



SUMMARY OF CONCLUSIONS

***LEGISLATION REVIEW DIGEST* No 7 of 2005**

6 June 2005

Legislation Review Digest No 7 of 2005 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 23 May 2005 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Budget-related Bills 2005**
- **Brigalow and Nandewar Community Conservation Area Bill 2005**
- **Building Professionals Bill 2005**
- **Courts Legislation Amendment Bill 2005**
- **Criminal Assets Recovery Amendment Bill 2005**
- **Crown Lands Legislation Amendment Bill 2005**
- **Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005**
- **Fire Brigades Amendment (Community Fire Units) Bill 2005**
- **Gambling (Two-up) Amendment Bill 2005**
- **National Park Estate (Reservations) Bill 2005**
- **Occupational Health and Safety Amendment (Workplace Deaths) Bill 2005**
- **Petroleum (Submerged Lands) Amendment (Permits and Leases) Bill 2005**
- **Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill 2005**
- **Rural Workers Accommodation Amendment Bill 2005**
- **Surveying Amendment Bill 2005**
- **Sydney 2009 World Masters Games Organising Committee Bill 2005**
- **Sydney University Settlement Incorporation Amendment Bill 2005***
- **Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Bill 2005**

Correspondence on Bills included:

- **Road Transport Legislation (Speed Limiters) Amendment Bill 2004**

Correspondence on Regulations includes:

- **Institute of Teachers Regulation 2005**
- **Residential Tenancies (Residential Premises) Regulation 1995**

Summary of Conclusions

SECTION A: Comment on Bills

1. Appropriation Bill 2005, Appropriation (Parliament) Bill 2005, Appropriation (Special Offices) Bill 2005, Fiscal Responsibility Bill 2005 and State Revenue Legislation Amendment (Budget Measures) Bill 2005

Retrospectivity: State Revenue Legislation Amendment (Budget Measures) Bill 2005, Schedule 1[14]

- | | |
|-----|---|
| 14. | The Committee is always concerned to identify where legislation is taken to have commenced on the date it was introduced into Parliament, rather than on or after the date of assent. |
| 15. | However, having regard to the purpose of clarifying the law (to prevent misuse of the concessions) and the likelihood that the period of retrospectivity will be limited, the Committee does not consider that the Bill's retrospective operation unduly trespasses on personal rights and liberties. |

2. Brigalow and Nandewar Community Conservation Area Bill 2005

- | | |
|-----|--|
| 13. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|-----|--|

3. Building Professionals Bill 2005

Self-incrimination: proposed s 59

- | | |
|-----|---|
| 14. | The Committee notes that the privilege against self-incrimination is a fundamental right expressed in the International Covenant on Civil and Political Rights and the common law. The Committee considers that this right should only be modified or restricted to achieve a legitimate aim in the public interest and in a manner proportionate to that aim. Blanket removal of the right should be avoided where possible and unnecessary use of the information should be proscribed. |
| 15. | The Committee notes that the Bill limits the direct use of self-incriminating information in criminal proceedings but does not provide any restriction on the use of that information in civil proceedings or indirectly in criminal proceedings. |

16. The Committee considers that ensuring that buildings are safe and meet applicable planning controls are matters of sufficient public importance to warrant the abrogation of the privilege against self-incrimination to the extent necessary to achieve that aim and proportionate to that aim.
17. The Committee has written to the Minister to seek her advice as to why there is no restriction on the use of self-incriminating information in civil proceedings.

Power of entry into premises: proposed ss 49-56

22. Given the limitations on the entry powers and the significant public interest in ensuring that buildings are safely built and comply with all applicable laws and planning consents, the Committee does not consider that the powers of entry and inspection in the Act unduly trespass on individual rights.

4. Courts Legislation Amendment Bill 2005

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

5. Criminal Assets Recovery Amendment Bill 2005

Self-incrimination: proposed s 13A

46. The Committee notes that the right against self-incrimination (or “right to silence”) is a fundamental right, which should only be eroded when overwhelmingly in the public interest.
47. The Committee also considers that, as a rule, when a person is compelled to answer incriminating questions, that information should not be capable of being used against the person.
48. The Committee notes that proposed s 13A provides no limit on the use in civil proceedings of evidence provided pursuant to s 12 of the Act, and ensures that further information obtained as a result of any such evidence is not inadmissible on the grounds that the material had to be produced or might incriminate the person.
49. The Committee notes that this removes some of the existing protection of the privilege against self-incrimination in s 13 of the Act.
50. The Committee also notes that proposed s 13A(3) is at variance with similar legislation which protects the privilege against self-incrimination.
51. The Committee refers to Parliament the question of whether proposed s 13A constitutes an undue trespass on the personal right against self-incrimination.

6. Crown Lands Legislation Amendment Bill 2005

- | |
|---|
| 4. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|---|

7. Environmental Planning And Assessment Amendment (Infrastructure And Other Planning Reform) Bill 2005

Self-incrimination arising from monitoring or environmental audits: proposed s 122F

- | |
|--|
| 32. The Committee notes that the Bill requires a proponent of a project to supply information from monitoring or environmental audits undertaken as a condition of a project approval, and allows broad use of that information, including in legal proceedings against the person, regardless of whether the information might incriminate the proponent. |
| 33. Given that the provision of such information is a condition of approval and is necessary for effective self monitoring and audit as provided by the Bill, and that such material is in the nature of real evidence and is not testimonial in character, the Committee does not consider that proposed section 122F trespasses unduly on personal rights and liberties. |

Powers of entry and search of premises: proposed ss 122J-122O

- | |
|--|
| 40. Given the limitations on the entry powers and the significant public interest in ensuring compliance with the Act and instruments under the Act, the Committee does not consider that the powers of entry and search in the Act unduly trespass on personal right and liberties. |
|--|

Self-incrimination arising from requirements to furnish records, information or answer questions: proposed s122U

- | |
|--|
| 55. The Committee notes that the privilege against self-incrimination is a fundamental right expressed in the International Covenant on Civil and Political Rights and the common law. The Committee considers that this right should only be modified or restricted to achieve a legitimate aim in the public interest and in a manner proportionate to that aim. |
| 56. Given the importance of requiring the furnishing of records to ensure compliance with the Act and the fact that such documents are in the nature of real evidence and are not testimonial in character, the Committee does not consider that the removal of the right to self-incrimination in relation to records trespasses unduly on personal rights and liberties. |
| 57. The Committee notes that the Bill limits the direct use of self-incriminating information and answers in criminal proceedings but does not provide any restriction on the use of that information in civil proceedings. |
| 58. The Committee further notes that the Bill specifically provides for the indirect use of self-incriminating records, information or answers in any proceedings. |

- | | |
|-----|---|
| 59. | The Committee considers that ensuring compliance with the Act is a matter of sufficient public importance to warrant the abrogation of the privilege against self-incrimination to the extent necessary to achieve, and in proportion to, that aim. |
| 60. | The Committee refers to Parliament the question as to whether proposed section 122U unduly trespasses on a person's right not to incriminate him or herself. |

Authorised officers: proposed s 122I

- | | |
|-----|--|
| 64. | The Committee has written to the Minister to seek his advice as to why there are no requirements regarding the qualifications or attributes of persons who may be appointed as authorised officers under the Bill. |
|-----|--|

Exclusion of merits review: proposed Part 3A

- | | |
|-----|--|
| 70. | The Committee notes that approval of a concept plan may significantly impact on persons adversely affected by development that would normally be categorised as designated development within that plan. |
| 71. | The Committee has written to the Minister to seek his advice as to why the Bill makes no provision for an objector to appeal against the approval of a concept plan. |

Exclusion of judicial review: proposed s 75T

- | | |
|-----|--|
| 74. | The Committee notes that critical infrastructure projects will effectively be exempt from judicial review under the Act, except on application made or approved by the Minister. This exemption extends to the declaration of a project to be a critical infrastructure project. |
| 75. | The Committee notes the Minister's reassurance that "infrastructure will only be declared critical where its speedy completion is considered essential to the social, economic or environmental welfare of the State". |
| 76. | The Committee will always be concerned to identify where a bill purports to prevent judicial review of government action. |
| 77. | However, given the significant public interest in ensuring that projects essential to the social, economic or environmental welfare of the State are not unnecessarily delayed and the political accountability of the Minister in relation to any decision to declare a project to be a critical infrastructure project, the Committee does not consider that proposed section 75T makes rights, liberties or obligations unduly dependent on non-reviewable decisions. |

Guidelines for environmental assessment requirements: proposed s 75F

- | | |
|-----|--|
| 84. | The Committee notes that a vital component of the regime for approving major infrastructure and other projects in proposed Part 3A is the setting of environmental assessment requirements. |
| 85. | The Committee also notes that the regime in proposed Part 3A stands in the place of numerous statutory environmental protections and controls in regard to approved projects. |
| 86. | The Committee notes that the Bill wholly delegates the setting of environmental assessment requirements to the Minister and the Director-General and does not subject the making of guidelines for such requirements or the terms of any requirements to Parliamentary scrutiny. |
| 87. | The Committee has written to the Minister to seek his advice as to why Parliament has no role in the making or scrutinising of the guidelines with respect to environmental assessment requirements. |
| 88. | The Committee refers to Parliament the question as to whether the Bill insufficiently subjects the setting of environmental assessment requirements to parliamentary scrutiny. |

8. Fire Brigades Amendment (Community Fire Units) Bill 2005

- | | |
|----|--|
| 6. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

9. Gambling (Two-up) Amendment Bill 2005

- | | |
|----|--|
| 5. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

10. National Park Estate (Reservations) Bill 2005

- | | |
|----|--|
| 5. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

11. Occupational Health And Safety (Workplace Deaths) Bill 2005

- | | |
|-----|--|
| 18. | The Committee did not identify any issues for consideration under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|-----|--|

12. Petroleum (Submerged Lands) Amendment (Permits And Leases) Bill 2005

- | | |
|----|--|
| 8. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

13. Poultry Meat Industry Amendment (Prevention Of National Competition Policy Penalties) Bill 2005

- | | |
|----|--|
| 3. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

14. Rural Workers Accommodation Amendment Bill 2005

Principles of criminal responsibility: proposed s 22

- | | |
|-----|--|
| 26. | The Committee notes that managers and directors of corporations voluntarily undertake the duties and liabilities of their position, including helping to prevent offences in the workplace that might cause harm. |
| 27. | The Committee also notes that, although reversing the onus of proof is inconsistent with the fundamental right of a person to be presumed innocent, this right is not absolute. |
| 28. | The Committee further notes the important policy objectives of the Bill (consistent with the <i>OH&S Act</i>) to protect workers from harm in the workplace and to encourage managers and directors of corporate employers to act with due diligence to minimise the risk of harm in the workplace. |
| 29. | The Committee refers to the Parliament the question as to whether clause 22 unduly trespasses on personal rights and liberties. |

15. Surveying Amendment Bill 2005

Strict liability: proposed s 35A

- | | |
|----|---|
| 8. | The Committee considers that strict liability offences should only be imposed when clearly in the public interest, and that the severity of punishment should reflect the lack of criminal intent. |
| 9. | Given the need for persons to take care not to disclose information obtained in the administration of the Act and the limit on any monetary penalty, the Committee does not consider that the lack of an explicit element of criminal intent in proposed s 35A trespasses unduly on personal rights and liberties |

16. Sydney 2009 World Masters Games Organising Committee Bill 2005

- | | |
|----|--|
| 7. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

17. Sydney University Settlement Incorporation Amendment Bill 2005*

- | | |
|----|--|
| 2. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|----|--|

18. Transport Legislation Amendment (Waterfall Inquiry Recommendations) Bill 2005

20. The Committee did not identify any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> .
--

SECTION B: Ministerial Correspondence — Bills Previously Considered

19. Road Transport Legislation (Speed Limiters) Amendment Bill 2004

5. The Committee thanks the Minister for his reply.

The Legislation Review Committee reports on whether each bill introduced into Parliament:

- (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.

Copies of *Legislation Review Digests* are available from www.parliament.nsw.gov.au/lrc/digests.

Subscriptions to the *Digest* are available by contacting the Committee Secretariat on 02 9230 3418 or legislation.review@parliament.nsw.gov.au.

The Hon Peter Primrose MLC
Chairman