

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

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* Denotes Private Member's Bill

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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.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. HISTORIC HOUSES AMENDMENT BILL 2004

Date Introduced: 19 October 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Carr MP
Portfolio: Premier

Purpose and Description

1. The object of this Bill is to amend the *Historic Houses Act 1980* as follows:
 - (a) to more accurately reflect the role of the Historic Houses Trust (the **Trust**) in managing and maintaining not only houses of historical importance, but also various other buildings, structures and sites;
 - (b) to enable the Trust to carry out alterations and improvements to historic buildings or places in accordance with conservation plans approved by the Minister;
 - (c) to enable the Trust to sell or dispose of certain property (such as items in collections acquired by the Trust that are not subject to conditions) with the approval of the Minister (instead of the Governor); and
 - (d) to make other miscellaneous changes to the Act of a consequential or minor nature.

Background

2. According to the Second Reading Speech:

The purpose of this bill is to amend the *Historic Houses Act 1980* to reflect more accurately the role of the trust in managing and maintaining not only houses of historic importance but other buildings, structures and sites. The bill also provides measures to streamline the trust's procedures.

The Historic Houses Trust currently manages 15 properties, including house museums such as Elizabeth Farm and Vaucluse House, two museums of social history, the Hyde Park Barracks, the Justice and Police Museum and two sites of great historical significance, Government House and the Museum of Sydney, which is on the site of the first Government House. When the Historic Houses Act was originally drafted the trust was responsible for only two properties.¹

¹ Miss Cherie Burton, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 20 October 2004.

Issues Considered by the Committee

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

Issue: Clause 2 – Commencement by proclamation

3. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on whatever day it chooses after assent or not to commence the Act, or parts of the Act, at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to an inappropriate delegation of legislative power.
4. The Premier's office has advised the Committee that the Bill is to commence on proclamation to allow time for administrative procedures to be put in place, in particular to ensure that all Trust properties have conservation plans in place.
5. The Premier's office further advises that they intend to have the Bill commenced as soon as possible.

The Committee makes no further comment on this Bill.

2. JURY AMENDMENT (MAJORITY VERDICTS) BILL 2004*

Date Introduced: 21 October 2004
House Introduced: Legislative Assembly
Member Responsible: Mr A A Tink MP

Purpose and Description

1. The object of this Bill is to amend the *Jury Act 1977* to provide for majority verdicts by juries in criminal trials.
2. The Bill inserts a new provision in the Act [proposed section 55F] to enable juries in criminal trials to deliver a majority verdict if, in the case of a jury of 12 persons, 11 of the jurors agree on the verdict.
3. The Bill also inserts a new provision in the Act [proposed section 56] to enable a court to discharge a jury of 12 persons after 6 hours of deliberations if it finds that the jury is not likely to reach either a unanimous or majority verdict. The provisions relating to the discharge of juries in existing section 56 are re-enacted for juries consisting of fewer than 12 persons.

Background

4. According to the Member introducing the Bill:

The object of the 10-2 or 11-1 majority is to avoid new trials in cases where the jury is hamstrung by a perverse, disinterested or unreasonable, or simply incompetent juror, where the result of the new trial is going to be that of the overwhelming majority in the original trial.²

5. The Member further stated that:

Some years ago I introduced a bill along similar lines but I reintroduce such a bill into the Parliament today in light of what I believe are some very important comments made by one of the most experienced criminal court judges in New South Wales and indeed the country, the Hon. Mr Justice John Dunford...:

... there are some reforms which I believe could make the jury system more efficient. For one thing, I support the introduction of majority verdicts after a specified period of deliberation.³

6. The Member also outlined the use of majority verdicts in other jurisdictions:

In Victoria, a majority verdict involves 11 out of 12, or 10 out of 11, or 9 out of 10 in criminal trials, except for cases of murder or treason. In other words, depending on the final number of jurors who are required to bring in a verdict the requirement is down to a total of 10, with one juror out: so a verdict can be entered with one juror

² Mr A Tink, Second Reading Speech, *Legislative Assembly Hansard*, 21 October 2004.

³ Mr A Tink, Second Reading Speech, *Legislative Assembly Hansard*, 21 October 2004.

Jury Amendment (Majority Verdicts) Bill 2004*

out. In Western Australia, the arrangement is for a majority of 10 out of 12, except in murder cases. In South Australia, a majority verdict is allowed with 10 or 11 out of 12, 10 out of 11, or 9 out of 10; again, down to a grand total of 10 to bring in a verdict. In Tasmania a majority of 10 out of 12 is allowed. In the Northern Territory, if a unanimous verdict is not reached in six hours, a majority of 10 out of either 11 or 12, or 9 out of 10 applies. In Queensland unanimous verdicts are required.

7. In 1986, the NSW Law Reform Commission considered whether majority verdicts should be introduced in NSW. The Commission recommended retaining unanimity in criminal trials. It stated that the need to change the existing rule had not been demonstrated and even if there was such a need, the commission was not satisfied that allowing a majority verdict would overcome the supposed defects of the present system.⁴
8. On 17 September 2004, the Attorney General referred the question of majority trials back to the Law Reform Commission for updated consideration of the matter. The Commission is to report its findings within 6 months of the referral.
9. In response to a question without notice on 16 September 2004, the Premier stated that:

One of the central planks of the New South Wales justice system is unanimous verdicts—long accepted as one of the key guarantees of a fair trial, and certainly the position to which I have always subscribed. But I was interested to hear Supreme Court Justice John Dunford recently make the case for a specific form of majority verdicts. At the annual criminal law conference on 2 August the judge said that Parliament should consider 11 to 1 majority verdicts ‘where the jury has deliberated for a specified period of time.’

Given that the last Law Reform Commission report on this issue was back in 1986, the Attorney General and I have agreed that this issue may justify another look. Certainly in those two decades a lot has changed here and overseas. In New South Wales the percentage of hung juries has more than doubled, from 3.55 per cent in 1985 to around 8 per cent today. Majority verdicts were introduced in Victoria in 1994 for all criminal cases except murder or treason, allowing an 11 to 1 majority if the jury remains deadlocked for six hours. Majority verdicts are also now permitted in Western Australia, South Australia, Tasmania and the Northern Territory, as well as in three American States and in the United Kingdom. In fact, in the United Kingdom a 10 to 2 majority verdict may be returned after just two hours of deliberation ending in deadlock.

So there are emerging precedents for majority verdicts and there are questions that need to be answered...

There are arguments on both sides. We do not want to relinquish an ancient institution lightly. That is why the Government will refer the issue of majority verdicts to the New South Wales Law Reform Commission for report back within six months. The commission will consult with senior members of the judiciary, study local and overseas experience, and invite submissions from interested parties and the general public.⁵

⁴ NSW Law Reform Commission Report 48 (1986) – *Criminal Procedure: The Jury in a Criminal Trial*, at chapter 9.

⁵ The Hon Bob Carr MP, Premier, Legislative Assembly Hansard, 16 September 2004.

The Bill

10. The Bill commences on the day occurring 3 months after the date of assent, unless commenced sooner by proclamation.
11. The Bill provides that juries in criminal trials can deliver a majority verdict if, in the case of a jury of 12 persons, 11 of the jurors agree on the verdict after 6 hours of deliberation. The court may refuse a majority verdict if it appears to it that the jury has not had a reasonable period of time for deliberation given the nature and complexity of the case. A jury must be unanimous for Commonwealth offences [proposed s 55F].
12. Currently under the Act, the court may discharge a jury in a criminal trial if it finds, after examination on oath of a jury member, that it is not likely to agree on their verdict. The Bill adds the requirement that, for a jury consisting of 12 persons, the jury must have retired for at least 6 hours before the court can discharge it [proposed s 56].

Issues Considered by the Committee

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

Issue: Majority verdicts, right to a fair trial; Schedule 1, Clause 1, Proposed s. 55F

13. The right to a trial by jury for criminal offences is a central plank of Australia's fair trial guarantees. At the Commonwealth level, this right is guaranteed by the Constitution.
14. According to the High Court in *Cheatle's* case, unanimous verdicts in criminal trials are an essential feature of the trial by jury required by the Commonwealth Constitution. The High Court explained this in part by stating that:

[T]he common law's insistence upon unanimity reflects a fundamental thesis of our criminal law, namely, that person accused of a crime should be given the benefit of any reasonable doubt... [A] verdict returned by a majority of the jurors, over the dissent of others, objectively suggests the existence of reasonable doubt and carries a greater risk of conviction of the innocent than does a unanimous verdict.⁶
15. It is arguable that allowing for majority verdicts in criminal cases undermines the right to be presumed innocent until proved guilty by the prosecution beyond reasonable doubt. If one juror does not agree with the majority verdict, arguably the prosecution has not discharged its evidentiary burden.
16. On the other hand, there are a number of arguments advanced in favour of majority verdicts. These include avoiding an individual juror preventing a verdict for reasons other than a reasonable assessment of guilt on the basis of the evidence and reducing the possibility of hung juries and the need for retrials, which can have a detrimental effect on the accused and victims and are very costly.

⁶ *Cheatle & Anor. v R* (1993) 116 ALR 1.

Jury Amendment (Majority Verdicts) Bill 2004*

17. The Bill may mitigate any adverse impact on personal rights by requiring that a majority verdict be made by 11 of 12 jurors and only after a minimum of 6 hours of deliberation during which it has not been possible to reach a unanimous verdict.

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| <p>18. The Committee notes that trial by jury is a central feature of the Australian criminal justice system, which helps to protect the rights of accused persons. The Committee further notes that the High Court has consistently maintained that unanimity is an essential feature of the right to trial by jury for criminal offences under the Commonwealth Constitution.</p> <p>19. The Committee also notes that the right to be presumed innocent until proved guilty beyond reasonable doubt is a fundamental personal right and that majority verdicts may erode this right.</p> <p>20. The Committee notes that majority verdicts <i>may</i> reduce the incidence of retrials and that most Australian jurisdictions now allow for majority verdicts in criminal cases.</p> <p>21. The Committee refers to Parliament the question whether majority verdicts unduly trespass on fair trial guarantees, including the right to be presumed innocent until proved guilty beyond reasonable doubt.</p> |
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The Committee makes no further comment on this Bill.

3. MINING AMENDMENT (CYANIDE LEACHING) BILL 2004*

Date Introduced: 19/10/2004
House Introduced: Legislative Council
Member: Ms Lee Rhiannon, MLC
(Private Member's Bill)

Purpose and Description

1. The object of this Bill is to amend the *Mining Act 1992* to prohibit the recovery of gold, silver or other metals by cyanide leaching of the ore.

Background

2. Cyanide leaching is a process of dissolving metals or metal compounds in a cyanide solution. It is a method commonly used to extract very fine metal from ore. Some other techniques extract only larger, visible metal particles.
3. In her Second Reading Speech, Ms Rhiannon said:

Cyanide is a lethal substance that is used to extract gold and other minerals from ore in mining. One teaspoon of a 2 per cent cyanide solution will kill an adult human. Cyanide in much lower levels is toxic to birds, animals and aquatic creatures... Since the year 2000 improved reporting has seen dozens of accidents involving cyanide leaks and spills reported worldwide. These accidents underline why we need to ban cyanide leaching in mining... Aside from spills, monitoring cyanide levels is a consistent problem, whether overseas or in Australia.⁷
4. Whilst the Bill has general application, Ms Rhiannon referred in her Second Reading Speech to the health and environmental risks posed by the use of cyanide leaching as part of the Cowal Gold Mining Development Project.⁸
5. On 13 June 2003, a mining lease was granted to North Gold (WA) Ltd with respect to the construction and operation of an open cut gold mine and processing facilities near Lake Cowal in western NSW.⁹ The Cowal development is still under construction.¹⁰

The Bill

6. The Bill provides for the primary Act to be amended as set out in Schedule 1 [s 3]. The Bill commences on the date of assent [s 2].

⁷ Ms Lee Rhiannon MLC, Second Reading Speech, *Legislative Council Hansard*, 19 October 2004.

⁸ Ms Lee Rhiannon MLC, Second Reading Speech, *Legislative Council Hansard*, 19 October 2004.

⁹ Mr Carr MC, Question Time, *Legislative Assembly Hansard*, 18 June 2003, p 1659

¹⁰ Ms Rhiannon MLC, Second Reading Speech, *Legislative Council Hansard*, 19 October 2004.

Irrevokable prohibition on cyanide leaching for ore processing [Schedule 1, cl 1]

7. The Bill imposes on every “mining authority”¹¹ and mineral claim a condition prohibiting the use of cyanide leaching for ore processing [proposed s 238A(1)]. “Ore processing” is defined to exclude the “assessment or testing of samples under laboratory conditions” [proposed s 238A(4)].
8. This condition cannot be revoked, suspended or amended, either on renewal of the mining authority or mineral claim or otherwise [proposed s 238A(2)].

Effect of prohibition on existing authorities and mineral claims [Schedule 1, cl 2]

9. The prohibition on the use of cyanide leaching introduced by the Bill does not apply to a mining authority or mineral claim in force immediately before the Bill’s assent if ore processing by cyanide leaching commenced before 1 July 2004.
10. This provision also states that no existing authority or mineral claim can be amended with the effect of authorising the use or increased use of cyanide leaching.

Issues Considered by the Committee

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

Retrospectivity: Schedule 1, cl 2 [Mining Act 1992, Schedule 6]

11. The prohibition on cyanide leaching applies retrospectively to all mining authorities and mineral claims granted at any time prior to the date of assent of the Bill if ore processing did not commence before 1 July 2004.
12. This may have adverse financial impacts upon holders of existing mining authorities or mineral claims who did not commence ore processing by 1 July 2004, including those who have committed significant resources in reliance on those authorities and/or claims.

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| <ol style="list-style-type: none">13. The Committee is always concerned with any retrospective effect of legislation which impacts adversely on any person.14. The Committee notes that the Bill may adversely affect those who have committed resources in reliance on existing mining authorities or mineral claims and who did not commence ore processing by 1 July 2004.15. The Committee refers to Parliament the question of whether the retrospective operation of the Bill trespasses unduly on personal rights and liberties. |
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The Committee makes no further comment on this Bill.

¹¹ A “mining authority” is defined in the Dictionary to the *Mining Act 1992* to mean an exploration licence, assessment lease or mining lease.

4. PROTECTED ESTATES AMENDMENT (MISSING PERSONS) BILL 2004

Date Introduced: 20 October 2004
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus MP
Portfolio: Attorney General

Purpose and Description

1. The Bill amends the *Protected Estates Act 1983* (the Act) to enable the estates of missing persons to be subject to management under that Act.

Background

2. The Attorney General noted the following in the second reading speech:

Presently, family or friends can only manage the affairs and estates of missing people after obtaining a grant of probate from the Supreme Court. This means the missing person is presumed to be dead. Unless there is strong evidence that the person has died, probate may not be granted until they have been missing for seven years.

The presumption of death process is particularly distressing for families and friends of missing people because they usually do not want to accept, let alone prove, that the person is dead. It is also unsuitable for the majority of missing people who are found alive. The process takes too long to provide any practical, timely assistance to people wishing to look after an estate in the short or medium term... Long-term missing people are those who have been missing for more than a year. In New South Wales there are more than 500 long-term missing people. The Government, in consultation with families and friends of missing people, has developed a clear and simple legal procedure for applications to be made to allow others to manage property belonging to missing people...

The proposed amendments to the Protected Estates Act 1983 create a clear, effective mechanism for dealing with the estates of protected missing people. The scheme uses the extensive expertise that already exists in the Supreme Court and in the Office of the Protective Commissioner.¹²

The Bill

Amendment of the *Protected Estates Act 1983*

3. The Bill enables the Supreme Court to declare that a person is a missing person and to order that the whole or part of the estate of the person be subject to management under the Act if it is satisfied that:
 - the person is a missing person;
 - the person's usual place of residence is in NSW; and

¹² The Hon R J Debus MP, Attorney General, Legislative Assembly *Hansard*, 20 October 2004.

Protected Estates Amendment (Missing Persons) Bill 2004

- it is in the best interests of the person [proposed s 21C(1)].
4. Such a declaration may be made only if the Court is satisfied that:
- it is not known whether the person is alive;
 - all reasonable efforts have been made to locate the person; and
 - persons residing at the same place, or relatives or friends, with whom the person would be likely to communicate, have not heard from, or of, the person for at least 90 days [proposed s 21C(2)].
5. Applications for a declaration and order may be made by:
- a spouse of a person;
 - a relative of relative of a person;
 - a business partner or employee of a person;
 - the Attorney General;
 - the Protective Commissioner; or
 - any other person who has an interest in the estate of a person [proposed s 21C(3)].
6. A person subject to such an order is a ***protected missing person*** [proposed amended s 4(1)].
7. The Court may make an order appointing a suitable person or the Protective Commissioner to manage the estate of a protected missing person [proposed amended s 22] and make orders regarding the use of the property and income of a protected missing person [proposed s 32(1A)].
8. The Bill confers on the Protective Commissioner various powers for the purposes of managing the estate of a protected missing person,¹³ including powers relating to:
- the disposition of property;
 - the carrying on of a business;
 - the alteration of a partnership; and
 - other powers relating to consents, contracts and legal proceedings [proposed amended s 24 - s 26].
9. The provisions in the Act for the recovery of the Crown's expenses for the care and management of an estate and the Protective Commissioner's fees are extended to cover protected missing persons¹⁴ [proposed amended ss 7 & 8].

¹³ The development of the powers of the Protective Commissioner is dealt with at length in the judgment of McColl JA in *The Protective Commissioner v "D" & Ors* [2004] NSWCA 216 (5 July 2004) at paragraphs 48 to 104.

¹⁴ Currently, s 7 of the *Protected Estates Act 1983* provides that all expenses incurred by or on behalf of the Crown in the care and management of the estate of a protected person or in the supervision of the management, under this Act, by a manager of the estate of a protected person may be:

(a) charged by the Protective Commissioner against, and paid out of and recovered from, the estate;

Protected Estates Amendment (Missing Persons) Bill 2004

10. Relatives, friends, creditors or debtors of protected missing persons or other interested persons may apply to the Supreme Court for the giving of directions to the Protective Commissioner relating to inquiries, notices or the exercise of the Commissioner's functions [proposed amended s 12].
11. Spouses of protected missing persons have the right to make an application to the Administrative Decisions Tribunal (ADT) for a review of a decision of the Protective Commissioner [proposed amended s 28A].
12. The management of the estate is terminated when:
 - an order that the estate be subject to management is revoked [proposed s 34(2)(a)];
 - the Protective Commissioner certifies under proposed s 38A that it is terminated [proposed s 34(2)(b)]; or
 - the protected missing person dies [proposed s 34(2)(c)].
13. The Supreme Court, on the application of a protected missing person or other person, may *revoke* a declaration that a person is a missing person and an order that the person's estate be subject to management under the Act, if satisfied that the person is alive [proposed s 35A].¹⁵ The Protective Commissioner may certify that management of the estate of a protected missing person is terminated if the Commissioner is satisfied that the protected missing person is alive [proposed s 38A].¹⁶
14. The Bill also amends the Act to:
 - require the Protective Commissioner to determine whether to consult with relatives of a protected missing person before taking any action in respect of the estate of the protected missing person [proposed s 50(1A)];
 - require items of a personal nature in the estate of a protected missing person, that have been requested to be preserved by the person or the person's relatives, to be preserved as far as reasonably practicable [proposed amended s 51];
 - suspend the operation of powers of attorney granted by a protected missing person while that person's estate is subject to management under the Act [proposed amended s 76]; and

(b) paid by the Protective Commissioner out of any money of the protected person that is received by the Protective Commissioner; or

(c) recovered on summary application to the Court,

whether or not the management under this Act of the estate of the protected person has terminated.

¹⁵ Proposed s 35A provides that if, on application to it by a protected missing person or other person, the Court is satisfied that a protected missing person is alive, it may:

- (a) revoke any declaration made that the person is a missing person, and
- (b) revoke the order that the estate of the person be subject to management under this Act, and
- (c) make such orders as appear to it to be necessary to give effect to the revocation of the order, including the release of the estate of the person from the control of the Court, the Protective Commissioner or a manager and the discharge of any manager.

¹⁶ Regulations may make provision for or with respect to information that the Protective Commissioner may take into account for the purposes of being satisfied that a protected missing person is alive: proposed s 38A(2) of the *Protected Estates Act 1983*.

Protected Estates Amendment (Missing Persons) Bill 2004

- enable a declaration and order to be made in relation to a person who became a missing person during a period commencing *before* the commencement of that Division and continuing after that commencement [proposed s 21C].

Amendment of other Acts

15. The Bill amends the *Powers of Attorney Act 2003* to provide that the power conferred by an irrevocable power of attorney is not revoked or otherwise terminated by, or remains effective despite, the principal becoming a protected missing person.
16. The Bill amends the *Real Property Act 1900* to enable the Protective Commissioner or the manager of the estate of a protected missing person to withdraw a caveat lodged under that Act by the protected missing person.
17. These amendments reflect existing provisions in relation to protected persons under the *Protected Estates Act 1983*.

Issues Considered by the Committee

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

Commencement on proclamation: Clause 2

18. The Committee notes that providing for an Act to commence on proclamation delegates to the Government the power to commence the Act on whatever day it chooses after assent or not to commence the Act, or parts of the Act, at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, it can give rise to an inappropriate delegation of legislative power.
19. The Committee has been advised by the Attorney's office that the Bill's provisions commence on proclamation to ensure that administrative mechanisms in the Protective Commissioner's office and the Supreme Court Rules that will give effect to the Bill are in place.

The Committee makes no further comment on this Bill.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

5. WATER MANAGEMENT AMENDMENT BILL 2004

Date Introduced:	12 May 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Craig Knowles MP
Portfolio:	Natural Resources

Background

1. The Committee reported on the *Water Management Amendment Bill 2004* in Legislation Review Digest No 8 of 2004. The Bill received assent on 24 June 2004.

Removal of Minister's plans from public exhibit

2. The Committee noted that the effect of proposed section 50(2A) of the Bill is to remove the existing mandatory requirement for exhibition of Minister's plans for public comment and leave this to the Minister's discretion.
3. The Committee was concerned that removing the requirement for public consultation could be regarded as an undue trespass on the right of those affected by the plan to be heard. This is because the Minister is not required to consult the water management committee in relation to Minister's plans and conditions imposed by plans are binding.
4. The Committee resolved to seek the advice of the Minister as to the need to remove the requirement for publication of Minister's plans for public comment.

Double penalty

5. The Committee also noted that under proposed section 85B, in addition to, or as an alternative to, prosecuting licence holders who take water in breach of their licence, the Minister could also penalise them.
6. The Committee was concerned that proposed s 85B allows for double punishment where it is used in *addition* to prosecution.

Furthermore, neither the court, on sentence, nor the Minister when making an order, is required to take account of the other's decision.

7. The Committee therefore also sought the Minister's advice as to the reasons for potentially subjecting a person to a double penalty.

Judicial Review

8. The Committee also noted the amendments to section 47 in relation to judicial review of plan making procedures particularly the exclusion of review on the grounds of failure to accord procedural fairness.

Minister's Reply

9. The Committee received the Minister's reply to its 28 May 2004 letter on 1 October 2004. The Minister had partially responded to the Committee's concerns during the second reading debate on the Bill on 1 June 2004.

10. In responding to the Committee's concerns regarding public consultation on Minister's plans, the Minister advised that under the *Water Management Act*:

A water management plan can be made in two ways: by a water management committee at the direction of the Minister ("committee plan"); and by the Minister (Minister's plan). The fundamental difference between the two plans is procedural. Whereas a committee plan must be made in accordance with certain procedures relating to contents, consultation and exhibition, a Minister's plan allows for a more flexible approach to accommodate particular situations. For instance, if a plan were to be developed for a large area of the State, it may not be practical to notify every interested party, as required in relation to the making of a committee plan.

The amendments simply clarify this difference, but also reinforce the Minister's discretion to follow the requirements of committee plans when making Minister's plans, as occurred in the making of the first round of plans.

The amendments therefore in no way remove or lessen existing requirements in relation to public consultation.

11. In response to the Committee's concern regarding the removal of judicial review of plans on the basis of natural justice (procedural fairness), the Minister stated that the Water Management Act contains detailed provisions relating to the procedures to be followed in making water management plans and the contents of those plans. Further, that the right to challenge a plan on the basis that these requirements were not met remains in the Act. He also stated that:

The amendments, however, serve to clarify that plans cannot simply be challenged on the basis that the plan is perceived as being detrimental to an individual's or group's interests or that the Government has failed to take sufficient account of such interests. Allowing such challenges would significantly undermine the capacity of the Government to perform its basic policy functions and would impede implementation of new water sharing arrangements.

12. Finally, regarding the Committee's concern that the amendments potentially subject licence holders who take water in breach of their licence to double punishment (s 85B) the Minister replied that:

The Water Management Act 2000 currently gives the Minister the power to impose a range of penalties for illegal taking of water, from penalty notices to suspension or cancellation of the access licence. The amendments simply increase the options available to the Minister in dealing with a serious problem by allowing a water payback penalty to be imposed in addition to any existing penalties.

This is akin, for example, to a court imposing community service obligations as well as a fine on a traffic offender.

Committee's Response

13. The Committee thanks the Minister for his reply.
14. In relation to the question of double penalties, the Committee does not agree that the Minister's ability to impose a civil penalty on a licensee who has illegally taken water is akin to a Court imposing community service obligations as well as a fine on a traffic offender.
15. In the Committee's view, the differences between an imposition of more than one penalty by a Court and the ability of the Minister under section 85B to impose a penalty in addition to any a court may have ordered, are stark. Further, the analogy of criminal penalty used by the Minister draws attention to concerns about confusing the roles of the executive and the judiciary. It is not unusual to provide for an administrative power to reduce an allocation under a licence in response to a breach of its terms, as provided in section 85B(1)(a). It is also common for regulatory provisions to provide for *courts* to impose monetary or other penalties through *civil* processes.¹⁷ However, it appears unprecedented to provide for a Minister to impose what in substance appears to be a monetary fine, as in section 85B(1)(b).
16. The Committee also considers that providing for the Minister to impose monetary penalties in section 85B(1)(b) is fundamentally different to the imposition of penalty notices or the suspension or cancellation of a licence:
 - A penalty notice provides a person with the option of paying a fine if they do not wish to contest an alleged offence in court. Provisions regarding penalty notices do not give the Minister any power to determine guilt or impose a sentence.
 - Decisions to suspend or cancel a licence only affect a person's rights provided under that licence.
17. A Court imposing any penalty does so after a proceeding that involves numerous elements to ensure a fair process that balances the rights of the accused person with the public interest. Such elements include an independent and impartial decision maker, the rules of evidence and the right to a fair hearing. By contrast, section 85B enables the Minister to impose what may amount to serious financial penalties on a licensee provided only that the licensee has been informed and has had the opportunity to be heard.
18. Importantly, the section also expressly authorises the Minister to impose the penalties under either or both s 85B(1) (a) or (b) "whether or not the person has been prosecuted for such a contravention". To have a person liable to punishment by both a court and the Minister, without one being required to have regard to any penalty imposed by the other, leaves open the possibility that a licensee will be penalised twice for the same behaviour. As the Committee stated in its report on this Bill, this

¹⁷ The Australian Law Reform Commission defines "civil penalty" as a penalty "imposed by courts applying civil rather than criminal court processes."

is contrary to a fundamental human right recognised in the International Covenant on Civil and Political Rights (article 14(7)).

19. In addition, allowing for the Minister to impose this penalty regardless of whether the licensee has already been convicted and punished in criminal proceedings allows the Minister to “top up” the penalty imposed by the court if he or she believes it is too lenient.
20. The Committee has written to the Minister:
 - (i) to reaffirm its view that to allow the Minister to impose a penalty for licensees who take water in breach of their licence whether or not the person has been prosecuted for such a contravention may expose licensees to double penalties; and
 - (ii) to express concern that the imposition of significant monetary penalties by administrative decision amounts to the denial of the right to a fair trial.



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

28 May 2004

File Ref: LRC731

The Hon Craig Knowles MP
Minister for Natural Resources
Level 33 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Water Management Amendment Bill 2004

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

The Committee resolved to write to you in relation to the following matters.

Public consultation on Minister's Plans

The Committee notes that the effect of proposed section 50(2A) is to remove the existing mandatory requirement for exhibition of Minister's plans for public comment and leave this to the Minister's discretion. The Committee considers that providing for public consultation and comment on draft plans is an important safeguard that gives those who may be affected by the plan an opportunity to be heard before the plan is finalised.

The Committee is concerned that as the Minister is not required to consult the water management committee in relation to Minister's plans, and as conditions imposed by plans are binding, removing the requirement for public consultation could be regarded as an undue trespass on the right of those affected by the plan to be heard. The Committee has referred to Parliament the question of whether this amendment is an undue trespass on the right to be heard.

The Committee seeks your advice as to the need to remove the requirement for publication of Minister's plans for public comment.

The Committee has also noted the amendments to section 47 in relation to judicial review of plan-making procedures, particularly the exclusion of review on the grounds of failure to accord procedural fairness (natural justice). Together with the removal of the requirement for exhibition of a Minister's plan for public comment, the amendment to section 47 leaves such plans free from requirements for either public consultation or procedural fairness.

The Committee has drawn Parliament's attention to the need to ensure that the Act provides adequate opportunity for persons affected by water management plans to be heard, whether through public consultation or an enforceable right to be heard.

Penalties for illegally taking water

The Committee is concerned that proposed section 85B [schedule 4, clause 22] allows for double punishment of a licence holder found to have taken water illegally.

The Committee is of the view that double punishment for the same offence is contrary to the fundamental right of a person not to be tried or punished twice for the same conduct. The Committee considers that this right is so fundamental that there should be no derogation from it notwithstanding the importance of protecting water resources.

The Committee has referred to Parliament the question of whether the additional penalty provided for in section 85B unduly trespasses on the fundamental right of a person not to be punished twice for the same offence.

The Committee seeks your advice as to the reasons for potentially subjecting a person to a double penalty in contravention of this fundamental human right.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barry Collier', is written over a large, stylized circular flourish.

**BARRY COLLIER MP
CHAIRPERSON**

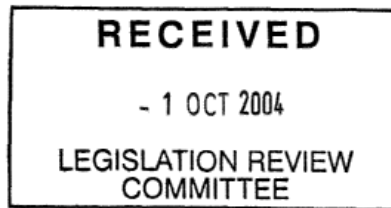


MINISTER FOR INFRASTRUCTURE AND PLANNING
MINISTER FOR NATURAL RESOURCES

D04/3976

24 SEP 2004

Mr Barry Collier MP
Chairperson
Legislation Review Committee
Parliament House
SYDNEY NSW 2000



Dear Mr Collier

I refer to your letter of 28 May 2004 in which you raise certain issues in relation to the *Water Management Amendment Bill 2004* on behalf of the Legislation Review Committee. The delay in replying is regretted. As you would be aware, the Bill has been passed by the Parliament of NSW.

Public consultation on Minister's Plans

In relation to the Committee's concern that the Bill removed existing mandatory requirements for public exhibition of Minister's plans, I refer the Committee to Part 4, section 50 of the *Water Management Act 2000* which governs the making of Minister's plans. This section contains no requirement for public consultation on Minister's plans.

Under the *Water Management Act 2000*, a water management plan can be made in two ways: by a water management committee at the direction of the Minister ("committee plan"); and by the Minister ("Minister's plan"). The fundamental difference between the two plans is procedural. Whereas a committee plan must be made in accordance with certain procedures relating to contents, consultation and exhibition, a Minister's plan allows for a more flexible approach to accommodate particular situations. For instance, if a plan were to be developed for a large area of the State, it may not be practical to notify every interested party, as required in relation to the making of a committee plan.

The amendments simply clarify this difference, but also reinforce the Minister's discretion to follow the requirements of committee plans when making Minister's plans, as occurred in the making of the first round of plans.

The amendments therefore in no way remove or lessen existing requirements in relation to public consultation.

- 2 -

Judicial review of plans

I note the Committee's concern that the Bill removes the capacity of judicial review of plans on the basis of natural justice (procedural fairness). I should point out that the Act already has detailed provisions relating to the procedures to be followed in making water management plans and the contents of such plans. The right to challenge a plan on the basis that a plan has not been made in accordance with these provisions, and with the Act more broadly, remains.

The amendments, however, serve to clarify that plans cannot simply be challenged on the basis that the plan is perceived as being detrimental to an individual's or group's interests or that the Government has failed to take sufficient account of such interests. Allowing such challenges would significantly undermine the capacity of the Government to perform its basic policy functions and would impede implementation of new water sharing arrangements.

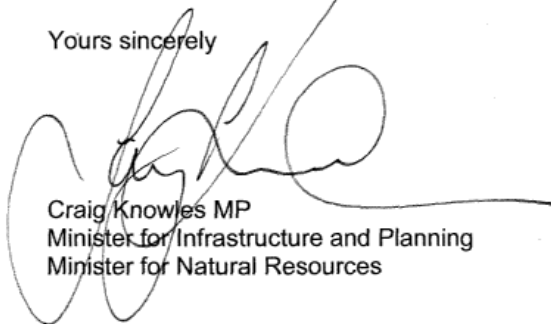
Penalties for illegally taking water

The Committee's suggestion that the amendments allow for "double punishment" is puzzling.

The *Water Management Act 2000* currently gives the Minister the power to impose a range of penalties for illegal taking of water, from penalty notices to suspension or cancellation of the access licence. The amendments simply increase the options available to the Minister in dealing with a serious problem by allowing for a water payback penalty to be imposed in addition to any existing penalties.

This is akin, for example, to a court imposing community service obligations as well as a fine on a traffic offender.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Craig Knowles', written over a horizontal line.

Craig Knowles MP
Minister for Infrastructure and Planning
Minister for Natural Resources

Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Architects Regulation 2004	25/06/04	4388	21/09/04	
Environmental Planning and Assessment Amendment (ARTC Rail Infrastructure) Regulation 2004	03/09/04	7343	26/10/04	
Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003	07/11/03	10369	05/03/04 30/04/04	01/04/04
Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004	25/06/04	4486	21/09/04	
Forestry Regulation 2004	27/08/04	6778	26/10/04	
Inclosed Lands Protection Regulation 2002	06/12/02	10370	29/05/03 12/09/03	29/08/03 11/03/04
Passenger Transport (Drug and Alcohol Testing) Regulation 2004	05/03/04	957	30/04/04	
Road Transport (General) Amendment (Impounding Fee) Regulation 2003	17/10/03	10045	13/02/04	15/06/04
Wild Dog Destruction Regulation 2004	27/08/04	7133	26/10/04	

Appendix 1: Index of Bills Reported on in 2004

	Digest Number
Aboriginal Land Rights (Gandangara Estate) Bill 2004	12
Administrative Decisions Tribunal Amendment Bill 2004	11
Agricultural Livestock (Disease Control Funding) Amendment Bill 2004	10
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	2
Anti-Discrimination Amendment (Miscellaneous Provisions) Bill 2004	12
Appropriation Bill 2004	10
Appropriation (Budget Variations) Bill 2004	5
Appropriation (Parliament) Bill 2004	10
Appropriation (Special Offices) Bill 2004	10
Bail Amendment (Terrorism) Bill 2004	9
Botany Bay National Park (Helicopter Base Relocation) Bill 2004	5
Child Protection (Offenders Prohibition Orders) Bill 2004	9
Child Protection (Offender Registration) Bill 2004	10,13
Children (Detention Centres) Amendment Bill 2004	4
Civil Liability Amendment (Offender Damages) Bill 2004	5,7
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004	12,13
Commercial Agents and Private Inquiry Agents Bill 2004	9,10
Community Protection (Closure of Illegal Brothels) Bill 2003*	1
Compulsory Drug Treatment Correctional Centre Bill 2004	8
Constitutional Amendment (Pledge of Loyalty) Bill 2004*	7
Courts Legislation Amendment Bill 2004	7
Crimes Amendment (Child Neglect) Bill 2004	7
Crimes Legislation Amendment Bill 2004	3
Crimes Legislation Amendment (Terrorism) Bill 2004	10
Crimes (Administration of Sentences) Bill 2004	9
Crimes (Administration Of Sentences) Amendment (Norfolk Island Prisoners) Bill 2004	13
Crimes (Interstate Transfer of Community Based Sentences) Bill 2004	9
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003	1
Criminal Procedure (Sexual Offence Evidence) Bill 2004	8
Cross-Border Commission Bill 2004	3
Crown Lands Legislation Amendment (Budget) Bill 2004	10

	Digest Number
Crown Lands (Prevention of Sales) Bill 2004*	10
Education Amendment (Non-Government Schools Registration) Bill 2004	2
Electricity (Consumer Safety) Bill 2003	1,2
Fair Trading Amendment Bill 2004	4
Filming Approval Bill 2004	7,8
Fines Amendment Bill 2004	9
Fisheries Management Amendment Bill 2004	6
Food Legislation Amendment Bill 2004	3
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	2
Greyhound and Harness Racing Administration Bill 2004	7,9
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	6
Health Legislation Amendment Bill 2004	6
Health Legislation Further Amendment Bill 2004	13
Historic Houses Amendment Bill 2004	14
Institute of Teachers Bill 2004	8
Jury Amendment (Majority Verdicts) Bill 2004*	14
Legal Profession Amendment Bill 2004	9
Legal Profession Legislation Amendment (Advertising) Bill 2003	1
Liquor Amendment (Parliament House) Bill 2004	6
Liquor Amendment (Parliamentary Precincts) Bill 2004	8
Liquor Amendment (Racing Clubs) Bill 2004	9
Local Government Amendment (Council and Employee Security) Bill 2004	5
Local Government Amendment (Discipline) Bill 2004	9
Local Government Amendment (Mayoral Elections) Bill 2004	9
Lord Howe Island Amendment Bill 2003	10
Mine Health and Safety Bill 2004	8,9
Mining Amendment (Cyanide Leaching) Bill 2004*	14
Mining Amendment (Miscellaneous Provisions) Bill 2004	6,8
National Competition Policy Amendment (Commonwealth Financial Penalties) Bill 2004	2
National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004	7
National Competition Policy Liquor Amendment (Commonwealth Financial Penalties) Bill 2004	7
National Parks and Wildlife Amendment (Jenolan Caves Reserve Trust) Bill 2004	9
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	1

	Digest Number
Parliamentary Electorates and Elections Amendment (Prohibition on Voting by Criminals) Bill 2004*	5
Partnership Amendment (Venture Capital Funds) Bill 2004	3
Passenger Transport Amendment (Bus Reform) Bill 2004	8,9
Police Amendment (Crime Reduction and Reporting) Bill 2004	3
Police Amendment (Senior Executive Transfers) Bill 2004	9,10
Police Integrity Commission Amendment Bill 2004	12
Prevention of Cruelty to Animals (Tail Docking) Bill 2004	4,6
Professional Standards Amendment Bill 2004	11
Protected Estates Amendment (Missing Persons) Bill 2004	14
Public Lands Protection Bill 2004*	13
Public Lotteries Legislation Amendment Bill 2004	2
Regional Development Bill 2004	7
Registered Clubs Legislation Amendment Bill 2004	11
Residential Tenancies (Public Housing) Bill 2004	9
Retail Leases Amendment Bill 2004	10
Retirement Villages Amendment Bill 2004	3
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	1
Road Transport (General) Amendment (Licence Suspension) Bill 2004	9
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	1,7
Rural Communities Impacts Bill 2004*	11
Snowy Mountains Cloud Seeding Trial Bill 2004	5
Save Orange Grove Bill 2004*	11
State Records Amendment Bill 2004	13
State Revenue Legislation Amendment Bill 2004	7
State Revenue Legislation Further Amendment Bill 2004	10
State Water Corporation Bill 2004	8
Statute Law (Miscellaneous Provisions) Bill 2004	9
Stock Diseases Amendment (Artificial Breeding) Bill 2004	6,8
Stock Diseases Amendment (False Information) Bill 2004	4,9
Stock Medicines Amendment Bill 2004	12
Strata Schemes Management Amendment Bill 2003	1,3
Superannuation Administration Amendment Bill 2003	1
Sustainable Energy Development Repeal Bill 2004	10
Sydney Opera House Trust Amendment Bill 2004	10

	Digest Number
The Synod of Eastern Australia Property Amendment Bill 2004	2
Thoroughbred Racing Legislation Amendment Bill 2004	4,6
Threatened Species Legislation Amendment Bill 2004	11,13
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	6
Water Management Amendment Bill 2004	8,14
Wool, Hide and Skin Dealers Bill 2004	2
Workers Compensation Legislation Amendment Bill 2004	9

Appendix 2: Index of Ministerial Correspondence on Bills in 2004

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Child Protection (Offender Registration) Bill 2004	Minister for Police	27/08/04	20/09/04		10,13
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004	Attorney General	21/09/04	28/09/04		12,13
Civil Liability Amendment Bill 2003	Minister for Health	28/11/03	22/12/03	7	1
Civil Liability Amendment (Offender Damages) Bill 2004	Minister for Justice	26/03/04	13/04/04		5,7
Commercial Agents and Private Inquiry Agents Bill 2004	Minister for Police	18/06/04	29/07/04		9,10
Crimes Legislation Further Amendment Bill 2003	Attorney General	28/11/03	16/12/03	7	1
Electricity (Consumer Safety) Bill 2003	Minister for Fair Trading	13/02/04	18/02/04		1,2
Environmental Planning and Assessment (Development Consents) Bill 2003	Minister for Infrastructure and Planning	24/10/03	19/03/04	4	5
Environmental Planning and Assessment Amendment (Planning Agreements) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	28/11/03	19/03/04	7	5
Environmental Planning and Assessment (Quality of Construction) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	18/11/03	19/03/04	6	5
Filming Approval Bill 2004	Minister for the Environment	11/05/04	12/05/04		7,8
Greyhound and Harness Racing Administration Bill 2004	Minister for Gaming and Racing	11/05/04	31/05/04		7,9
Lord Howe Island Amendment Bill 2003	Attorney General/ Premier	13/02/04	Premier 13/07/04		1,10 ¹⁸
Legal Profession Legislation Amendment (Advertising) Bill 2003	Attorney General	13/02/04	23/03/04		1,5
Mine Health and Safety Bill 2004	Minister for Mineral Resources	28/05/04	09/06/04		8,9
Mining Amendment (Miscellaneous Provisions) Bill 2004	Minister for Mineral Resources	30/04/04	17/05/04		6,8
Motor Accidents Legislation Amendment Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1

¹⁸ Published under the title "Commencement of Acts."

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
National Parks and Wildlife Amendment (Kosciuszko National Park Roads) Bill 2003	Minister for the Environment	07/11/03	08/12/03	5	1
Partnership Amendment (Venture Capital Funds) Bill 2004	Attorney General	05/03/04	23/03/04		3,5
Passenger Transport Amendment (Bus Reform) Bill 2004	Minister for Transport Services	28/05/04 18/06/04	17/06/04		8,9
Police Amendment (Senior Executive Transfers) Bill 2004	Minister for Police	18/06/04	21/07/04		9,10
Police Legislation Amendment (Civil Liability) Bill 2003	Minister for Police	18/11/03	24/12/03	6	1
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004	Minister for Agriculture and Fisheries	16/03/04	05/04/04		4,6
Privacy and Personal Information Protection Amendment Bill 2003	Attorney General	24/10/03	25/02/04	4	3
Registered Clubs Amendment Bill 2003	Minister for Gaming and Racing	28/11/03	25/02/04	7	3
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	Minister for Roads	13/02/04	23/03/04		1,5
Road Transport (General) Amendment (Licence Suspension) Bill 2004	Minister for Roads	18/06/04			9
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	Minister for Roads	13/02/04	05/05/04		1,7
State Revenue Legislation Further Amendment Bill 2003	Treasurer	28/11/03	15/12/03	7	1
Stock Diseases Amendment (Artificial Breeding) Bill 2004	Minister for Agriculture and Fisheries	30/04/04	21/05/04		6,8
Stock Diseases Amendment (False Information) Bill 2004	Minister for Agriculture and Fisheries	16/03/04	28/05/04		4,9
Stock Medicines Amendment Bill 2004	Minister for Primary Industries	21/09/04			12
Strata Schemes Management Amendment Bill 2003	Minister for Fair Trading	13/02/04	27/02/04		1,3
Superannuation Administration Amendment Bill 2003	Treasurer	13/02/04	18/03/04		1,5
Thoroughbred Racing Legislation Amendment Bill 2004	Minister for Gaming Racing	16/03/04	07/04/04		4,6
Threatened Species Legislation Amendment Bill 2004	Minister for the Environment	27/08/04	24/09/04		11,13
Water Management Amendment Bill 2004	Minister for Natural Resources	28/05/04 26/10/04	24/09/04		8,14

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Workers Compensation Amendment (Insurance Reforms) Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1

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

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Aboriginal Land Rights (Gandangara Estate) Bill 2004	N				
Administrative Decisions Tribunal Amendment Bill 2004				N	
Agricultural Livestock (Disease Control Funding) Amendment Bill 2004				N	
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	N				
Anti Discrimination Amendment (Miscellaneous Provisions) Bill 2004	N			N	
Bail Amendment (Terrorism) Act 2004	N				
Botany Bay National Park (Helicopter Base Relocation) Bill 2004				N	
Child Protection (Offenders Prohibition Orders) Bill 2004	N			C	
Child Protection (Offenders Registration) Bill 2004	N,C			C	
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004				C	
Civil Liability Amendment (Offender Damages) Bill 2004	R			C	
Commercial Agents and Private Inquiry Agents Bill 2004	R			C	
Community Protection (Closure of Illegal Brothels) Bill 2003	R				
Compulsory Drug Treatment Correctional Centre Bill 2004	N			N	
Courts Legislation Amendment Bill 2004				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Crimes Amendment (Child Neglect) Bill 2004				N	
Crimes Legislation Amendment (Terrorism) Bill 2004	N				
Crimes (Administration of Sentences) Bill 2004	N			N	
Crimes (Interstate Transfer of Community Based Sentences) Bill 2004				N	
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003				N	
Criminal Procedure (Sexual Offence Evidence) Bill 2004	N				
Crown Lands (Prevention of Sales) Bill 2004*	N, R				
Education Amendment (Non-Government Schools Registration) Bill 2004				N	
Electricity (Consumer Safety) Bill 2003	N, R				C
Fair Trading Amendment Bill 2004				N	
Filming Approval Bill 2004				C	
Fines Amendment Bill 2004				N	
Fisheries Management Amendment Bill 2004				N	
Food Legislation Amendment Bill 2004				N	
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	N			N	
Greyhound and Harness Racing Administration Bill 2004			R, C	N	
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	N		R		
Health Legislation Amendment Bill 2004	N			N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Health Legislation Further Amendment Bill 2004				N	
Historic Houses Amendment Bill 2004				N	
Institute of Teachers Bill 2004				N	
Jury Amendment (Majority Verdicts) Bill 2004*	N, R				
Legal Profession Legislation Amendment (Advertising) Bill 2003	C, R		C, R	N	
Liquor Amendment (Parliamentary Precincts) Bill 2004				N	
Local Government Amendment (Council and Employee Security) Bill 2004	N			N	
Local Government Amendment (Discipline) Bill 2004				N	
Mine Health and Safety Bill 2004	N, R	N	C	N, R	
Mining Amendment (Cyanide Leaching) Bill 2004*	N, R				
Mining Amendment (Miscellaneous Provisions) Bill 2004	C, R			N	
National Parks and Wildlife Amendment (Jenolan Caves Reserve Trust) Bill 2004	N				
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	N				
Parliamentary Electorates and Elections Amendment (Prohibition on Voting Rights by Criminals) Bill 2004*	R				
Partnership Amendment (Venture Capital Funds) Bill 2004	C			C	
Passenger Transport Amendment (Bus Reform) Bill 2004	N, R		N, C, R	N	
Police Amendment (Senior Executive Transfers) Bill 2004				C	
Police Integrity Commission Amendment Bill 2004				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004				C	
Professional Standards Amendment Bill 2004				N	
Protected Estates Amendment (Missing Persons) Bill 2004				N	
Public Lotteries Legislation Amendment Bill 2004				N	
Regional Development Bill 2004				N	
Registered Clubs Legislation Amendment Bill 2004	N				
Residential Tenancies (Public Housing) Bill 2004	N			N	
Retail Leases Amendment Bill 2004				N	
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	N, C				
Road Transport (General) Amendment (Licence Suspension) Bill 2004	N	C	R		
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003				C	
Save Orange Grove Bill 2004*	R				
Snowy Mountains Cloud Seeding Trial Bill 2004				N	
State Records Amendment Bill 2004	N,R,C			N	
State Revenue Legislation Further Amendment Bill 2004	N				
State Water Corporation Bill 2004				N	
Stock Diseases Amendment (Artificial Breeding) Bill 2004	C, R			N	N
Stock Diseases Amendment (False Information) Bill 2004	C			C	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Stock Medicines Amendment Bill 2004	N	R, C		N	
Strata Schemes Management Amendment Bill 2003				N,C	
Superannuation Administration Amendment Bill 2003	N			C	
Sydney Opera House Trust Amendment Bill 2004	N				
Thoroughbred Racing Legislation Amendment Bill 2004				C	
Threatened Species Legislation Amendment Bill 2004	N,R		N	N	R,C
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	R			N	
Water Management Amendment Bill 2004	C, R		N	N	
Wool, Hide and Skin Dealers Bill 2004				N	
Workers Compensation Legislation Amendment Bill 2004	N			N	

Key

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

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

Regulation	Minister/Correspondent	Letter sent	Reply	Digest Number
Children and Young Persons (Savings and Transitional) Amendment (Out-of-Home Care) Regulation 2003 & Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003	Minister for Community Services	13/02/04	21/04/04	1,7
Children's Services Regulation 2004	Minister for Community Services	10/09/04 16/09/04	14/09/04 16/09/04	12
Consultation on Regulations	Premier/Acting Premier	05/03/04	15/06/04	9
Crimes (Forensic Procedures) Amendment (DNA Database Systems) Regulation 2003	Attorney General	07/11/03	03/12/03	1
Determination of Regulatory Fee Increases	Premier	24/10/03	18/03/04	5
Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003	Minister Assisting the Minister for Infrastructure and Planning (Planning Administration)	05/03/04 30/04/04	01/04/04 01/06/04	6,9
Landlord and Tenant (Rental Bonds) Regulation 2003	Minister for Fair Trading	24/10/03 18/11/03 23/12/03	05/11/03 10/02/04	1
Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003	Minister for Commerce	26/03/04 30/04/04	15/04/04 05/05/04	6,7
Pawnbrokers and Second-hand Dealers Regulation 2003	Minister for Fair Trading	24/10/03 18/11/03 23/12/03	05/11/03 10/02/04	1
Radiation Control Regulation 2003	Minister for the Environment	24/10/03	23/01/04	1
Review of Regulations	Premier	18/12/03 27/08/04 01/09/04	12/07/04 20/08/04	11
Road Transport (General) Amendment (Impounding Fee) Regulation 2003	Minister for Roads	13/02/04	15/06/04	9
Road Transport (General) (Penalty Notice Offences) Amendment (Interlock Devices) Regulation 2003 and Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Privacy Commissioner	24/10/03 19/10/04	27/11/03	1
Road Transport (General) (Penalty Notice Offences) Amendment (Interlock Devices) Regulation 2003 and Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Minister for Roads	13/02/04 01/06/04 19/10/04	20/05/04 17/09/04	1,8