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## SUMMARY OF CONCLUSIONS

### *LEGISLATION REVIEW DIGEST* No. 2 of 2007

### XX September 2007

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*Legislation Review Digest* No. 2 of 2007 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 25 June 2007 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007
- Biofuel (Ethanol Content) Bill 2007;
- Climate Futures Bill 2007;\*
- Electricity Supply Amendment (Offences) Bill 2007;
- Government Schools (Infrastructure Register) Bill 2007;
- National Parks and Wildlife Amendment (Leasing and licensing) Bill 2007;
- University of Technology (Kuring-gai Campus) Bill 2007.\*

Correspondence on Bills includes:

- Statute Law (Miscellaneous Provisions) Bill 2007.

Correspondence on Regulations includes:

- Centennial Park and Moore Park Trust Regulation 2004;
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## SUMMARY OF CONCLUSIONS

### SECTION A: Comment on Bills

#### 1. **Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007\***

**Privacy: Clause 3 Amendment of *Administrative Decisions Tribunal Act 1997***  
The Act is amended by omitting section 75 (2)(d).

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| 14. | In light of balancing the interests of the affected party to challenge the confidential evidence or contents of the confidential document and the public interest, safety and privacy issues associated with a person giving or providing such confidential evidence, the Committee has concerns with regard to the Tribunal losing jurisdiction and the general power with respect to the making of such an order under the current s 75 (2)(d), especially in contexts other than for firearms or security industry licensing, such as, in matters dealing with child protection or victims of sexual assault or domestic violence.  |
| 15. | The Committee also notes that other comparable judicial bodies including the District Court and the Supreme Court of NSW have such general powers to make suppression orders. However, the need for transparency in the decision making and giving of reasons with regard to the use of confidential information is a valid concern. In the context of the firearm and security industry licensing, the Committee considers that the relevant sections of the <i>Firearms Act 1996</i> and the <i>Security Industry Act 1997</i> might be more appropriate legislation for the consideration of any future amendments rather than the removal of a judicial body's general power to make suppression orders. |
| 16. | The Committee is of the view that the personal rights of any witness or person providing such confidential evidence subject to the particular circumstances, deserve to be protected. This may outweigh the personal rights of the affected person to challenge the confidential evidence or confidential contents that may identify the witness or provider of that evidence made under the restricted or prohibited order. It is a matter for the Tribunal, a judicial body, to determine whether an order prohibiting or restricting the disclosure should be made or not.  |
| 17. | The Committee asks Parliament to consider whether the proposed amendment may unduly trespass personal rights, privacy and safety, by making the Tribunal lose the power to make orders prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the Tribunal in relation to the proceedings.  |

## **2. Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007**

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| 9. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **3. Biofuel (Ethanol Content) Bill 2007**

**Issue: Strict liability – Clauses 9 and 10**

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| 19. The Committee stresses that the presumption of innocence is a fundamental right. It highlights that the imposition of strict liability removes the requirement on the prosecution to prove that the defendant intended to commit the offence. |
| 20. However, the imposition of strict liability may be acceptable in circumstances where it is designed to protect the public interest and after consideration of any defences available and the type of penalties that may be imposed.           |
| 21. The Committee concludes that, given the inclusion of defences and limiting the penalties that may be imposed to monetary ones only, personal rights and liberties are not unduly trespassed by the inclusion of strict liability offences.    |

**Issue: Right to privacy - clause 11**

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| 26. The Committee considers that the publication of the names and returns of primary wholesalers who fail to comply with the legislation unduly trespasses on the right to privacy. Confidential information may be insufficiently protected. The Committee has resolved to write to the Minister seeking information on how the right to privacy might be better protected. |
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**Issue: Power of entry into premises – clause 16**

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| 31. The power to enter premises trespasses on the right to privacy. The Committee acknowledges that there are some limitations on the power of entry given to investigators. The Committee refers to Parliament whether the power of entry unduly trespasses on the right to privacy. |
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**Issue: Denial of compensation - clause 22**

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| 33. Whilst the Bill excludes the State from any liability or payment of compensation in relation to certain matters, the Committee acknowledges that there is a public interest in the State being able to regulate the ethanol content of petrol sales without the constraints of potential litigation. |
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34. The Committee has concerns about the denial of compensation and asks Parliament to consider the question of whether the exclusion of liability unduly trespasses on personal rights and liberties.

**Issue: Commencement by proclamation**

36. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement by proclamation rather than on assent is an inappropriate delegation of legislative power.

#### **4. Brothels Legislation Amendment Bill 2007**

**Procedural Fairness: Proposed Schedule 1 [2] - Amendment of *Environmental Planning and Assessment Act 1979* to insert the proposed section 121ZR (2)**  
Natural justice requirements not applicable. (A person who gives a brothel closure order is not required to comply with sections 121G – 121K. Note: Sections 121G – 121K provide, among other things, for the notice of proposed orders. Sections 121L and 121N apply to brothel closure orders and provide for reasons for an order to be given to the person to whom an order is given and information about appeal rights).

15. The Committee has concerns with regard to the proposed Schedule 1 [2] to insert the proposed section 121ZR (2), and asks Parliament to consider whether that it may be an undue trespass on the right to procedural fairness by legislating away the need to give notice and to hear representations concerning the making of a brothel closure order.

**Fair Trial: Proposed Schedule 1 [3] to insert section 124AB (5) (a) and (b)**  
Finding may be made on circumstantial evidence.

17. The Committee has concerns with regard to the proposed provisions and asks Parliament to consider whether the above proposed provisions on accepting a finding based on circumstantial evidence may be unfair to the affected person if it is also not balanced by amendments to include a right to be heard and to make representations at the time of the making of a brothel disclosure order.

**Right to Housing: Proposed Schedule 1 [2] - Amendment of *Environmental Planning and Assessment Act 1979* to insert the proposed section 121ZR (2)**  
Natural justice requirements not applicable.

20. The Committee asks Parliament to consider whether that the proposed Schedule 1 [2] to insert section 121ZR (2) and remove the applicability of the current section 121G on satisfactory accommodation, may trespass unduly on personal rights and liberties.

23. The Committee asks Parliament to consider whether that it is an undue trespass to personal rights and liberties when there is a denial of compensation for innocent persons who suffer damage as a result of making the cessation of utilities order for the enforcement of a brothel closure order, including any successful appeals against the brothel disclosure order.

**Exclude judicial review: Proposed Schedule 1 [2] - Amendment of *Environmental Planning and Assessment Act 1979* to insert the proposed section 121ZS Enforcement of brothel closure orders by cessation of utilities.**

25. The Committee asks Parliament to consider whether the lack of appeal rights and procedure for utilities orders may be an undue trespass to personal rights and liberties.

**Clauses which allow amendment of Acts by a regulation: Proposed Schedule 1 [2] to insert proposed section 121ZR (8) (a), (b), (c), (d) with regard to appeals.** (Regulations may be made for or with respect to the following: (a) conferral of jurisdiction on Local Courts with respect to appeals against brothel closure orders; (be) removing the right to appeal under section 121 ZK if an appeal is made to a Local Court under the regulations; (c) the conferral of jurisdiction on the Land and Environment Court with respect to appeals from decisions of a Local Court on appeals; (d) the modification of provisions of the *Crimes (Appeal and Review) Act 2001* for the purposes of appeals referred to above).

28. The Committee asks Parliament to consider whether the above proposed schedule to amend the Acts by regulation is an inappropriate delegation of legislative power, and that it may also be an inappropriate delegation of legislative power to oust the jurisdiction of the courts as judicial review is vital for protecting individual rights against oppressive administrative action and in the upholding of the rule of law.

## **5. Children (Criminal Proceedings) Amendment (Publication Of Names) Bill 2007**

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

## **6. Climate Futures Bill 2007\***

**Issue: Clauses 5(3) and 6: Revocation of planning approval**

11. The Committee notes that passage of the Bill may adversely affect those who have obtained planning approval in relation to the Anvil Hill coal mine and the Kooragang Coal Terminal and its coal export transport terminal.
12. However, the Committee also notes that one of the purposes of the Bill is to prevent environmental degradation by reducing the reliance of the State on coal.

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| 13. Accordingly, the Committee asks Parliament to consider whether the revocation of planning approval in accordance with clause 6 of the Bill unduly trespasses on rights and liberties. |
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## **7. Constitution Amendment (Speaker) Bill 2007**

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| 8. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **8. Crimes (Administration of Sentences) Amendment (Assistance in Foreign Criminal Matters) Bill 2007**

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| 6. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **9. Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007**

**Issue: Procedural fairness**

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| 15. The Committee acknowledges that the Bill is designed to reduce the administrative burden on the police and subsequently free them for frontline policing. However, the need for improved efficiency does not justify interference with procedural fairness.  |
| 16. The Committee also notes concerns, such as those voiced by the Law Society of NSW, that the amendments would increase the number of not guilty pleas. This would add to the workload of the court and may not result in a decrease in the number of briefs of evidence required. This would diminish any efficiency benefits that might otherwise be gained. |
| 17. Accordingly, the Committee concludes that the rights and liberties of the defendant are unduly trespassed.   |

**Issue: Commencement by proclamation**

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| 19. The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power. |
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## **10. Educational Support for Dyslexic Children Bill 2007\***

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| 4. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **11. Electricity Supply Amendment (Offences) Bill 2007**

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| 8. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **12. Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007**

**Issue:** No default maximum of compulsory contributions: proposed s 34J

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| 11. The Committee considers that it is appropriate to vary any maximum compulsory contribution level by regulation as any such variation would be disallowable by Parliament. However, the lack of a default maximum level that applies if no maximum level is prescribed by regulation delegates to the Government the power to determine whether or not there should be a maximum at all. |
| 12. The Committee is concerned that the failure to provide a default maximum level of compulsory contributions payable into the Climate Change Fund may be an inappropriate delegation of legislative power.  |

## **13. Government Publicity Control Bill 2007\***

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| 13. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **14. Government Schools (Infrastructure Register) Bill 2007\***

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| 6. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **15. Motor Dealers Amendment Bill 2007**

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| 12. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **16. National Parks and Wildlife Amendment (Leasing and Licensing) Bill 2007**

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| 12. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **17. Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007\***

**Issue: Strict liability – Schedule 1**

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| 11. | The Committee concludes that given that s 151AA includes a defence, imposes a monetary penalty only, and is designed to protect the public interest in upholding the integrity of the electoral process in NSW, the imposition of strict liability does not unduly trespass on personal rights and liberties. |
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## **18. Protection of the Environment Operations Amendment (Waste) Bill 2007**

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| 12. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **19. Renewable Energy (New South Wales) Bill 2007**

**Issue: Strict liability – clauses 38, 86, 105, 108 and 114**

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| 28. | The Committee recognises that the proposed scheme is to be market-based. Given the strong public interest in ensuring that certificates are only created by those entitled to do so, that individuals and entities comply with the terms of the scheme and not acquire an unfair advantage, and that the maximum penalties applicable do not involve a term of imprisonment, the Committee considers that the imposition of strict liability does not unduly trespass on personal rights and liberties. |
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**Issue: Powers of authorised officers**

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| 33. | The Committee recognises the public interest in ensuring compliance with the Bill. Given that the power to enter premises to exercise various monitoring powers is balanced by a requirement that such entry be at a reasonable time, is to cause as little inconvenience as possible, must be by consent in the case of business premises or else by warrant, and that only persons with the appropriate skills, qualifications and experience may be appointed authorised officers, the Committee does not consider that the rights to privacy and enjoyment of property are unduly trespassed. |
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**Issue: Retrospectivity – Schedule 3**

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| 35. | The Committee concludes that the potential for retrospective application of regulations made in accordance with Schedule 3 does not unduly trespass on personal rights and liberties. |
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## **Issue: Commencement**

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| 37. | The Committee concludes that the Bill does not inappropriately delegate legislative powers by providing that it is to commence following proclamation rather than on assent as it specifies that the latest date for commencement is 1 January 2008. |
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## **20. Royal Rehabilitation Centre Sydney Site Protection Bill 2007\***

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| 8. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **21. Security Industry Amendment (Patron Protection) Bill 2007\***

### **Issue: Privacy – Schedule 1[5]**

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| 18. | The Committee notes the importance of protecting a person's right to privacy. It acknowledges that drug and alcohol testing can involve invasive procedures. The Committee further notes that random drug and alcohol testing is particularly invasive.         |
| 19. | However, there may be situations when the need to protect the safety of others justifies such an invasion. There is a public interest in ensuring that crowd and venue controllers and bouncers are not under the influence of drugs or alcohol whilst working. |
| 20. | The Committee notes that the procedures involved in the testing of, and collection of samples from, crowd and venue controllers and bouncers are provided for in the Bill. Only police officers are authorised to require such tests.                           |
| 21. | It also notes that drug and alcohol testing of workers in some other industries already occurs.   |
| 22. | The Committee thus concludes that individual rights and liberties are not unduly trespassed.  |

## **22. Standard Time Amendment (Daylight Saving) Bill 2007**

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| 8. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **23. Superannuation Legislation Amendment Bill 2007**

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| 7. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **24. Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2007\***

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| <b>9. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</b> |
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## **25. University of Technology (Kuring-gai Campus) Bill 2007\***

**Issue: Acquisition of land not on just terms – Clause 6**

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| <b>9. The Committee is concerned that the right to, and interests in, property are inadequately safeguarded by the Bill. It is uncertain whether the circumstances justify exclusion of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>. Accordingly, the Committee is concerned that the Bill may trespass unduly on personal rights and liberties.</b> |
| <b>10. The Committee asks Parliament to consider whether the personal rights and liberties are unduly trespassed by the Bill as it allows the compulsory acquisition of land and interests in the land without compensation.</b>  |

**Issue: Commencement – Clause 2**

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| <b>12. The Committee asks Parliament to consider whether providing that the Bill commence on proclamation rather than on assent is an appropriate delegation of legislative power.</b> |
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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.

Those bills marked with an \* are sponsored by Private Members.

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