



SUMMARY OF CONCLUSIONS

***LEGISLATION REVIEW DIGEST* No. 15 of 2006**

24 October 2006

Legislation Review Digest No. 15 of 2006 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 17 October 2006 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Adoption Amendment Bill 2006**
- **Charter of Budget Honesty (Election Promises Costing) Bill 2006**
- **Crimes (Administration of Sentences) Amendment Bill 2006**
- **Criminal Procedure Amendment (Sexual and Other Offences) Bill 2006**
- **Crown Lands Legislation Amendment (Carbon Sequestration) Bill 2006**
- **Election Funding Amendment Bill 2006**
- **Electricity Supply Amendment (Greenhouse Gas Abatement Scheme) Bill 2006**
- **National Park Estate (Lower Hunter Regions Reservations) Bill 2006**
- **Passenger Transport Amendment Bill 2006**
- **Police Amendment (Miscellaneous) Bill 2006**
- **Ports Corporatisation and Waterways Management Amendment Bill 2006**
- **Quarantine Station Preservation Trust Bill 2006***
- **Racing Legislation Amendment Bill 2006**
- **State Revenue Legislation Amendment (Tax Concessions) Bill 2006**
- **Western Sydney Parklands Bill 2006**

Correspondence on Bills includes:

- **Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 and Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006.**

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Adoption Amendment Bill 2006

- | |
|---|
| 8. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|---|

2. Charter of Budget Honesty (Election Promises Costing) Bill 2006

- | |
|---|
| 3. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|---|

3. Crimes (Administration of Sentences) Amendment Bill 2006

- | |
|---|
| 5. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|---|

4. Criminal Procedure Amendment (Sexual and Other Offences) Bill 2006

Proposed s 292(2) – Publication of evidence

- | |
|--|
| 20. The Committee notes that, on its face, s 292(6) may appear to be inconsistent with a Court's traditional procedural impartiality. |
| 21. However, the Committee also notes that the Bill constitutes a legislative step taken by Parliament to redress the traditional inadequacies in the treatment of complainants in sexual offence cases. |
| 22. Having regard to this broader context of the Bill, the Committee does not consider that proposed s 292(6) unduly trespasses on the personal rights and liberties of an accused person. |

Proposed s 294(3) – (5): *Longman* directions

- | |
|---|
| 29. The Committee notes that the Bill arguably trespasses upon the rights of an accused in limiting the availability of a <i>Longman</i> direction. |
| 30. However, the Committee also notes that the changes ought to be viewed in the light of an ongoing process of criminal law reform designed to improve the legal system's handling of sexual assault prosecutions. |

31. Having regards to the objects of the Bill, the safeguards therein, the problematic nature of *Longman* directions, and the need to take account of the concerns of the complainant and the interests of the community, the Committee does not consider that proposed s 294(3) – (5) unduly trespass upon the rights of an accused person.

Proposed Chapter 6, Part 5, Division 4: Retrospectivity

34. The Committee will always be concerned to identify where legislation has a retrospective effect that may impact adversely upon any person.

35. The Bill's application to re-trials ordered before its commencement impinges upon a defendant's legitimate expectation that the retrial will be conducted in accordance with current law and that they will therefore be able to re-examine the complainant at the new trial.

36. Having regard to the benefit to the complainant of not being compelled to testify a second time, the benefit to the community of ensuring that persons accused of sexual offences are effectively dealt with by the criminal justice system, and the continuing common law requirement of a fair trial, the Committee does not consider that the Bill trespasses unduly on personal rights and liberties.

5. Crown Lands Legislation Amendment (Carbon Sequestration) Bill

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

6. Election Funding Amendment Bill 2006

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

7. Electricity Supply Amendment (Greenhouse Gas Abatement Scheme) Bill 2006

Termination of operation of provision: Proposed Clause 97KB

8. The Committee notes that the bill provides that the Governor may, by proclamation published in the Gazette, terminate the operation of Part 8A of the Act.

-
9. However, the Committee also notes that, consistent with the objects of the bill, the Governor may only terminate the operation of Part 8A where the Minister certifies that New South Wales is, or will be, a participant in a scheme (either nationally, or with at least one other State or Territory) that is designed to reduce greenhouse gas emissions associated with the production and use of electricity.
 10. The Committee refers to Parliament the question of whether allowing the Governor to terminate the operation of Part 8A under such conditions by proclamation, is an inappropriate delegation of legislative powers.

8. Passenger Transport Amendment Bill 2006

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

9. Ports Corporatisation and Waterways Management Amendment Bill 2006

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

10. National Park Estate (Lower Hunter Region Reservations) Bill 2006

3. The Committee did not identify any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

11. Police Amendment (Miscellaneous) Bill 2006

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

12. Quarantine Station Preservation Trust Bill 2006*

Insufficiently defined administrative powers [s 8A(1)(b)(ii) *LRA*]: Clauses 10 & 11

10. Clause 11(3) may create uncertainty regarding whether any lease or licence the Minister purports to issue under the Bill is valid. The Committee refers to Parliament the question of whether this makes the rights of a lessee or licensee under the Bill unduly dependent upon insufficiently defined administrative powers.

13. Racing Legislation Amendment Bill 2006

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

14. State Revenue Legislation Amendment (Tax Concessions) Bill 2006

- | |
|---|
| 3. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|---|

15. Western Sydney Parklands Bill 2006

- | |
|---|
| 3. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|---|

SECTION B: Ministerial Correspondence — Bills Previously Considered

16. Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 and Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006

- | |
|---|
| 6. The Committee thanks the Premier for his response. |
|---|

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.

Copies of *Legislation Review Digests* are available from www.parliament.nsw.gov.au/lrc/digests.

Subscriptions to the *Digest* are available by contacting the Committee Secretariat on 02 9230 3418 or legislation.review@parliament.nsw.gov.au.

Allan Shearan MP
Chair