to apply to situations where the tree has been wholly removed following the damage or injury giving rise to the application.

18. This Bill amends the *Trees (Disputes Between Neighbours) Regulation* to prescribe vines as a tree for the purposes of the Act. Damage caused by vines is currently excluded from the Act by the statutory definition of tree. The Bill also provides for a review of the new part 2A of the Act after its first two years of operation.

The Bill

19. The object of this Bill is to amend the *Trees (Disputes Between Neighbours) Act 2006* (***the principal Act***) (and certain other Acts and an instrument) to implement the recommendations arising from the statutory review of the principal Act. In particular, the Bill:

(a) extends the operation of Part 2 of the principal Act to trees situated on land zoned "rural-residential", and
(b) gives the Land and Environment Court (***the LEC***) jurisdiction to hear disputes about high hedges that severely obstruct sunlight to a window of a dwelling on adjoining land or views from such a dwelling, and
(c) gives the LEC jurisdiction to hear and determine matters under the *Dividing Fences Act 1991* in certain circumstances where a related application has been made under the principal Act, and
(d) makes it clear that an application for an order under Part 2 of the principal Act can still be made following the removal of the tree that caused the damage or injury on which the application is based, and
(e) allows a local council to recover the amount prescribed by the regulations as an administrative fee where it enforces an order under the principal Act (in addition to the costs of carrying out the work required to enforce the order), and
(f) enables a local council to register an order for costs as a charge on the land concerned, and
(g) enables the immediate successor in title to an applicant to benefit from certain orders made under Part 2 of the principal Act, and
(h) provides for plants that are vines to be treated as trees for the purposes of the principal Act, and
(i) makes other minor statute law revision amendments.

20. Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.
Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act (except for the amendments relating to the proposed high hedge jurisdiction which are to commence on 2 August 2010).

Schedule 1 Amendment of *Trees (Disputes Between Neighbours) Act 2006* No 126:

Schedule 1 [3] extends the operation of Part 2 of the principal Act to trees situated on land zoned "rural-residential". As a result of this extension of operation, the *Native Vegetation Act 2003* may presently also apply in respect of a native tree to which the principal Act applies. However, **Schedule 2.3** makes an amendment to the *Native Vegetation Act 2003* so that it does not apply to any clearing of a native tree in accordance with an order under the principal Act.

Schedule 1 [4] makes it clear that the removal of a tree following damage or injury caused by the tree that gives rise to an application under Part 2 of the principal Act does not prevent a person from making such an application.

Schedule 1 [11] inserts new Part 2A into the principal Act. The new Part gives the LEC jurisdiction to hear and resolve disputes in relation to high hedges that obstruct sunlight or views.

Proposed section 14A provides that the new Part applies only in relation to groups of 2 or more trees that are planted so as to form a hedge and that rise to a height of at least 2.5 metres.

Proposed section 14B enables an owner or occupier of land to apply to the LEC for an order to remedy, restrain or prevent a severe obstruction of sunlight to a window of a dwelling

situated on the land, or any view from a dwelling situated on the land, if the obstruction occurs as a consequence of trees to which the new Part applies being situated on adjoining land. An owner of land is to give notice of the lodging of such application in accordance with proposed section 14C (unless the LEC waives the requirement in accordance with that proposed section).

Proposed section 14D gives the LEC jurisdiction to make such orders as it thinks fit to remedy, restrain or prevent a relevant obstruction (apart from an order that requires the payment of compensation). However, proposed section 14E provides that the LEC must not make an order unless the applicant has made a reasonable effort to reach agreement with the owner of the land on which the trees are situated. The LEC must also be satisfied that the severity and nature of the obstruction in question is such that the applicant's interest in having the obstruction removed, remedied or restrained outweighs any other matters that suggest the undesirability of disturbing or interfering with the trees.

Proposed section 14F sets out various matters that are to be considered by the LEC before determining an application under the new Part (including whether the trees existed prior to the dwelling concerned, whether the trees grew to a height of 2.5 metres or more during the applicant's occupancy and the nature and extent of any view affected by the obstruction).

Proposed section 14G provides for the appearance of a local council or the Heritage Council in certain proceedings under the new Part and proposed section 14H requires the LEC to provide a copy of any order made under the new Part to the local council and the Heritage Council (if the Heritage Council appeared in the proceedings).

Proposed section 14I requires a review to be carried out in relation to the operation of the new Part.

Schedule 1 [5] provides that no action may be brought in nuisance as a result of an obstruction of sunlight to the window of a dwelling, or of a view from a dwelling, caused by trees to which new Part 2A applies.

Schedule 1 [13] allows an order under the new Part to be enforced against an immediate successor in title to the owner of land on which the trees concerned are situated. **Schedule 1 [1], [6], [7], [8], [12], [16] and [18]** make amendments consequential on the insertion of the new Part.

Schedule 1 [15] enables an immediate successor in title to an applicant to benefit from certain orders made under Part 2 of the principal Act in favour of the applicant. **Schedule 1 [14]** makes a consequential amendment.

Section 17 of the principal Act allows a local council to enter land and carry out work in accordance with an order under the principal Act where the owner of that land has failed to carry out the work.

Schedule 1 [17] provides that in such circumstances a council may recover in a court of competent jurisdiction, from the owner of the land, a prescribed administrative cost in addition to the reasonable costs of carrying out the work.

Schedule 1 [19] enables the council to register such an order for costs as a charge on the land and sets out the procedure for registration.

Schedule 1 [2] makes a minor amendment to clarify that a reference in the principal Act to land zoned "rural-residential" includes a reference to land zoned "large lot residential" and to insert a regulation-making power to enable such clarification to be included in the regulations in relation to other zones referred to in the principal Act if necessary.

Schedule 1 [9] makes a minor amendment in relation to the matters that may be considered by the LEC in making an order under Part 2 of the principal Act.

Schedule 1 [10] makes a minor amendment to make it clear that the requirement to provide a copy of an order made under Part 2 of the principal Act to a local council and, in certain circumstances, the Heritage Council does not extend to an order dismissing an application.

Schedule 2 Amendment of other Acts and instrument:

Schedule 2.1 gives the LEC jurisdiction to hear and determine matters under the *Dividing Fences Act 1991* in certain circumstances where an application is made under the *Trees (Disputes Between Neighbours) Act 2006* in relation to:

> (a) a tree that has caused, is causing, or is likely in the near future to cause damage to a dividing fence, or
>
> (b) a tree that is part of a dividing fence and has caused, is causing, or is likely in the near future to cause damage to the applicant's property or is likely to cause injury to any person.

Schedule 2.2 makes a consequential amendment to the *Land and Environment Court Act 1979*.

Schedule 2.3 provides that the *Native Vegetation Act 2003* (which prohibits the clearing of native vegetation except in accordance with that Act) does not apply to any clearing of native vegetation in accordance with an order under the principal Act.

Schedule 2.4 amends the *Trees (Disputes Between Neighbours) Regulation 2007* so that any plant that is a vine is considered to be a tree for the purposes of the principal Act.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

CASINO CONTROL AMENDMENT BILL 2010

Ministerial Correspondence

Date Introduced:	25 February 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Kevin Greene MP
Portfolio:	Gaming and Racing

Background

The Committee reported on this Bill in its *Legislation Review Digest 2 of 2010*.

The Committee resolved to write to the Minister and the Attorney-General to seek advice on the removal of criminal liability for any act done or omitted to be done, in the removal of an excluded person from the casino where it is done 'in good faith'.

Specifically, the Committee sought clarification from the Minister about the standard that is to apply in determining 'good faith', identifying which party bears the onus in proving that an action was done or omitted to be done 'in good faith' and what precedent exists, if any, for the test of 'in good faith'.

Minister's Reply

'In Good Faith'

By letter received 18 March 2010, the Minister replied to the Committee's concerns, stating:

> The Casino, Liquor and Gaming Control Authority (CLAGCA) recommended incorporating the same legal protections presently allowed for hotels and clubs under gaming machine law into the Act. These proposals go no further than this.
>
> *What standard applies in determining 'in good faith'?*
>
> In criminal maters the standard is 'beyond reasonable doubt' and in civil matters the standard is 'on the balance of probabilities'. The determination as to whether a person has acted in good faith is obviously a matter for the Court.
>
> *With which party does the onus lie to prove that an action was done or omitted to be done 'in good faith'?*
>
> In the case of criminal prosecution, the onus is on the prosecution to show 'beyond a reasonable doubt' that the elements of the offence are proven, for example that the casino employee used unreasonable force removing an excluded person, or was not acting in good faith when removing a person, or preventing the entry, of an excluded person. In this case the defendant (the casino employee) may then offer the defence that they acted in good faith. For instance, the employee may have been told by their supervisor that the person was an excluded person, and the employee did not use unreasonable force.

> Where civil action is concerned the plaintiff (the excluded person) will present his or her case setting out the elements of the wrongdoing, such as negligence. The respondent (the casino employee) may then offer the defence that they were not negligent and present arguments as to why this is the case. I note it is irrelevant to a claim for negligence that the casino employee may or may not have acted in good faith. The Court will determine the matter on the balance of probabilities, taking all relevant circumstances into consideration.
>
> *What precedent, if any, exists where conduct done or omitted to be done 'in good faith' is an exception to a criminal defence?*
>
> NSW legislative precedents for an 'in good faith' defence include s136 of the *Crimes Act 1900,* which relates to the destruction of wills and securities; and s49(5)(a) of the *Gaming Machines Act 2001* and s76(7)(a) of the *Liquor Act 2007* (both provisions relate to removing self-excluded persons from the premises).

Although the Committee is of the understanding that the 'in good faith' provisions are designed to bring the *Casino Control Act 1992* in line with equivalent legislation in related industries (such as hotels and pubs), the Committee remains concerned that the test is insufficiently defined and potentially too broad in its application.

Removal of Criminal Liability

Further clarification about the removal of criminal liability was sought from the Office of Liquor, Gaming and Racing. The Committee was informed that, despite the provision of proposed section 85(4) which removes criminal liability for any act done or omitted to be done in the removal of an excluded person from the casino where it is done in good faith, casino staff and agents were still subject to the requirements set out under section 85(3) that requires the removal of a person to be exercised 'using no more force than is reasonable in the circumstances'. It was suggested that this provision tempers the risk that the removal of criminal liability provided for in proposed section 85(4) would facilitate the unjustifiably forceful removal of an individual.

However, the existing provision under section 85(3), whilst prohibiting the unreasonably forceful removal of an individual, does not prescribe corresponding penalties. In the absence of such penalties, charges against staff or agents for the unreasonably forceful removal of casino patrons would presumably be referred to possible assault or grievous bodily harm offences under the *Crimes Act 1900*. Although the addition of section 85(4) appears to narrow the options available by effectively affording immunity to casino staff and agents from such prosecution, proposed section 85(4) does provide that the removal of criminal liability exists only when 'in accordance with this section'. In other words, including in accordance with section 85(3) that prohibits unreasonably forceful removals. The Committee appreciates this clarification and its concerns are allayed to an extent.

Committee's Response

The Committee thanks the Minister for his reply and for correspondence received from the Office of Liquor, Gaming and Racing.

The Hon. Kevin Greene MP
MINISTER FOR GAMING AND RACING
MINISTER FOR SPORT AND RECREATION

Min Ref. EA1553532
Obj. Ref: 0755/10

LRC 3499

RECEIVED 18/03/2010

Mr Allan Shearan MP
Chair
Legislation Review Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Allan Shearan

Thank you for your correspondence regarding the *Casino Control Amendment Bill 2010*. As Chair of the Legislation Review Committee, you have sought my advice regarding specific aspects of clause 28 of the Bill.

The particular section of the Bill concerning the Committee arises from a recommendation of the Casino, Liquor and Gaming Control Authority (CLAGCA) in its review of the *Casino Control Act 1992* (the Act). The Authority recommended incorporating the same legal protections presently allowed for hotels and clubs under gaming machine law into the Act. These proposals go no further than this.

What standard applies in determining 'in good faith'?
In criminal matters the standard is 'beyond reasonable doubt' and in civil matters the standard is 'on the balance of probabilities'. The determination as to whether a person has acted in good faith is obviously a matter for the Court.

With which party does the onus lie to prove that an action was done or omitted to be done 'in good faith'?

In the case of a criminal prosecution, the onus is on the prosecution to show 'beyond a reasonable doubt' that the elements of the offence are proven, for example that the casino employee used unreasonable force when removing an excluded person, or was not acting in good faith when removing a person, or preventing the entry, of an excluded person. In this case the defendant (the casino employee) may then offer the defence that they acted in good faith. For instance, the employee may have been told by their supervisor that the person was an excluded person, and the employee did not use unreasonable force.

Where civil action is concerned the plaintiff (the excluded person) will present his or her case setting out the elements of the wrongdoing, such as negligence. The respondent (the casino employee) may then offer the defence that they were not negligent and present arguments as to why this is the case.

Level 11, 52 Phillip Street, Sydney NSW 2000 Telephone: (02) 9228 5331 Facsimile: (02) 9228 5549

I note it is irrelevant to a claim for negligence that the casino employee may or may not have acted in good faith. The Court will determine the matter on the balance of probabilities, taking all relevant circumstances into consideration.

What precedent, if any, exists where conduct done or omitted to be done 'in good faith' is an exception to a criminal defence?

NSW legislative precedents for an 'in good faith' defence include s136 of the *Crimes Act 1900*, which relates to the destruction of wills and securities; and s49(5)(a) of the *Gaming Machines Act 2001* and s76(7)(a) of the *Liquor Act 2007* (both provisions relate to removing self-excluded persons from the premises).

Thank you for the opportunity to provide clarification regarding these issues. I trust this advice is of assistance to the Committee.

Yours sincerely

Kevin Greene MP
Minister for Gaming and Racing
Minister for Sport and Recreation

Part Two – Regulations

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

Criminal Records Amendment Regulation 2010

Recommendation

That the Committee for the purposes of s 9(1A) of the *Legislation Review Act 1987*, resolve to report to Parliament on the Regulation.

Grounds for comment

Personal rights/liberties	The Committee holds concerns that this Regulation may trespass unduly on individual rights and liberties, in particular by allowing the prior conviction history of an individual – which would otherwise be spent – to be disclosed in certain circumstances.
Business impact	
Objects/spirit of Act	The object of this Regulation is to provide an exemption from the operation of the *Criminal Records Act 1991* in respect of an application by the Commissioner of Police under the *Crimes (Criminal Organisations Control) Act 2009* for a declaration that a particular organisation is a declared organisation for the purposes of that Act.
Alternatives/effectiveness	
Duplicates/overlaps/conflicts	
Needs elucidation	Although there may be good reasons for allowing judges to consider the spent convictions of members of an organisation that is subject to a possible declaration order, such reasons are not specified in the Regulation. It would be advantageous for the Committee to be aware of these reasons.
SLA, ss 4,5,6, Sched 1, 2	
Other	

Explanatory Note

The object of this Regulation is to provide for an exemption from the operation of the *Criminal Records Act 1991* in respect of an application by the Commissioner of Police under the *Crimes (Criminal Organisations Control) Act 2009* for a declaration that a particular organisation is a declared organisation for the purposes of the Act.

As a result of the exemption, the prior convictions of alleged members of potential criminal organisations, which would otherwise be considered spent by the *Criminal Records Act 1991,* can be disclosed by the Commissioner of Police when lodging an application under the *Crimes (Criminal Organisations Control) Act 2009* to an eligible judge*.* The information arising from the prior conviction can be taken into account by the judge when making a decision on such an application.

Comment

1. The effect of this Regulation is that the Commissioner of Police is now able to disclose information about an individual's prior conviction history – in circumstances where that information would otherwise be spent – to an eligible judge for their consideration when making a decision on whether to make a declared organisation order.

2. The Committee notes that the *Criminal Records Regulation 2004* provides a comprehensive list of circumstances in which spent conviction protections are suspended, for example in relation to a person seeking appointment as a Crown Prosecutor, or an individual's application to be admitted as a legal practitioner.

3. The inclusion of the additional circumstances provided for under this Amendment Regulation may not be regarded as more onerous than the other circumstances provided for under the principal Regulation. In addition, there may be good reasons for allowing judges to consider the spent convictions of members of an organisation that is subject to a possible declaration order.

4. However, the Committee notes that enabling the disclosure of spent conviction information of individuals alleged to be members of potentially criminal organisations represents a retreat away from the spent conviction scheme and a further restriction of personal rights and liberties. The Committee understands that convictions become spent for crimes considered petty or less serious, in circumstances where sufficient time has lapsed since the commission of the offence and where the individual has not since re-offended. The spent convictions scheme offers an important step in rehabilitating individuals by affording a high level of protection on certain criminal history information and diminishing the risk of discrimination or prejudice as a result of that information being released.

5. The Committee recognises the importance of the spent conviction scheme and is concerned by the narrowing of its scope. To this end, the Committee refers this matter to Parliament for its consideration.

SECTION B: MINISTERIAL CORRESPONDENCE — REGULATIONS PREVIOUSLY CONSIDERED

CRIMINAL PROCEDURE AMENDMENT (LOCAL COURT PROCESS REFORMS) REGULATION 2010

Ministerial Correspondence

Published in Gazette:	No 14 of 22 January 2010
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Attorney General

Background

The Committee reported on this Regulation in its *Legislation Review Digest 1 of 2010*. The Committee noted that the object of this Regulation was to amend the Criminal Procedure Regulation 2005 (which lists the kind of proceedings for which prosecutors are not required to serve briefs of evidence) to remove the requirement of the prosecution to serve a brief of evidence on the accused for offences relating to driving without a license, possession of a restricted substance or possession of a prohibited drug. It was the understanding of the Committee that in lieu of briefs of evidence, a comprehensive fact sheet would be served on the accused, despite not being set out in legislation or regulation.

The Committee indicated its concerns that the lack of statutory requirement on the prosecution to serve a brief of evidence on the accused unduly trespasses on the rights of the accused to be fully apprised of the evidence to be used against them in court. To this end, the Committee was particularly concerned that the Regulation compromises the rights of the accused to procedural fairness and a fair trial.

The Committee resolved to write to the Attorney General to seek further clarification and advice with regards to the service of fact sheets in lieu of briefs of evidence.

On 23 February, the Committee wrote to the Attorney General and requested information about the process relating to the service of fact sheets, including the content of fact sheets, for offences in which a brief of evidence is no longer required. Further, the Committee sought information regarding what guarantees existed, if any, that a fact sheet must be served.

Minister's Reply

By letter dated 27 April 2010, the Attorney replied to the Committee's concerns, advising that

- The practice of serving the accused with a facts sheet predates the trial of the reforms brought in by the Regulation and continues to occur. Police have been providing statements of facts even prior to the introduction of the requirement to serve a brief in 1997;

- Facts sheets are generated by police at the time of charge and it is in their interests to provide a facts sheets as matters cannot proceed without a summary of the allegation being averred and police have determined that a facts sheet is the most expeditious form of providing this.

The Attorney further advised that, given these considerations, he did not deem it necessary to provide any additional legislative guarantee.

Committee's Response

The Committee thanks the Minister for his reply.

NEW SOUTH WALES

ATTORNEY GENERAL

RECEIVED
28 APR 2010
LEGISLATION REVIEW COMMITTEE

Alan Shearan MP
Chair
Legislation Review Committee
Parliament of New South Wales
Macquarie Street, Sydney NSW 2000

Your Ref: LRC 3498
Our Ref: AG10/00921
Matter No: 10/001422

27 APR 2010

Dear Mr Shearan

I refer to your letter dated 23 February 2010 concerning the *Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010*.

The practice of serving the accused with a facts sheet predates the trial of these reforms and continues to occur. As noted in the Agreement in Principle Speech police had been providing statements of facts even prior to the introduction of the requirement to serve a brief in 1997.

Facts sheets are generated by police at the time of charge and continue to be. It is in the interests of police to provide a facts sheet as matters cannot proceed without a summary of the allegation being averred and police have determined that a facts sheet is the most expeditions form of providing this. As such, I do not consider it necessary to provide an additional legislative guarantee.

Any further queries regarding changes to facts sheets since the introduction of the 2007 reforms should be directed to the Minister for Police.

Yours faithfully

(John Hatzistergos)

Postal: GPO Box 5341 Sydney NSW 2001 Telephone: (02) 9228 4977 Facsimile: (02) 9228 3600

Appendix 1: Index of Bills Reported on in 2010

	Digest Number
Building and Construction Industry Long Service Payments Amendment Bill 2009	1
Carers Recognition Bill 2010*	3
Carers Recognition Bill 2010*	5
Carers (Recognition) Bill 2010	5
Casino Control Amendment Bill 2010	2
Charter of Budget Honesty Amendment (Independent Election Costings) Bill 2010*	5
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	4
Coal Mine Health and Safety Amendment Bill 2010	4
Companion Animals Amendment (Dogs in Outside Eating Areas) Bill 2010*	4
Companion Animals Amendment (Outdoor Dining Areas) Bill 2010	5
Court Information Bill 2010	4
Credit (Commonwealth Powers) Bill 2010	2
Crimes (Administration of Sentences) Amendment Bill 2010	2
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	3
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	4
Crimes Amendment (Police Pursuits) Bill 2010	2
Environmental Planning and Assessment Amendment (Development Consents) Bill 2010	5
Gas Supply Amendment Bill 2009	1
Housing Amendment (Community Housing Providers) Bill 2009	1
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment Bill 2009	1
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	5
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010	2
National Park Estate (Riverina Red Gum Reservations) Bill 2010	5
National Parks and Wildlife Amendment Bill 2010	2
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	5
Paediatric Patient Oversight (Vanessa's Law) Bill 2010*	5
Parliamentary Electorates and Elections Amendment Bill 2010	4
Registrar-General Legislation (Amendment and Repeal) Bill 2010	4
Relationships Register Bill 2010	5
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010	4

	Digest Number
State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010	5
State Senate Bill 2010	2
Sydney Olympic Park Authority Amendment Bill 2009	1
Trees (Dispute Between Neighbours) Amendment Bill 2010	5
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	3
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)	4
Weapons and Firearms Legislation Amendment Bill 2010	4
Workers Compensation Amendment (Commission Members) Bill 2010	2

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1			
Casino Control Amendment Bill 2010	Minister for Gaming and Racing and Attorney General	08/03/10	18/03/10				2, 5
Civil Liability Legislation Amendment Bill 2008	Attorney General	28/10/08			12		
Contaminated Land Management Amendment Bill 2008	Minister for Climate Change and the Environment	22/09/08	03/12/08		10	1	
Credit (Commonwealth Powers)	Minister for Fair Trading	08/03/10					2
Crimes (Administration of Sentences) Amendment Bill 2008	Attorney General and Minister for Justice	2/12/07			15		
Crimes (Administration of Sentences) Amendment Bill 2009	Minister for Corrective Services	08/08/09				10	
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	06/02/09		9		
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07		1		2	
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1		
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning		12/06/08		8		
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7			
Home Building Amendment	Minister for Fair Trading		30/10/08		10, 13		
Liquor Legislation Amendment Bill 2008	Minister for Gaming and Racing	24/11/08	05/01/09		14	2	
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07		1		2	
Parking Space Levy Bill 2009	Minister for Transport	23/03/09	26/05/09			3, 8	
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1,2			

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1			
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2	

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2010

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Building and Construction Long Service Payments Amendment Bill 2009				N	
Casino Control Amendment Bill 2010	N, R, C		N, R		
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	N				
Coal Mine Health and Safety Amendment Bill 2010	N, R			N, R	
Court Information Bill 2010	N, R			N	
Credit (Commonwealth Powers) Bill 2010	N, R, C			N, R, C	
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	N			N	
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	N, R				
Crimes Amendment (Police Pursuits) Bill 2010	N, R				
Environment Planning and Assessment Amendment (Development Consents) Bill 2010			N, R		
Gas Supply Amendment Bill 2009				N	
Housing Amendment (Community Housing Providers) Bill 2009	N				
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment 2009				N	
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	N, R				
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010				N	N
National Parks and Wildlife Amendment Bill 2010	N, R			N, R	
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	N, R			N	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Relationships Register Bill 2010	N			N	
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010				N, R	
Sydney Olympic Park Authority Amendment Bill 2009	N, R			N	
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	N			N	
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)				N	
Weapons and Firearms Legislation Amendment Bill 2010	N, R			N	

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

Appendix 4: Index of correspondence on regulations

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008	Digest 2009	Digest 2010
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12		
Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010	Attorney General	23/02/10	28/04/10			1, 5
Fisheries Management Legislation Amendment (Fishing Closures) Regulation 2009	Minister for Primary Industries	23/11/09	11/01/10		16	1
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08	5/01/09	10	2	
Retirement Villages Regulation 2009	Minister for Fair Trading	22/02/10				1
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10		