



SUMMARY OF CONCLUSIONS

***LEGISLATION REVIEW DIGEST* No. 9 of 2005**

12 September 2005

Legislation Review Digest No. 9 of 2005 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 21 June 2005 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Building Legislation Amendment (Smoke Alarms) Bill 2005**
- **Duties Amendment (Abolition of Bob Carr's Vendor Duty) Bill 2005**
- **James Hardie Former Subsidiaries (Special Provisions) Bill 2005**
- **Legislation Review Amendment (Family Impact) Bill 2005**
- **Local Government and Valuation of Land Amendment (Water Rights) Bill 2005**
- **National Parks and Wildlife (Further Adjustment of Areas) Bill 2005**
- **Parliamentary Electorates and Elections Amendment (Voting Age) Bill 2005**
- **Security Industry Amendment Bill 2005**
- **Smoke-Free Environment Amendment (Motor Vehicle Prohibition) Bill 2005**

Correspondence on Bills includes:

- **Building Professionals Bill 2005**
- **Criminal Procedure Further Amendment (Evidence) Bill 2005**
- **Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005**
- **Local Government Amendment Bill 2005**
- **Photo Card Bill 2005**

Correspondence on Regulations includes:

- **Mental Health Amendment (Transfer of Queensland Civil Patients) Regulation 2005**
- **Protection of the Environment Operations (General) Amendment (Luna Park) Regulation 2005**
- **Road Transport (General) Amendment (Driver Licence Appeals) Regulation 2005**

Summary of Conclusions

SECTION A: Comment on Bills

1. Building Legislation Amendment (Smoke Alarms) Bill 2005

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| 1. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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2. Duties Amendment (Abolition Of Bob Carr's Vendor Duty) Bill 2005*

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| 6. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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3. James Hardie Former Subsidiaries (Special Provisions) Bill 2005

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| 1. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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4. Legislation Review Amendment (Family Impact) Bill 2005*

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| 4. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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5. Local Government and Valuation of Land Amendment (Water Rights) Bill 2005

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| 1. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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6. National Parks and Wildlife (Further Adjustment of Areas) Bill 2005

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| 1. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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7. Parliamentary Electorates And Elections Amendment (Voting Age) Bill 2005*

Disqualification from voting of persons under 18 years who are subject to 12 months of more of criminal detention: proposed s 21(b1)

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| 13. The Committee notes that disentitling any citizens of voting age from the right to vote is a significant trespass to those persons' rights and should only be provided for when clearly justified in a free and democratic society. |
| 14. The Committee notes that, under current NSW law, persons serving a prison sentence of 12 months or more are not entitled to vote. |

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| 15. The Committee refers to Parliament the question of whether proposed cl 21(b1) of the Bill is an undue trespass on the right to freedom from discrimination and to equality before the law. |
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8. Security Industry Amendment Bill 2005

Procedural fairness: new s 29(3)

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| 16. The Committee notes that it is a fundamental common law rule that a person must be given an opportunity to participate in the decisions that affect him or her. |
| 17. The Committee also notes that the provisions of new s 29(3) trespass upon this right by providing that a person may not be made aware of important information to be relied upon in determining an appeal against the refusal to grant, or the revocation of, a licence. |
| 18. The Committee notes that the provision does not limit the Administrative Decision Tribunal's access to material on which the decision under review was based while preventing release of the material to the person to whom the intelligence relates. |
| 19. The Committee refers to Parliament whether new s 29(3) unreasonably trespasses on an applicant's right to a fair hearing. |

Rostering or scheduling: new s 38C

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| 31. The Committee notes that new s 38C places a considerable onus of knowledge upon a person employed to roster or schedule licensees, and that there are severe penalties for failing to comply with the new section, including imprisonment. |
| 32. The Committee notes the importance of protecting convicted persons who have completed their sentence from stigma and discrimination to allow them, as far as practicable, to participate fully in society and reduce the likelihood of their recidivism. |
| 33. The Committee has written to the Minister expressing its concerns with respect to the potential for new s 38C to unduly trespass upon rights and liberties. In particular, the Committee has written to the Minister for: <ul style="list-style-type: none">a) advice as to why the Bill does not provide any mechanism by which a person could be alerted to the fact that they are prohibited from certain forms of employment based on their past offences (eg, a licensing regime);b) advice as to why the offence is a strict liability offence and why the Bill does not provide a defence, such as lack of knowledge;c) clarification on the need to subject a person who has been found guilty but not convicted of an offence to the prohibition in section 38C; |

- d) advice on the public interest justifications behind the Bill potentially subjecting a person to a double punishment, especially a person who has not had a conviction recorded against them; and
 - e) advice on the justification for the high penalty for this offence, including a term of imprisonment, especially given that there is no fault element for the offence and the offence applies to a person who has no recorded conviction.
36. The Committee considers that offences for which there is no fault element should not normally be punishable by imprisonment.
 37. The Committee has written to the Minister to seek his advice as to the reasons for including imprisonment as a penalty for offences without a fault element in Schedule 1 [65].
 44. The Committee notes that placing more than an evidential burden of proof has at times been held to unduly trespass upon the presumption of innocence, a fundamental human right recognised at common law and international law.
 45. The Committee has written to the Minister for advice as to the reasons for placing a legal rather than an evidential burden on defendants under s 39.

Attributing personal liability for corporate conduct and reversing onus of proof: new s 44

58. The Committee notes that reversing the onus of proof is inconsistent with the fundamental right of a person to be presumed innocent and requires a balance to be struck between the general interest of the community and the protection of the fundamental rights of the individual. This will not be achieved if the reverse onus provision goes beyond what is necessary to accomplish the objective of the statute.
59. The Committee again notes that this balance can normally be achieved by placing no more than an evidential burden on the defendant.
60. The Committee also notes the important policy objectives of the Act to ensure the safety of the community in the course of the commercial provision of security services.
61. The Committee refers to the Parliament the question as to whether new s 44 unduly trespasses on personal rights and liberties.

9. Smoke-Free Environment Amendment (Motor Vehicle Prohibition) Bill 2005*

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

SECTION B: Ministerial Correspondence — Bills Previously Considered

10. Building Professionals Bill 2005

6. The Committee thanks the Minister for her reply.

11. Criminal Procedure Further Amendment (Evidence) Bill 2005

4. The Committee thanks the Attorney General for his reply.

12. Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005

8. The Committee thanks the Minister for his reply.

13. Local Government Amendment Bill 2005

7. The Committee thanks the Minister for his reply.

14. Photo Card Bill 2005

4. 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.

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

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The Hon Peter Primrose MLC
Chairman