



SUMMARY OF CONCLUSIONS
LEGISLATION REVIEW DIGEST No. 7 of 2007
23 November 2007

Legislation Review Digest No. 7 of 2007 contains the Legislation Review Committee's consideration of Bills introduced into Parliament in the sitting week beginning 12 November 2007 and any reports on regulations since the previous *Digest*.

The Bills reported on:

- Agricultural Industry Services Amendment Bill 2007
- Anti-Discrimination Amendment (Equal Opportunity in Public Employment) Bill 2007
- Crimes (Domestic and Personal Violence) Bill 2007
- Evidence (Audio and Audio Visual Links) Amendment Bill 2007
- Local Court Bill 2007
- Local Government Amendment Bill 2007
- Miscellaneous Acts (Local Court) Amendment Bill 2007
- Prevention of Cruelty to Animals Amendment (Prosecutions) Bill 2007
- Rice Marketing Amendment Bill 2007
- Statute Law (Miscellaneous Provisions) Bill (No. 2) 2007
- Sydney Water Catchment Management Amendment Bill 2007
- Wine Grapes Marketing Board (Reconstitution) Amendment Bill 2007

Correspondence on Bills includes:

- Guardianship Amendment Bill 2007.

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. **Agricultural Industry Services Amendment Bill 2007**

Issue: Ill Defined and Wide Powers - Clause 41A – Schedule 1 [8] – Appointment of inspectors

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| 12. | The Committee notes it is proposed that there should be a broader definition of who can carry out inspections, such as those with accountancy and audit skills. However, the Bill has no requirements regarding the qualifications or attributes, to be an inspector, as is the current situation. |
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2. **Anti-Discrimination Amendment (Equal Opportunity in Public Employment) 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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3. **Crimes (Domestic and Personal Violence) Bill 2007**

Commencement by proclamation: Clause 2

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| 6. | Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, 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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4. **Evidence (Audio and Audio Visual Links) Amendment Bill 2007**

Right to a fair trial: proposed s 5BB

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| 18. | The Committee acknowledges that the Bill alters the types of proceedings in which an accused detainee is required to be physically present before the court, providing for the use of audio visual links instead. |
| 19. | The Committee acknowledges that there are a number of benefits associated with the use of audio visual technology including improved access to court services, greater efficiency, improved court security and reduced costs in relation to witnesses and prisoner transportation. It notes the existence of concerns that the disruptions, costs and risks presented by requiring an accused detainee to be physically present for all proceedings associated with an offence may in some circumstances be disproportionate to the benefit of having the detainee physically present in the court room. |

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| 20. | However, the Committee highlights that the right of an accused person to be tried in his or her presence may be affected by the Bill. Appearing by audio visual link may alienate an accused detainee from the court proceedings and affect the interaction between the accused detainee and his or her legal practitioner. |
| 21. | It is noted that the court retains its discretion to require the accused detainee to be physically present where it is deemed to be in the interests of justice, and that an accused detainee is still required to be physically present for certain proceedings including any trial or hearing of charges. |
| 22. | Accordingly, the Committee asks Parliament to consider whether the Bill unduly trespasses on the right of the accused to a fair trial. |

Commencement by proclamation: Clause 2

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| 24. | Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, 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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5. Local Court Bill 2007

Issue: Clause 2 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

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| 13. | Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, 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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6. Local Government Amendment Bill 2007

Commencement by proclamation: Clause 2

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| 9. | Although there may be good reasons why such discretion is required, 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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7. Miscellaneous Acts (Local Court) Amendment Bill 2007

Issue: Clause 2 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

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| 11. | Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, 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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8. Prevention of Cruelty to Animals Amendment (Prosecutions) 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. Rice Marketing Amendment Bill 2007

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| 13. | The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987</i> . |
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10. Statute Law (Miscellaneous Provisions) Bill (No 2) 2007

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| 17. | 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. Sydney Water Catchment Management Amendment Bill 2007

Self-incrimination: proposed Part 6B – requirements to provide information

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| 40. | The Committee will always be concerned if a Bill removes or restricts a person's right against self-incrimination. The Committee notes that the right against self-incrimination is enshrined in the <i>International Covenant on Civil and Political Rights</i> . |
| 41. | However, the Committee acknowledges that in some cases this right may be modified if there is a significant public interest in obtaining the information and where the use of that information is restricted. The Committee accepts that there is a strong public interest in ensuring the protection of catchment areas and the need to control, prevent, minimise or remove any damage to, or detrimental effect on, the quality of water and/or catchment health. |
| 42. | The Committee notes that there are some safeguards in the Bill regarding the use of any information required by authorised officers or the Sydney Catchment Authority that may incriminate the person providing that information. However, it is questionable whether the limitation on the way in which this information may be used is adequate. |

43. Accordingly, the Committee asks Parliament to consider whether the modification of the right against self-incrimination contained in the Bill unduly trespasses on the rights and liberties of individuals.

Excessive punishment – substantial penalties: proposed sections 62R, 62S, 63, 64, 64A

47. The Committee notes that there is a significant public interest in ensuring the health of catchment areas. It acknowledges that the existence of significant penalties may encourage compliance by serving as an effective deterrence to potential offenders.
48. However, the Committee highlights that similar penalties apply to a range of offences. Accordingly, the Committee asks Parliament to consider whether the maximum penalties applicable to certain offences are excessive.

Commencement by proclamation: Clause 2

50. Although there may be good reasons why such discretion is required, 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.

12. Wine Grapes Marketing Board (Reconstitution) Amendment Bill 2007

11. 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

13. Guardianship Amendment Bill 2007

8. The Committee thanks the Minister for her reply.

17. The Committee considers that an appropriate privacy balance has been achieved between the privacy rights and needs of donor-conceived children, parents, donors, ART providers, and the primacy of the best interests of children conceived using the assisted reproductive technology, with respect to circumstances in aiming to save their lives or preventing serious damage to their health. Therefore, the Committee does not consider personal rights such as privacy concerns have been unduly trespassed.

Issue: Onus of Proof – Part 5 Clause 53(1) Offences; Part 7 Clause 68 Onus of Proof Concerning Reasonable Excuse

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| <p>20. The Committee notes that Part 5 sets out the appointment of inspectors with the issuance of a certificate of authority to authorise the inspector's exercise of functions; limitation on self-incrimination; search warrants applications; and procedures for disallowance of seizures including applications to the Local Court.</p> <p>21. The Committee considers that given the above context of procedural rights, along with monetary penalties rather than imprisonment, as well as the overall aims of the Bill to recognise the rights of individuals to have control over the use of their genetic material, to promote the best interests of the child, and to prevent the commercialisation of human reproduction and commercial surrogacy, the reversal onus of proof on defendants that they had a reasonable excuse, does not trespass unduly on personal rights.</p> |
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Issue: Retrospectivity – Part 4 Surrogacy - Clause 45 Surrogacy Agreements Void

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| <p>23. This includes agreements made before this legislation commences (clause 45). The Committee will always be concerned with any retrospective effect of legislation which may impact on personal rights. However, since a key part of the objective of this Bill is to prevent the commercialisation of human reproduction by prohibiting commercial surrogacy, which is also consistent with existing law, by making all surrogacy arrangement, void and unenforceable, the Committee is of the view that in the circumstances, the retrospective effect of the proposed section does not trespass unduly on personal rights.</p> |
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Issue: Provide the executive with unfettered control over the commencement of an Act - Part 1 Clause 2 - Commencement by proclamation.

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| <p>24. This Bill proposes to commence by proclamation. This is because a lengthy and detailed implementation period is required, during which the Department of Health will consult with stakeholders on regulations under the Bill. The Committee notes that it is important for stakeholders to be involved in the development of the donor register and that they are provided with information on their rights and obligations before the Act commences. Therefore, the Committee considers in these circumstances, the Bill commencing by proclamation rather than on assent, is not an inappropriate delegation of legislative power.</p> |
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