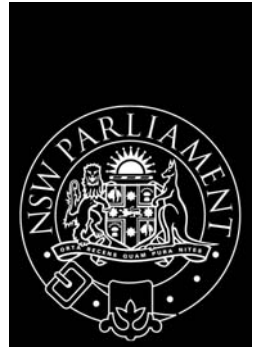


PARLIAMENT OF NEW SOUTH WALES



# Legislation Review Committee

ANNUAL REVIEW

---

July 2005-June 2006

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Legislative Assembly. Legislation Review Committee.**

Annual Report July 200-June 2006, Legislation Review Committee, Parliament NSW Legislative Assembly.  
[Sydney, NSW]: The Committee, 2006, 28 p. ; 30cm

Chair: Mr Allan Shearan MP

29 August 2006

ISBN 1 921012 32 3

1. Legislation Review Committee—New South Wales

2. Legislation Review Committee – ANNUAL REPORT JULY 2005-JUNE 2006 (29 August 2006)

I Title.

II Series: New South Wales. Parliament. Legislative Assembly. Legislation Review Committee Report; No. 5

# Table of Contents

Membership & Staff.....	iii
<b>CHAPTER ONE - INTRODUCTION.....</b>	<b>1</b>
Committee’s functions and procedure.....	1
<b>CHAPTER TWO - SCRUTINY OF BILLS .....</b>	<b>3</b>
Bills considered.....	3
“Rights and liberties” .....	4
Issues arising in Bills considered .....	4
<b>CHAPTER THREE - SCRUTINY OF REGULATIONS .....</b>	<b>11</b>
Regulations considered .....	11
Issues arising in Regulations considered .....	11
<b>CHAPTER FOUR - OPERATIONAL ISSUES.....</b>	<b>13</b>
Membership of Committee.....	13
Operational Issues .....	13
<b>CHAPTER FIVE - STATISTICS .....</b>	<b>16</b>
<b>CHAPTER SIX - OUTCOMES .....</b>	<b>17</b>
<b>CHAPTER SEVEN - OTHER ACTIVITIES OF THE COMMITTEE.....</b>	<b>19</b>
<b>CHAPTER EIGHT - CONCLUSION .....</b>	<b>20</b>



## Membership & Staff

<b>Chair</b>	Allan Shearan MP, Member for Londonderry
<b>Vice Chair</b>	Virginia Judge MP, Member for Strathfield
<b>Members</b>	Shelley Hancock MP, Member for South Coast
	Robyn Parker MLC
	Paul Pearce MP, Member for Coogee
	Penny Sharpe MLC
	Russell Turner MP, Member for Orange
	Peter Wong MLC
<b>Staff</b>	Russell Keith, Committee Manager
	Indira Rosenthal, Senior Committee Officer
	Mel Keenan, Senior Committee Officer
	Carly Sheen, Committee Officer
	Melanie Carmeci, Assistant Committee Officer
<b>Contact Details</b>	Legislation Review Committee Legislative Assembly Parliament House Macquarie Street Sydney NSW 2000
<b>Telephone</b>	02 9230 2899
<b>Facsimile</b>	02 9230 3052
<b>E-mail</b>	legislation.review@parliament.nsw.gov.au
<b>URL</b>	www.parliament.nsw.gov.au



## Chair's Forward

The Legislation Review Committee has the important function of informing Members of Parliament of the human rights implications of Bills and reviewing new Regulations on any ground, including their impacts on personal rights and on business. This Report highlights the work of the Committee over the 2005-06 financial year. The Committee has a demanding workload, and has reported to Parliament on 128 Bills, considered 397 Regulations and published 16 editions of the *Legislation Review Digest*.

An important development over this past year has been the public dissemination of discussion papers on the right to silence, and strict and absolute liability offences. These discussion papers are a chance for the Committee to receive input from government and the community in relation to issues that arise repeatedly in its scrutiny of Bills. This assists the Committee in the formulation of consistent and well-founded principles by which to test legislative proposals.

One of the most significant and continuing challenges the Committee faces is the timeframe within which it considers Bills. The limitation of the five calendar day adjournment of the second reading debate presents difficulties at times for adequate consideration of complex legislation, particularly when a large number of Bills are introduced in the same week. The Committee remains of the view that providing for a longer adjournment period for the second reading debate would greatly assist it in fulfilling its scrutiny function under the Act.

The Committee continues to appreciate the responses from Ministers and their staff to its correspondence and inquiries. Such communication is important for the effective work of the Committee and I thank Ministers for their assistance.

I also thank Members for their positive and constructive comments on the *Legislation Review Digests*. The Committee's *Digests* are produced foremost for the assistance of Members, and I continue to welcome any comments that may assist the Committee in that task.

Finally, I express my appreciation of the other members of the Committee and the Secretariat for their commitment and hard work.



Allan Shearan MP  
Chair





## Chapter One - Introduction

- 1.1 The Legislation Review Committee considers all Bills introduced into Parliament and all new Regulations in accordance with s 8A and s 9 of the *Legislation Review Act 1987* (the Act).
- 1.2 This Report briefly:
- describes the work of the Committee over the course of the last financial year;
  - highlights the main issues that have arisen in the Committee’s consideration of Bills and Regulations;
  - identifies certain procedural issues; and
  - notes some issues for future consideration.

### Committee’s functions and procedure

- 1.3 The Committee has the functions of reviewing all Bills introduced into Parliament and all Regulations subject to disallowance.
- 1.4 The Committee’s function with respect to Bills is set out in s 8A of the Act. Section 8A(1)(b) requires the Committee to report to Parliament on whether a Bill:
- (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.
- 1.5 The Committee’s functions with respect to Regulations are set out in s 9 of the Act. Under s 9(1), the Committee is to consider whether the special attention of Parliament should be brought to a Regulation on any ground, including that:
- (i) the Regulation trespasses unduly on personal rights and liberties,
  - (ii) the Regulation may have an adverse impact on the business community,
  - (iii) the Regulation may not have been within the general objects of the legislation under which it was made,
  - (iv) 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) the objective of the Regulation could have been achieved by alternative and more effective means,
  - (vi) the Regulation duplicates, overlaps or conflicts with any other Regulation or Act,
  - (vii) the form or intention of the Regulation calls for elucidation, or
  - (viii) 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,

---

<sup>1</sup> As the Committee reports the week following the introduction of a Bill, this includes 9 Bills introduced the last sitting week of June 2005 and excludes the 9 Bills introduced the last sitting week of June 2006.

appear not to have been complied with, to the extent that they were applicable in relation to the Regulation.

Further functions of the Committee under s 9 are to report on the systematic review of Regulations from time to time, and on any questions on Regulations referred to the Committee by a Minister. The Committee also considers proposals to postpone the automatic repeal of Regulations under the *Subordinate Legislation Act 1989*.

## Scrutiny of Bills

- 1.6 The Committee reports on its consideration of Bills in its *Digest*. The *Digest* is normally tabled out of session on Friday afternoon before a sitting week, or in the House on the Tuesday afternoon of a second consecutive sitting week. This timing ensures that Members have the *Digest* prior to the resumption of the second reading debate (following the adjournment after the second reading speech).
- 1.7 The Committee's report on any given Bill is based on the Bill itself, the Minister or Private Member's second reading speech, and, where necessary, on expert legal advice. Where it requires further clarification of any issue regarding a Bill, the Committee writes to the mover of the Bill. This correspondence is published in the *Digest*.
- 1.8 The Secretariat to the Committee advises the Committee in its consideration of most Bills and Regulations. The Committee also retains a panel of expert legal advisers to assist it further in the preparation of its reports to Parliament on Bills and complex areas of law. Over the last 12 months, the Committee has sought advice from these experts in relation to 8 Bills.

## Scrutiny of Regulations

- 1.9 The wider terms of reference and longer timeframe for Regulations (15 sitting days instead of 5 calendar days) leads the Committee to adopt different procedures for its Regulation scrutiny function.
- 1.10 Rather than flagging issues for debate in the House, the Committee usually enters into correspondence with the responsible Minister to seek further information regarding any concerns the Committee may have on a Regulation. If a Regulation requires further investigation, the Committee may seek submissions from, and hold hearings with, interested parties.
- 1.11 Once the Committee has concluded its consideration of a Regulation, it publishes correspondence with the Minister in its *Digest*. If the Committee has significant continuing concerns, it may also include a report in the *Digest* drawing the Regulation to the attention of Parliament.
- 1.12 The Committee publishes any unanswered correspondence on Regulations after 3 months. The Committee is pleased to note that this has not been necessary to date, and thanks Ministers for their timely responses.

## Chapter Two - Scrutiny of Bills

### Bills considered

- 2.1 In the last 12 months, the Committee published 16 *Digests* reporting on 128 Bills. In the previous 2004-05 reporting period, the Committee published 16 *Digests* reporting on 143 Bills.
- 2.2 The Committee normally reports on every Bill by the beginning of the sitting week following its introduction and conclusion of the mover's second reading speech.<sup>2</sup>
- 2.3 However, the Committee was unable to comment on 16 Bills before they were passed by one or both Houses of Parliament, as these Bills were passed within two days of their introduction.<sup>3</sup> This generally happens when the House declares that the Bill is urgent or suspends the standing orders so that the Bill can be passed without delay.<sup>4</sup>
- 2.4 Of the 16 Bills which were passed before the Committee had the opportunity to comment on them, four raised issues under s 8A(1)(b) of the *Legislation Review Act 1987*.<sup>5</sup> For example, the *Crimes (Serious Sex Offenders) Bill 2006* raised the following issues:
- depriving a person of their liberty in relation to criminal conduct in which they may (or may not) engage in the future;
  - departing from the traditional criminal standard of proof of “beyond a reasonable doubt”;
  - retrospectivity;
  - double jeopardy;
  - arbitrary detention;
  - disclosure of privileged and confidential communications; and
  - a general lack of safeguards.

<sup>2</sup> There were two exceptions for 2005-06, namely the *Luna Park Site Amendment (Noise Control) Bill 2005* (Digest No. 13 of 2005) and *Crimes (Serious Sex Offenders) Bill 2006* (Digest No. 5 of 2006).

<sup>3</sup> These Bills were the *Building Legislation Amendment (Smoke Alarms) Bill 2005* (Digest No. 9 of 2005), *James Hardie Former Subsidiaries (Special Provisions) Bill 2005* (Digest No. 9 of 2005), *Local Government and Valuation of Land Amendment (Water Rights) Bill 2005* (Digest No. 9 of 2005), *National Parks and Wildlife (Further Adjustment of Areas) Bill 2005* (Digest No. 9 of 2005), *Security Industry Amendment Bill 2005* (Digest No. 9 of 2005), *Companion Animals Amendment Bill 2005* (Digest No. 15 of 2005), *Crimes and Courts Legislation Amendment Bill 2006* (Digest No. 1 of 2006), *James Hardie Former Subsidiaries (Winding up and Administration) Bill 2005* (Digest No. 1 of 2006), *James Hardie (Civil Liability) Bill 2005* (Digest No. 1 of 2006), *James Hardie (Civil Penalty Compensation Release) Bill 2005* (Digest No. 1 of 2006), *Law Enforcement Legislation Amendment (Public Safety) Bill 2005* (Digest No. 1 of 2006), *Police Amendment (Death and Disability) Bill 2005* (Digest No. 1 of 2006), *Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill 2005* (Digest No. 3 of 2006), *Industrial Relations Amendment Bill 2006* (Digest No. 3 of 2006), *Public Sector Employment Legislation Amendment Bill 2006* (Digest No. 3 of 2006), and *Crimes (Serious Sex Offenders) Bill 2006* (Digest No. 5 of 2006).

<sup>4</sup> The *Legislation Review Act 1987* allows the Committee to report on a Bill even if it has been passed by both Houses of Parliament, or has become an Act.

<sup>5</sup> These were the *Security Industry Amendment Bill 2005* (Digest No. 9 of 2005), *Companion Animals Amendment Bill 2005* (Digest No. 15 of 2005), *Law Enforcement Legislation Amendment (Public Safety) Bill 2005* (Digest No. 1 of 2006), and *Crimes (Serious Sex Offenders) Bill 2006* (Digest No. 5 of 2006).

## “Rights and liberties”

- 2.5 The scrutiny criteria in s 8A(1)(b) of the Act can be divided into two broad types:
- (a) scrutiny as to how the Bill could adversely affect personal rights and liberties; and
  - (b) scrutiny of provisions regarding the delegation and exercise of legislative power.
- 2.6 In the absence of a definition of “rights and liberties” in the Act, and in the absence of any other legislative statement as to the content of rights and liberties (eg, a Bill of Rights), the Committee takes into account;
- rights protected under the common law (eg, right to silence), as developed by the courts;
  - rights protected under New South Wales and Commonwealth statute law (eg, *Anti Discrimination Act 1977* (NSW), *Racial Discrimination Act 1975* (Cth));
  - rights protected under the Commonwealth *Constitution*;
  - rights protected under international law, especially as set out in international human rights treaties ratified by Australia (eg, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CROC) and the Convention Against Torture (CAT));
  - the decisions and comments of the principal international bodies monitoring these international human rights treaties (eg, UN Committees on Human Rights, Economic, Social and Cultural Rights, Women’s Rights, Children’s Rights and the Committee Against Torture);
  - rights recognised in other comparable jurisdictions (eg, under the European Convention on Human Rights, South African and Canadian constitutions and the UK *Human Rights Act 1998*); and
  - academic and public debate on the content of “rights”.
- 2.7 Some rights recognised under international law, such as the privilege against self-incrimination, have longstanding traditions, pre-dating even the English common law.<sup>6</sup> Other rights are new to Australian law, and their scope and application are developing along with changes in society and technology, for example, the personal right to privacy.<sup>7</sup>

## Issues arising in Bills considered

- 2.8 Fifty-one of the 128 Bills reported on between 1 July 2005 and 30 June 2006 raised issues for the Committee’s consideration under one or more of the grounds set out in s 8A of the Act.<sup>8</sup>
- 2.9 The issues that arise most frequently in the Committee’s reports are set out below.

---

<sup>6</sup> See discussion on this issue below at paragraphs 2.24-2.27.

<sup>7</sup> See discussion on this issue below at paragraph 2.31.

<sup>8</sup> In the 2004-2005 reporting period, two thirds of the 132 Bills commented on raised issues under s 8A of the Act.

## Trespassing on personal rights and liberties (*Legislation Review Act 1987, s 8A(1)(b)(i)*)

### *Retrospectivity*

- 2.10 Retrospective application of legislation was the most common issue identified by the Committee in the past year. It was an issue in 10% of all Bills considered during the reporting period.<sup>9</sup>
- 2.11 The Committee considers that any retrospective provision that adversely affects a person trespasses on that person's right to be able to rely on the law at any given time. This is most serious when a law seeks to create new criminal offences with retroactive effect. Such legislation is contrary to a fundamental human right recognised in the ICCPR and in the various regional human rights conventions.<sup>10</sup> Article 15 of the ICCPR provides:
- No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.
- 2.12 Under the European Convention of Human Rights (ECHR), this right, which is in identical terms to Article 15, is considered so fundamental that it is one of the very few rights under that Convention that is non-derogable.<sup>11</sup> This means that there are *no* circumstances in which governments are permitted to withdraw protection of this right under that Convention.
- 2.13 The Committee considered two Bills with retrospective effect in the area of criminal law.<sup>12</sup> The most serious example was the *Crimes (Serious Sex Offenders) Bill 2006*. This Bill provided for the continued detention of serious sex offenders beyond the term of imprisonment given at sentencing. The Committee referred to Parliament the question of whether the Bill, by effectively allowing the imposition of a heavier penalty than the one that was applicable at the time when the criminal offence was committed, unduly trespasses on personal rights and liberties.
- 2.14 Other retrospective legislation with which the Committee raised concerns included legislation that:
- removed a right to bring legal proceedings for a breach of legislation or the common law (*Luna Park Site Amendment (Noise Control) Bill 2005*);<sup>13</sup>
  - removed a statutory entitlement to compensation (*Retail Leases Amendment Bill 2005*);<sup>14</sup> and

<sup>9</sup> This issue was considered in 13 of the total of 128 Bills considered from 1 July 2005 until 30 June 2006.

<sup>10</sup> See European Convention on Human Rights and Fundamental Freedoms 1950 (ECHR), Article 7; African (Banjul) Charter On Human And Peoples' Rights 1981 (AfCHR), Article 7; and American Convention on Human Rights 1969 (AmCHR), Article 9.

<sup>11</sup> On this point, see Article 7.1 of the ECHR & European Court of Human Rights decisions in *R (on the application of Uttley) v Secretary of State for the Home Department* [2003] 1 WLR 2590; [2003] 4 All ER 891; *Welch v United Kingdom* (1995) 20 EHRR 247; and *Ibbotson v United Kingdom* [1999] Crim LR 153.

<sup>12</sup> *Crimes (Sentencing Procedure) Amendment Bill 2006* (Digest No. 5 of 2006), and the *Crimes (Serious Sex Offenders) Bill 2006* (Digest No. 5 of 2006).

<sup>13</sup> Digest No. 13 of 2005

<sup>14</sup> Digest No. 13 of 2005

- allowed retrospective authority for unlawful conduct (*Law Enforcement (Controlled Operations) Amendment Bill 2006*).<sup>15</sup>

### ***Strict liability offences***

- 2.15 The creation of strict liability offences constitutes the second most common issue identified by the Committee during the reporting period. This issue was considered by the Committee in seven Bills.<sup>16</sup>
- 2.16 A “strict liability” offence does not require the prosecutor to prove a fault element. In other words, a person can commit such an offence without having meant to do so and whether or not they had any criminal intent.<sup>17</sup> Such an offence is often imposed for regulatory offences where there is a need to ensure persons take all reasonable steps to avoid the offence, eg, speeding or pollution offences.
- 2.17 Under the common law, it is presumed that the prosecution must prove fault (eg, intention, recklessness or negligence) in relation to the physical elements of a crime. As statutes may displace this presumption, it is a matter of interpretation whether the prosecution must prove fault if it is not so explicitly provided.
- 2.18 In its reports, the Committee has repeatedly expressed the view that strict liability should:
- be imposed only after careful consideration of all other options;
  - be subject to defences wherever possible where contravention appears reasonable; and
  - have only limited monetary penalties.
- 2.19 In particular, the Committee raised serious concerns about the size of penalties and the imposition of terms of imprisonment for strict liability offences. For example, the *Companion Animals Amendment Bill 2005* imposed monetary penalties up to \$55,000 and included a term of imprisonment;<sup>18</sup> and the *Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005* imposed terms of imprisonment for a number of strict liability offences.
- 2.20 To assist its consideration of Bills that raise this issue, the Committee released a discussion paper on strict liability for public comment (see below).

### ***Fair trial***

- 2.21 The Committee considered 10 Bills that raised fair trial issues, including the right not to incriminate oneself, and the right to be presumed innocent.
- 2.22 Under the ICCPR and the regional human rights instruments, these rights are recognised as fundamental human rights, and are widely recognised as vital to the

---

<sup>15</sup> *Digest* No. 3 of 2006

<sup>16</sup> *Crimes Amendment (Protection of the Innocent Accused) Bill 2005* (*Digest* No. 10 of 2005); *Protection of the Environment Operations Amendment Bill 2005* (*Digest* No. 10 of 2005); *Confiscation of the Proceeds of Crime Amendment Bill 2005* (*Digest* No. 11 of 2005); *Companion Animals Amendment Bill 2005* (*Digest* No. 15 of 2005); *Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005* (*Digest* No. 15 of 2005); *Fisheries Management Amendment Bill 2006* (*Digest* No. 2 of 2006); and *Motor Vehicle Repairs (Anti-steering) Bill 2006* (*Digest* No. 4 of 2006).

<sup>17</sup> Section 6.1 of the Commonwealth *Criminal Code* defines strict liability offences.

<sup>18</sup> *Digest* No. 15 of 2005

delivery of a fair trial.<sup>19</sup> These and other fair trial rights are also recognised under the common law.

### *Self-incrimination/Right to silence*

- 2.23 The Committee commented on the issue of self-incrimination and the right to silence in relation to provisions in four different Bills.<sup>20</sup> In three of these instances, the Committee wrote to the Minister seeking clarification of the reason for modifying or abrogating the right or referred the provision abrogating or modifying the right to Parliament.<sup>21</sup>
- 2.24 The principle that no one can be forced to accuse him or herself is recognised as a basic human right protecting personal freedom and human dignity.<sup>22</sup> For example, Article 14(3)(g) of the ICCPR states that a person has the right “[n]ot to be compelled to testify against himself or to confess guilt”. The privilege against self-incrimination is an attribute of the wider right to a fair trial protected by Article 14(1) of the ICCPR and, to some extent, by the common law.
- 2.25 The High Court has emphasised that the right to silence is a fundamental rule of law,<sup>23</sup> which has been described as an entitlement:
- to remain silent when questioned or asked to supply information by any person in authority about the occurrence of an offence, the identity of participants and the roles which they played.<sup>24</sup>
- 2.26 While the Committee has often acknowledged compelling reasons in the public interest why persons should be compelled to answer questions, it has always been concerned to seek a clear and sufficient rationale for any use of such answers against the person giving them.
- 2.27 One of the most common concerns raised by the Committee over the reporting period in relation to the right to silence was a lack of limits on the use of compelled self-incriminating information in civil proceedings. While the Bills considered typically limited the use of self-incriminating information in criminal proceedings, they

---

<sup>19</sup> In relation to equality before the law, see Articles 3, 16 and 26 of the ICCPR. In relation to undue delay in criminal proceedings see Articles 14(5) of the ICCPR; and in relation to right to appeal a criminal conviction see Article 14(3)(c) of the ICCPR. These rights are also recognised in the regional human rights treaties referred to above at footnote 10.

<sup>20</sup> *Confiscation of the Proceeds of Crime Amendment Bill 2005* (Digest No. 11 of 2005); *Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005* (Digest No. 15 of 2005); *Law Enforcement Legislation Amendment (Public Safety) Bill 2006* (Digest No. 1 of 2006); and *Fair Trading Amendment Bill 2006* (Digest No. 8 of 2006).

<sup>21</sup> *Confiscation of the Proceeds of Crime Amendment Bill 2005* (Digest No. 11 of 2005); *Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005* (Digest No. 15 of 2005); *Fair Trading Amendment Bill 2006* (Digest No. 8 of 2006).

<sup>22</sup> The historical origins and modern rationale of the privilege were explored by High Court of Australia in *EPA v Caltex* (1993) 178 CLR 447.

<sup>23</sup> *Pavic v Swaffield* (1998) 192 CLR 159.

<sup>24</sup> *R v Petty* (1991) 173 CLR 95 at 95. Nonetheless, the Court has noted that it is not a right against incrimination, simply against self-incrimination: *Controlled Consultants Pty Ltd v Commissioner for Corporate Affairs* (1985) 156 CLR 385 at 393, per Gibbs CJ, Mason and Dawson JJ.

generally did not limit it from being used in civil proceedings or indirectly in criminal proceedings.<sup>25</sup>

### *Reversal of onus of proof/Presumption of innocence*

- 2.28 The Committee commented on these two issues, which are closely inter-related, in relation to six Bills during the reporting period.<sup>26</sup>
- 2.29 In its comments on these Bills, the Committee stated its view that the principle that the prosecutor bears the onus of proving beyond reasonable doubt all the elements of a criminal offence against an accused person, consistent with the presumption of innocence, is a key principle of the Australian criminal justice system and a fundamental human right.<sup>27</sup> This right should not be derogated from - including by reversing the onus of proof - unless there are very clear and highly compelling public interest justifications for doing so.
- 2.30 The Committee further noted that when it was deemed necessary that a defendant bear the burden of disproving an element of an offence or establishing a defence, normally this should be no more than an *evidential* burden (ie, the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist).<sup>28</sup>

### ***Privacy***

- 2.31 The Committee commented on the right to privacy in relation to four Bills during the reporting period.<sup>29</sup> The increasing volume of personal data collected by government agencies, together with technological advances for storing and using that data and new means of publication, have the potential to trespass on this important right.

### ***Denial of Compensation***

- 2.32 The Committee also considered 6 Bills that raised issues related to the denial of compensation rights.<sup>30</sup> In commenting on the denial of compensation rights, the Committee noted that extinguishment of compensation can be justified if, having regard to the overall context, there are compelling public interest reasons for

---

<sup>25</sup> *Confiscation of the Proceeds of Crime Amendment Bill 2005* (Digest No. 11 of 2005); *Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005* (Digest No. 15 of 2005); and *Fair Trading Amendment Bill 2006* (Digest No. 8 of 2006).

<sup>26</sup> *Confiscation of the Proceeds of Crime Amendment Bill 2005* (Digest No. 11 of 2005); *State Emergency and Rescue Management Amendment Bill 2005* (Digest No. 11 of 2005); *Commission for Children and Young People Amendment Bill 2006* (Digest No. 15 of 2006); *Water Management Amendment Bill 2005* (Digest No. 15 of 2005); *Crimes (Serious Sex Offenders) Bill 2006* (Digest No. 5 of 2006); *Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006* (Digest No. 8 of 2006).

<sup>27</sup> See for example, article 11(1), Universal Declaration of Human Rights and Article 14(2) of the ICCPR, to which Australia became a party in 1980. Also, see Article 6(2) of the ECHR.

<sup>28</sup> *Legislation Review Digest* No. 11 of 2005, p.12.

<sup>29</sup> *Transport Administration Amendment (Public Transport Ticketing Corporation) Bill 2005* (Digest 15 of 2005); *Law Enforcement Legislation Amendment (Public Safety) Bill 2006* (Digest 1 of 2006); *Security Industry Amendment (Patron Protection) Bill 2006* (Digest 7 of 2006); *Children (Detention Centres) Amendment Bill 2006* (Digest 8 of 2006).

<sup>30</sup> *Luna Park Site Amendment (Noise Control) Bill 2005* (Digest No. 13 of 2005); *Retail Leases Amendment Bill 2005* (Digest No. 13 of 2005); *Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005* (Digest No. 15 of 2005); *Water Management Amendment Bill 2005* (Digest No. 15 of 2005); *Motor Accidents (Lifetime Car and Support) Bill 2006* (Digest No. 3 of 2006); and *Motor Accidents Compensation Amendment Bill 2006* (Digest No. 3 of 2006)



extinguishing the right, and if the extinguishment is proportional to that public interest aim.<sup>31</sup>

***Other issues regarding trespass of rights and liberties***

2.33 Other rights issues on which the Committee commented during the reporting period included:

- excessive punishment [3 Bills];<sup>32</sup>
- personal physical integrity [3 Bills];<sup>33</sup>
- property rights [3 Bills];<sup>34</sup>
- children's rights [2 Bills];<sup>35</sup> and
- the rule of law [1 Bill].<sup>36</sup>

**Insufficiently defined administrative powers (*Legislation Review Act 1987, s 8A(1)(b)(ii)*)**

2.34 The Committee commented on 2 Bills regarding insufficiently defined administrative powers.<sup>37</sup>

**Non-reviewable decisions (*Legislation Review Act 1987, s 8A(1)(b)(iii)*)**

2.35 The Committee commented on seven Bills removing or modifying judicial review rights,<sup>38</sup> and three Bills which excluded merits review.<sup>39</sup>

2.36 The Committee is of the view that review of administrative decisions, especially external review, is an important mechanism to ensure the appropriate exercise of executive power.<sup>40</sup>

<sup>31</sup> *Luna Park Site Amendment (Noise Control) Bill 2005 (Digest No. 13 of 2005)*

<sup>32</sup> *Crimes Amendment (Road Accidents) Bill 2005 (Digest No. 11 of 2005); Crimes (Serious Sex Offenders) Bill 2006 (Digest No. 5 of 2006); and Crimes Amendment (Murder of Police Officers) Bill 2006 (Digest No. 7 of 2006).*

<sup>33</sup> *Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005 (Digest No. 15 of 2005); Children (Detention Centres) Amendment Bill 2006 (Digest No. 8 of 2006) and Crimes (Serious Sex Offenders) Bill 2006 (Digest No. 5 of 2006).*

<sup>34</sup> *Civil Liability Amendment (Offender Damages Trust Fund) Bill 2005 (Digest No. 10 of 2005); Education Legislation Amendment (Staff) Bill 2006 (Digest No. 6 of 2006); and University of Technology (Kuring-gai Campus) Bill 2006 (Digest No. 8 of 2006).*

<sup>35</sup> *Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005 (Digest No. 15 of 2005) and Children (Detention Centres) Amendment Bill 2006 (Digest No. 8 of 2006).*

<sup>36</sup> *Luna Park Site Amendment (Noise Control) Bill 2005 (Digest No. 13 of 2005)*

<sup>37</sup> *Education Legislation Amendment (Staff) Bill 2006 (Digest No. 6 of 2006) and the Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006 (Digest No. 6 of 2006).*

<sup>38</sup> *Confiscation of the Proceeds of Crime Amendment Bill 2005 (Digest No. 11 of 2005); Luna Park Site Amendment (Noise Control) Bill 2005 (Digest No. 13 of 2005); Commission for Children and Young people Amendment Bill 2005 (Digest No. 15 of 2005); Industrial Relation Amendment Bill 2005 (Digest No. 15 of 2005); Water Management Amendment Bill 2005 (Digest No. 15 of 2005); Pipelines Amendment Bill 2006 (Digest No. 7 of 2006); and Local Government Amendment (Waste Removal Orders) Bill 2006 (Digest No. 8 of 2006).*

<sup>39</sup> *Environmental Planning and Assessment Amendment (Waste Removal Orders) Bill 2006 (Digest No. 2 of 2006); Education Legislation Amendment (Staff) Bill 2006 (Digest No. 6 of 2006); and Local Government Amendment (Waste Removal Orders) Bill 2006 (Digest No. 8 of 2006).*

<sup>40</sup> *Local Government Amendment (Waste Removal Orders) Bill 2006 (Digest No. 8 of 2006)*

**Delegation & Parliamentary scrutiny of legislative power (*Legislation Review Act 1987*, s 8A(1)(b)(iv & v))**

2.37 The Committee commented on the following delegations of legislative power:

- so-called “Henry VIII” clauses (which allow an Act to be amended by Regulation) [1 Bill];<sup>41</sup>
- providing for fees comprising part of a regulatory scheme to be determined by the executive [1 Bill];<sup>42</sup> and
- other matters which should be regulated by Parliament, such as key statutory definitions or the persons or bodies to which an Act is to apply [2 Bills].<sup>43</sup>

---

<sup>41</sup> *Pharmacy Practice Bill 2006* (Digest No. 7 of 2006)

<sup>42</sup> *Vocational Education and Training Bill 2006* (Digest No. 13 of 2005)

<sup>43</sup> *Retail Leases Amendment Bill 2005* (Digest No. 13 of 2005); and the *Education Legislation Amendment (Staff) Bill 2006* (Digest No. 6 of 2006).

## Chapter Three - Scrutiny of Regulations

### Regulations considered

- 3.1 During the reporting period, the Committee considered 397 Regulations.<sup>44</sup> Of these, 73 were the subject of more detailed analysis by the Committee, leading to follow-up action on 15 Regulations. During the period, such action took the form of writing to the responsible Minister seeking clarification or explanation of the issues of concern or amendment of the legislation. All correspondence was subsequently published in the *Digest*.
- 3.2 The Committee did not recommend the disallowance of any Regulation or draw the special attention of Parliament to any Regulation during the reporting period.

### Issues arising in Regulations considered

- 3.3 Issues which the Committee raised in relation to Regulations included:
- Undue trespass on personal rights and liberties – including the creation of strict liability offences (5 Regulations)<sup>46</sup>; excessive punishment (3 Regulations)<sup>47</sup>; reversal of the onus of proof (3 Regulations)<sup>48</sup>; access to justice (2 Regulations)<sup>49</sup>; erosion of property rights (2 Regulations)<sup>50</sup>;
  - adverse impact on the business community (4 Regulations);<sup>51</sup>
  - not within the general objects of the legislation under which it was made (3 Regulations);<sup>52</sup>
  - objective of the Regulation could have been achieved by alternative and more effective means (5 Regulations);<sup>53</sup>

<sup>44</sup> This compares with 480 Regulations considered by the Committee over the 14-month period between May 2003 and 30 June 2004, and 282 Regulations considered by the Committee over the 12-month period between July 2004 and June 2005.

<sup>45</sup> For example, see correspondence about this Regulation in *Digest* No. 12 of 2004, pp 32-49.

<sup>46</sup> *Legal Profession Amendment (Advertising) Regulation 2005* (*Digest* No. 13 of 2005); *Occupational Health and Safety Amendment (Dangerous Goods) Regulation 2005* (*Digest* No. 13 of 2005); *Animal Research Regulation 2005* (*Digest* No. 13 of 2005); *Workers Compensation Amendment (Advertising) Regulation 2005* (*Digest* No. 1 of 2006); *Protection of the Environment Operations (Waste) Regulation 2005* (*Digest* No. 1 of 2006); and *Workers Compensation Amendment (Advertising) Regulation 2005* (*Digest* No. 1 of 2006).

<sup>47</sup> *Legal Profession Amendment (Advertising) Regulation 2005* (*Digest* No. 13 of 2005); *Workers Compensation Amendment (Advertising) Regulation 2005* (*Digest* No. 1 of 2006); and *Companion Animals Amendment (Penalty Notices) Regulation 2005* (*Digest* No. 1 of 2006).

<sup>48</sup> *Legal Profession Amendment (Advertising) Regulation 2005* (*Digest* No. 13 of 2005); *Workers Compensation Amendment (Advertising) Regulation 2005* (*Digest* No. 1 of 2006); and *Protection of the Environment Operations (Waste) Regulation 2005* (*Digest* No. 1 of 2006).

<sup>49</sup> *Legal Profession Amendment (Advertising) Regulation 2005* (*Digest* No. 13 of 2005); and *Workers Compensation Amendment (Advertising) Regulation 2005* (*Digest* No. 1 of 2006).

<sup>50</sup> *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005* (*Digest* No. 3 of 2006); and *Electricity (Consumer Safety) Regulation 2006* (*Digest* No. 5 of 2006).

<sup>51</sup> *Food Amendment (Food Safety Schemes) Regulation 2005* (*Digest* 13 of 2005); *Animal Research Regulation 2005* (*Digest* No. 13 of 2005); *Legal Profession Amendment (Advertising) Regulation 2005* (*Digest* No. 13 of 2005); *Workers Compensation Amendment (Advertising) Regulation 2005* (*Digest* No. 1 of 2006).

<sup>52</sup> *Stock Diseases (General) Amendment Regulation 2005* (*Digest* No. 1 of 2006); *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005* (*Digest* No. 3 of 2006); *Photo Card Regulation 2005* (A reply to the Committee's concerns has not yet been received from the Minister's Office).

- form or intention of Regulation requires elucidation (3 Regulations);<sup>54</sup>
- Regulatory Impact Statement requirements not complied with (1 Regulation).<sup>55</sup>

3.4 Some of the comments made by the Committee in relation to these issues echoed comments made on the same issues in the Committee's consideration of Bills, for example in relation to privacy rights and the removal or modification of appeal rights.

---

<sup>53</sup> *Legal Profession Amendment (Advertising) Regulation 2005 (Digest No. 13 of 2005); Workers Compensation Amendment (Advertising) Regulation 2005 (Digest No. 1 of 2006); Companion Animals Amendment (Penalty Notices) Regulation 2005 (Digest 1 of 2006); Hunter Water (General) Regulation 2005 (Digest 1 of 2006); and Motor Accidents Compensation Regulation 2005.*

<sup>54</sup> *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005 (Digest 3 of 2006); Legal Profession Amendment (Advertising) Regulation 2005 (Digest 13 of 2005); and Workers Compensation Amendment (Advertising) Regulation 2005 (Digest 1 of 2006).*

<sup>55</sup> *Food Amendment (Food Safety Schemes) Regulation 2005 (Digest 13 of 2005).*

<sup>56</sup> Correspondence on these Regulations between the Committee and the sponsoring Minister was published in *Digest No. 13 of 2005* in relation to the *Legal Profession Amendment (Advertising) Regulation 2005*, and *Digest No.1 of 2006* in relation to the *Workers Compensation Amendment (Advertising) Regulation 2005*.

---

## Chapter Four - Operational issues

### Membership of Committee

- 4.1 During the year the composition of the Committee changed as follows.
- 4.2 The Hon Peter Primrose MLC (Chair) resigned as Chair on 18 October 2005 and was discharged from the Committee on 17 November 2005. Mr Allan Shearan MP was appointed to the Committee on 12 October 2005 and was elected as Chair on 18 October 2005.
- 4.3 Ms Linda Burney MP ceased to be a member of the Committee on becoming Parliamentary Secretary on 24 August 2005, the Hon Don Harwin MLC was discharged from the Committee on 22 September 2005, and Ms Noreen Hay MP was discharged from the Committee on 12 October 2005.
- 4.4 Mr Paul Pearce MP was appointed to the Committee on 16 September 2005, the Hon Robyn Parker MLC was appointed to the Committee on 22 September 2005, and the Hon Penny Sharpe MLC was appointed to the Committee on 17 November 2005.

### Operational Issues

#### Time allowed for consideration of Bills

- 4.5 One of the most significant challenges the Committee has faced is the timeframe within which it can consider Bills.<sup>57</sup>
- 4.6 The Legislative Assembly's *Standing Order 198(11)* and the Legislative Council's *Standing Order 137(3)* require only a 5 clear day adjournment of the debate after the mover's second reading speech. The five-day period includes weekends.
- 4.7 To allow its reports on Bills to be available to Members in time for the second reading debate, the Committee tables its *Digests* at or before the commencement of the Tuesday sitting. To meet this deadline, briefing papers on Bills for such meetings need to be completed by Monday at the latest. This leaves the Committee with very little time for full consideration of Bills, especially in consecutive sitting weeks.
- 4.8 Other Australian Parliaments follow a different procedure. As previously reported, the Queensland Parliament extended its second reading adjournment period from six to 11 sitting days after a 1998 report from its Bills scrutiny committee indicating that the six day period was not workable.<sup>58</sup> In Victoria, debate on Bills introduced into the Legislative Assembly is usually adjourned for two weeks. This is also the general practice in the Victorian Legislative Council.<sup>59</sup> The practice of the Federal Parliament is normally to adjourn Bills to the next period of sittings, which is usually one or two months later.
- 4.9 The practice in the United Kingdom is to have at least two weekends between printing and second reading, and in New Zealand to adjourn Bills for 6 months. These

<sup>57</sup> This issue has also been raised by the Committee in Legislation Review Committee, *Operation, Issue and Future Directions September 2003 - June 2004*, Report No. 1, 24 June 2004, p 8 and Legislation Review Committee *Annual Review July 2004 - June 2005*, Report No. 3, 13 September 2005, p 15.

<sup>58</sup> Queensland Scrutiny of Bills Committee, *The scrutiny of Bills within a restrictive timetable*, Report No. 7, tabled 18 March 1998, [www.parliament.qld.gov.au/view/committees/documents/SLC/reports/slcr07.pdf](http://www.parliament.qld.gov.au/view/committees/documents/SLC/reports/slcr07.pdf).

<sup>59</sup> See Victorian Scrutiny of Acts and Regulations Committee, [www.parliament.vic.gov.au/sarc/role.htm](http://www.parliament.vic.gov.au/sarc/role.htm).

jurisdictions also provide for expedited procedures when a Bill needs to be passed urgently.

- 4.10 The Committee remains of the view that amending Legislative Assembly *Standing Order 198* and Legislative Council *Standing Order 137*, or sessional orders, to provide for a longer adjournment period for the second reading debate would greatly assist the Committee in fulfilling its scrutiny function under the Act. It would also assist Members, who would benefit both from the longer period in which to consider Bills, and the more detailed consideration the Committee would be able to give to Bills in its reports to Parliament.

### **Protective disallowance**

- 4.11 Under s 9 of the Act, the Committee considers Regulations while they are subject to disallowance. Regulations are subject to disallowance in each House for 15 sitting days after the Regulation is tabled in that House. If a Notice of Motion to Disallow a Regulation is given during that time, the 15-day period is extended until the notice of motion is dealt with by the House or withdrawn. As a result, a Notice of Motion to Disallow a Regulation can be used as a device to extend the disallowance period. This is referred to as a protective notice of motion as it protects the House's power to disallow a Regulation beyond the initial 15-day period.
- 4.12 When considering Regulations, the 15-day period can be quite arbitrary. Most importantly, it means that the Committee has the least time for considering Regulations when the Parliament is sitting frequently. This is also the time when the Committee is most occupied with the consideration of Bills.
- 4.13 Section 9 of the Act was amended by the *Statute Law Miscellaneous Provisions Act 2005*, which received the Royal Assent on 1 July 2005. This amendment clarifies that the Committee may consider and make reports to Parliament on a Regulation that has ceased to be subject to disallowance if the Committee has, during the disallowance period, resolved to review and report on the Regulation.<sup>60</sup> This clarification removes the need for a protective Notice of Motion to Disallow a Regulation merely to extend the time over which the Committee can collect evidence on the Regulation. The Committee did not request any Member to give a Notice of Motion to Disallow a Regulation during the reporting period.
- 4.14 The Committee notes that occasions may still arise where a protective Notice of Motion to Disallow a Regulation may be required to preserve the Parliament's ability to disallow a Regulation. This could occur if, for example, the Committee is considering recommending the disallowance of a Regulation but is waiting for a response to its concerns prior to completing its report to the Parliament.
- 4.15 The Committee notes again that a "protective notice of motion to disallow" is a device that has long and often been used by the Senate Regulations and Ordinances Committee. As noted in *Odgers Australian Senate Practice*:

The Standing Committee on Regulations and Ordinances follows a practice of giving notices of motions to disallow Regulations or other subordinate legislation within the

---

<sup>60</sup> The Committee had recommended an amendment to this effect in its report *Operation, Issues and Future Directions September 2003 - June 2004*, Report No. 1, 24 June 2004, pp 9-10. The Committee's correspondence with the then-Premier in relation to the review of Regulations was published in *Digest* No. 11 of 2004, pp 41- 48.

prescribed period, and then withdrawing the notices after correspondence with the responsible minister satisfies the committee's concerns.<sup>61</sup>

- 4.16 The giving of such a notice in no way reflects a view of the Member giving the Notice, or of the Committee as a whole, that the Regulation in question should be disallowed. It is merely a device to keep alive the Parliament's ability to disallow a Regulation once it has received the Committee's final report on the Regulation concerned.

---

<sup>61</sup> H Evans (ed), *Odgers' Australian Senate Practice*, 11<sup>th</sup> Ed., Commonwealth of Australia, 2004, p 336.

## Chapter Five - Statistics

5.1 The following statistics relate to the Committee during the 2005-06 reporting period.

5.2 During the reporting period, the Committee:

- met 17 times;
- reported on 128 Bills in 16 tabled *Legislation Review Digests*;
- commented on 51 Bills under the criteria in s 8A of the *Legislation Review Act 1987*;
- written to Ministers or Members for clarification or justification of issues that relate to the s 8A criteria in relation to 20 Bills;
- referred 77 issues in 39 Bills that relate to s 8A criteria to Parliament for its consideration; and
- had its *Digest* reports referred to 71 times by Members in the course of Parliamentary debate in relation to 33 Bills.

5.3 The Committee also:

- considered 397 Regulations subject to disallowance, including 73 Regulations that were the subject of detailed analysis;
- considered 14 proposed postponements of the automatic repeal of a Regulation; and
- published correspondence relating to 14 Regulations raising issues under s 9 of the Act.



## Chapter Six - Outcomes

- 6.1 The function of the Committee is to assist the Parliament's consideration of Bills and Regulations in the terms set out in s 8A and s 9 of the Act. Indicators of the Committee's effectiveness in this regard include the influence the Committee has on debate and the changes to Bills, Regulations or administrative practices that result from the Committee's reports and correspondence. Ultimately, however, the effectiveness of the Committee largely rests on the extent to which it encourages the thorough consideration of the issues under its terms of reference in the preparation of Bills and Regulations.
- 6.2 In the reporting period, Members used the Committee's *Digests* in a variety of ways. Sponsoring Ministers and Government Members referred to the *Digest* in discussing issues raised by Bills and in commending Bills to Parliament.<sup>62</sup> With respect to some Bills, Members referred to issues of concern as reported in the *Digest* and requested the sponsoring Minister or Member to answer those concerns in debate.<sup>64</sup>
- 6.3 Two Bills were amended in the Legislative Council in explicit response to the Committee's reports and were passed by both Houses, as amended. The *Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Bill 2005* was amended so that it did not operate retrospectively, and the *Education Legislation Amendment (Staff) Bill 2006* was amended to explicitly include a requirement for procedural fairness.
- 6.4 Privacy concerns raised by the Committee in relation to the *Transport Administration Amendment (Public Transport Ticketing Corporation) Bill 2005* led to an undertaking from the Minister for Transport to ensure that prior to the Public Transport Ticketing Corporation transitioning to a State-owned corporation, policies and procedures will be put in place for the ongoing protection of personal information.
- 6.5 The Legislative Council referred the *Correctional Service Amendment Bill 2006* to its General Purpose Standing Committee No 3, following concerns being raised by the Committee regarding the rights implications of the Bill.
- 6.6 In response to Committee concerns of transparency in relation to charges and fees, the Minister for Natural Resources advised that the Catchment Management Authority will request that, where practicable, councils identify and itemise the expenses incurred in tracing persons liable to pay catchment contributions.<sup>65</sup>
- 6.7 Also, the Minister for Utilities made an undertaking to amend the *Hunter Water (General) Regulation 2005* to allow owners to fit tap washers and water saving devices

<sup>62</sup> See, for example, comments made by the Hon Peter Breen MLC on the *Anti-Discrimination Amendment (Religious Tolerance) Bill 2005*, Legislative Council *Hansard*, 1 March 2006.

<sup>63</sup> See, for example, comments made by Mr Chris Hartcher MP on the *Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005*, Legislative Assembly *Hansard*, 24 May 2005. See also comments made by Mr Andrew Tink MP, and the response by the Hon Bob Debus MP, Attorney General, on the *Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004* Legislative Assembly *Hansard*, 20 October 2004.

<sup>64</sup> For recent examples, see the debate on the *Education Legislation Amendment (Staff) Bill 2005*, reported on in *Digest* No. 6 of 2006, in Legislative Assembly *Hansard*, 10 May 2005; and the debate on the *Crimes Amendment (Road Accidents) (Brendan's Law) Bill 2005*, reported on in *Digest* No. 11 of 2005, in Legislative Council *Hansard*, 18 October 2005.

<sup>65</sup> See *Hunter-Central Rivers Catchment Management Authority Regulation 2005*, *Digest* No. 9 of 2005.

Outcomes

and to require the notification of water restrictions in both the Gazette and local newspapers.

- 6.8 In response to Committee concerns that all law be publicly accessible, the Department of Health agreed to the on-line publishing of agreements between the New South Wales government and the Victorian government, ACT government and Queensland government in relation to the transfer of civil patients.<sup>66</sup>

---

<sup>66</sup> See the *Mental Health Amendment (Transfer of Queensland Civil Patients) Regulation 2005*, Digest No. 9 of 2005.

<sup>67</sup> For example, the second reading speeches for the *Gambling (Two-up) Amendment Bill 2005*, Legislative Assembly *Hansard*, 25 May 2005; and the *Gaming Machines Amendment Bill 2005*, Legislative Assembly *Hansard*, 9 June 2005, respectively.

## Chapter Seven - Other activities of the Committee

### **The Right to Silence: Discussion Paper**

- 7.1 On 21 September 2005, the Committee tabled a discussion paper seeking comment in relation to the principles it should apply when considering Bills that trespass on the right to silence. The Committee sought such comment to better equip itself when considering Bills under s 8A of the *Legislation Review Act 1987*.
- 7.2 The Committee advertised the discussion paper on the Parliament's website and in its Legislation Review Digests and wrote to all Ministers, Members of Parliament, and over 90 other agencies, organisations and individuals seeking comment. Submissions to the Discussion Paper closed 30 November 2005.

### **The Right to Silence: Responses to the Discussion Paper**

- 7.3 On 8 June 2006, the Committee tabled a report on responses it received to the Right to Silence Discussion Paper, which outline principles it proposes to adopt in its consideration of strict liability offences.
- 7.4 The Committee received submissions from the following organisations and individuals:
- Australian Lawyers Alliance;
  - Mr Shaun Cashman ;
  - NSW Council for Civil Liberties;
  - the Police Association of NSW;
  - the Law Society of NSW;
  - the NSW Bar Association;
  - the NSW Nurses Association; and
  - the Office of the Director of Public Prosecutions.

The Committee published these submissions on the Parliament's website, [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au).

- 7.5 The overwhelming majority of the submissions noted the importance of maintaining the right to silence. While there was a range of views on some of the details regarding the questions raised, there was general support for the proposed principles for the committee to apply when considering Bills.

### **Strict and Absolute Liability Offences: Discussion Paper**

- 7.6 On 8 June 2006 the Committee tabled a discussion paper seeking comment on the principles it should adopt when considering if Bills or Regulations that create offences of strict or absolute liability trespass unduly on personal rights and liberties. Submissions to this Discussion Paper were to close on 14 August 2006.

## Chapter Eight - Conclusion

- 8.1 Since the commencement of its review of Bills function in September 2003, the Legislation Review Committee has achieved a significant output in terms of the number of Bills considered, *Digests* produced, and the number of meetings held. It has also developed a highly effective and timely process by which it considers the large volume of legislation introduced and reports its findings to the Parliament in time for the second reading debate.
- 8.2 While the impact of the Committee's work is difficult to measure, there are encouraging signs that its work is having an impact on debate on Bills with Members frequently referring to, or quoting from, reports on Bills in its *Digests*. This indicates that the *Digest* is being used by Members to help inform the debate in both Houses.
- 8.3 In addition, as described in chapter 6 above, on a number of occasions Ministers have accepted the comments of the Committee and have amended their legislation accordingly or have indicated their intention to take administrative action to meet the Committee's concerns.
- 8.4 An important development over the past year has been the public dissemination of discussion papers on the right to silence and strict and absolute liability in order to develop more clearly defined standards by which to test legislative proposals. The Committee received a number of public submissions to its discussion paper on the right to silence, resulting in a report outlining the principles the Committee will adopt when considering this issue.
- 8.5 In the coming year, the Committee hopes to continue to advance its understanding of the issues on which it comments to better enable the Parliament to determine when a Bill might trespass unduly on personal rights and liberties. It also hopes to further promote the consideration of the human rights impact of legislation at the policy formulation and drafting stages.
- 8.6 The Committee also welcomes the Government's renewed focus on regulatory reform and looks forward to continuing to assist by bringing to attention any concerns regarding the impact of Regulations on business, whether a Regulation's benefits outweigh the costs and whether appropriate analysis and consultation has been done prior to the Regulation being made. In this regard, the Committee is pleased to see that the Independent Pricing and Regulatory Tribunal has commended recommendations of the former Regulation Review Committee for implementation.<sup>68</sup>
- 8.7 Finally, in fulfilling its scrutiny function under the Act, the Committee hopes to continue to be of assistance to Members in their consideration of Bills and Regulations, improve the quality of NSW legislation and raise awareness of, and respect for, personal rights and liberties.

---

<sup>68</sup> IPART, *Investigation into the burden of Regulation and improving regulatory efficiency*, Draft Report, July 2006, pp 61-66.