



SUMMARY OF CONCLUSIONS

***LEGISLATION REVIEW DIGEST* No. 13 of 2005**

7 November 2005

Legislation Review Digest No. 13 of 2005 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting weeks beginning 12 October 2005 and 18 October and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Bill 2005**
- **Farm Debt Mediation Amendment (Water Access Licences) Bill 2005**
- **Luna Park Site Amendment (Noise Control) Bill 2005**
- **Retail Leases Amendment Bill 2005**
- **Royal Blind society (Merger) Bill 2005; and**
- **Vocational Education and Training Bill 2005.**

Correspondence on Regulations includes:

- **Adoption Amendment (Adoption Service Providers) Regulation 2005; and**
- **Legal Profession Amendment (Advertising) Regulation 2005.**

SECTION A: Comment on Bills

1. Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Bill 2005

Retrospectivity: Schedule 2 [9]

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| 8. | The Committee notes that the Bill has the effect of altering the terms of existing contracts where the inclusion of all credit fees and interest charges in the calculation of the maximum annual percentage rate results in a maximum rate above that prescribed. |
| 9. | The Committee notes that the purpose of including fees and charges within the maximum annual percentage rate is to prevent fringe lenders from imposing fees and charges far in excess of reasonable costs. |

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| 10. The Committee refers to Parliament the question as to whether the retrospective effect of the Bill unduly trespasses on personal rights and liberties |
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2. Farm Debt Mediation Amendment (Water Access Licences) Bill 2005

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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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3. Luna Park Site Amendment (Noise Control) Bill 2005

Denial of Compensation, Review rights: Schedule 1[3] (proposed s 19A)

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| 20. The Committee refers to Parliament the question as to whether proposed section 19A unduly trespasses on personal rights and liberties by limiting action against Luna Park in respect of noise emissions only to noise that exceeds the new maximum level of 85 decibels. |
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Rule of law, Retrospectivity, Denial of compensation rights, Discrimination: Schedule 1[5] (proposed s 3)

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| 35. The Committee notes that adherence to the rule of law is recognised as a key element in a democracy and is essential for the protection of human rights. |
| 36. The Committee is also of the view that the rule of law requires compliance with a set of principles that includes avoiding retrospective legislation that adversely affects a person, ensuring consistency in the application of the law and respecting the separation of powers. |
| 37. The Committee is of the view that Schedule 1[5] trespasses on personal rights by: <ul style="list-style-type: none">– applying retrospectively in a way that may adversely affect some persons;– rendering ineffective certain judicial decisions on which people may have relied;– preventing the final determination of legal proceedings that are still on foot. |
| 38. The Committee refers to Parliament the question as to whether Schedule 1[5] unduly trespasses on a person's rights and liberties. |

Right to Compensation: Schedule 1[5] (proposed section 3)

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| 50. The Committee notes that Schedule 1[5] denies a person the right to seek compensation in relation to certain noise emissions from Luna Park during the relevant period. |
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51. The Committee is of the view that extinguishing compensation rights can be justified if, having regard to the overall context, there are compelling public interest reasons for extinguishing the right, and if the extinguishment is proportional to that public interest aim.
52. The Committee notes the Minister's explanation for the need for this provision to ensure that Luna Park is viable into the future at no cost to the taxpayer.
53. The Committee also notes that it is unclear to it that the trespass of personal rights resulting from the operation of proposed section 3 is necessary for the preservation of Luna Park or proportional to the public interest served in preserving Luna Park.
54. The Committee refers to Parliament the question as to whether the exclusion of claims for compensation constitutes an undue trespass on personal rights and liberties.

4. Retail Leases Amendment Bill 2005

15. Given the public interest in ensuring RailCorp is unimpeded in ensuring railway safety and security, the Committee does not consider that s 82A trespasses unduly on personal rights and liberties insofar as it applies to leases entered into after the Bill has been passed.
19. The Committee is of the view that the rule of law requires compliance with a set of principles that includes avoiding retrospective legislative provisions that adversely affect a person.
20. The Committee refers to Parliament the question of whether preventing existing RailCorp lessees from relying on an implied statutory entitlement to compensation that existed at the time they entered into their leases constitutes an undue trespass on personal rights and liberties.

Prescribing by regulation those retail shops to which the Act is to apply: Schedule 1[4], [93].

24. The Committee will always be concerned to identify when the subject matter of an Act may be effectively expanded or contracted by a regulation that prescribes those matters that fall within a key definition.
25. The Committee notes, however, that providing for new types of retail shops outside of retail shopping centres to be covered by the Act without the need for its amendment offers regulatory flexibility and responsiveness.
26. Having regard to the fact that any regulations altering the retail shops that may fall within or outside the Act's ambit will be subject to disallowance by Parliament, the Committee considers that the proposed provisions do not constitute an inappropriate delegation of legislative power.

5. Royal Blind Society (Merger) Bill 2005

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| 5. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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6. Vocational Education and Training Bill 2005

Procedural fairness, Right to be heard: Clauses 30(2) & 36(2)

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| 14. 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, but that this rule can be displaced by clear legislative intent. |
| 15. The Committee is of the view that a decision to cancel or refuse accreditation of a vocational course could have a significant adverse impact on a person, which could be compounded if decision is made with immediate effect. |
| 16. The Committee notes the power is intended to be used in circumstances in which, for example, public safety is at stake. |
| 17. The Committee has written to the Minister for advice as to why the legislation does not contain an inclusive or indicative list of the public interest circumstances that might warrant a decision of the Board to cancel or refuse accreditation to take immediate effect. |
| 18. The Committee refers to Parliament the question as to whether clauses 30(2) and 36(2) unduly trespass on a person's right to be heard before an adverse decision is made against them. |

Fees not reviewable by Parliament: Clauses 11(2), 13(3), 16(2), 18(9), 25(2), 27(2), 34(3) & (6) and 35(2)

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| 22. The Committee notes that the Bill delegates to the Board the power to determine the level of fees to impose for a range of matters and that such fees are not reviewable or disallowable by the Parliament. |
| 23. The Committee is of the view that the level of fees, particularly fees comprising part of a regulatory scheme rather than merely a fee for a service, should be reviewable and disallowable by Parliament. |
| 24. The Committee has written to the Minister for advice as to why the level of fees is not disallowable by the Parliament. |
| 25. The Committee refers to Parliament the question whether these clauses provide for an undue delegation of legislative power. |

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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