



SUMMARY OF CONCLUSIONS

***LEGISLATION REVIEW DIGEST* No 5 of 2005**

2 May 2005

Legislation Review Digest No 5 of 2005 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 5 April 2005 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Civil Procedure Bill 2005**
- **Coal Acquisition Amendment (Fair Compensation) Bill 2005**
- **Energy Administration Amendment (Water & Energy Savings) Bill 2005**
- **Game and Feral Animal Control Amendment Bill 2005**

Correspondence on Bills includes:

- **Civil Liability Amendment (Offender Damages) Bill 2005**
- **Electricity Supply Amendment Bill 2005**
- **Legal Profession Bill 2004**
- **Prisoners (Interstate Transfer) Amendment Bill 2005**
- **Road Transport (General) Amendment (Licence Suspension) Bill 2004**

Correspondence on Regulations includes:

- **Centennial Park and Moore Park Trust Regulation 2004**

Summary of Conclusions

SECTION A: Comment on Bills

1. Civil Procedure Bill 2005

Retrospectivity: Schedule 6

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| 16. | The Committee will always be concerned to identify where legislation has a retrospective effect that may impact adversely upon any person. |
| 17. | To change the rules for proceedings already on foot may frustrate the legitimate expectation of those involved that the rules would remain consistent throughout the course of those proceedings. |

18. However, given the apparent advantage of having the rules apply to all relevant proceedings and the courts' power to dispense with the new rules where appropriate, the Committee does not consider that applying the new rules to proceedings already commenced trespasses unduly on personal rights and liberties.

Henry VIII clause: Clause 4

32. The Committee will always be concerned when rules or regulations may amend Acts, thereby limiting Parliamentary scrutiny.
33. However, having regard to the nature of the provisions subject to such amendment, the purpose of facilitating transitional arrangements, and the fact that any such amendment will be subject to disallowance by Parliament, the Committee considers that proposed cl 4 does not inappropriately delegate legislative power.

2. Coal Acquisition Amendment (Fair Compensation) Bill 2005

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

3. Energy Administration Amendment (Water & Energy Savings) Bill 2005

Commencement by proclamation: Clause 2

14. The Minister's office has advised that the ensuing Act will commence on proclamation to enable the establishment of the Water and Energy Savings Funds and other administrative arrangements to be in place.

Prescription of "State water agencies": proposed new definition (s 3)

18. The Committee notes that enabling the Government to prescribe a State agency as a State water agency by regulation, and thereby subjecting that agency to requirements to make annual contributions, is a significant delegation of legislative power.
19. However, given that any such regulation would be subject to disallowance by either House of Parliament, the Committee does not consider that this comprises an inappropriate delegation of legislative power.

No default maximum of compulsory contributions: Proposed s 34P

22. 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.

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| 23. | The Committee refers to Parliament the question as to whether not providing a default maximum level of compulsory contributions payable into the Energy Saving Fund if the Government has not set a maximum level by regulation comprises an inappropriate delegation of legislative power. |
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4. Game and Feral Animal Control Amendment 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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SECTION B: Ministerial Correspondence — Bills Previously Considered

5. Civil Liability Amendment (Offender Damages) Bill 2005

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| 6. | The Committee thanks the Minister for his response. |
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6. Electricity Supply Amendment Bill 2005

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| 3. | The Committee thanks the Minister for his response. |
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7. Legal Profession Bill 2004

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| 6. | The Committee thanks the Attorney General for his response. |
| 7. | The Committee welcomes the Attorney General's referral to the National Legal Profession Joint Working Group of the proposal that legislation in all jurisdictions include a requirement that a person be informed of their right to object to questioning and the nature, extent and consequences of that right to object. |
| 8. | The Committee has written to the Attorney General to request that it be advised of the outcome of the Working Group's consideration of this issue. |

8. Prisoners (Interstate Transfer) Amendment Bill 2005

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| 4. | The Committee thanks the Minister for his reply. |
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9. Road Transport (General) Amendment (Licence Suspension) Bill 2004

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| 11. | The Committee thanks the Minister for his further response. |
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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.

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The Hon Peter Primrose MLC
Chairman