



PARLIAMENT OF NEW SOUTH WALES

LEGISLATION REVIEW COMMITTEE

Parliament of New South Wales · Macquarie Street · Sydney NSW 2000 · Australia

SUMMARY OF CONCLUSIONS

***LEGISLATION REVIEW DIGEST* No. 16 of 2006**

10 November 2006

Legislation Review Digest No. 16 of 2006 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 24 October 2006 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Aboriginal Land Rights Amendment Bill 2006**
- **Central Coast Water Corporation Bill 2006**
- **Charitable Trusts Amendment Bill 2006**
- **Children and Young Persons (Care and Protection) Miscellaneous Amendments Bill 2006**
- **Companion Animals Amendment Bill 2006**
- **Crimes and Courts Legislation Amendment Bill 2006**
- **Education Legislation Amendment Bill 2006**
- **Environmental Planning Legislation Amendment Bill 2006**
- **Home Building Amendment (Statutory Warranties) Bill 2006**
- **Industrial Relations (Child Employment) Bill 2006, Industrial Relations Further Amendment Bill 2006 and Workers Compensation Amendment (Permanent Impairment Benefits) Bill 2006**
- **Legal Profession Further Amendment Bill 2006**
- **Rural Lands Protection Amendment Bill 2006**
- **Rural Communities Impact Bill 2006***
- **Superannuation Administration Amendment (Trust Deed Schemes) Bill 2006**
- **Trees (Disputes Between Neighbours) Bill 2006**
- **Water Industry Competition Bill 2006**
- **Banning Political Advertising (Make Labor Pay) Bill 2006***

Correspondence on Regulations includes:

- **Conveyancing (Sale of Land) Amendment (Smoke Alarms) Regulation 2006**

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Aboriginal Land Rights Amendment Bill 2006

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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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2. Banning Political Advertising (Make Labor Pay) Bill 2006*

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| 2. | 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. Central Coast Water Corporation Bill 2006

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| 4. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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4. Charitable Trusts Amendment Bill 2006

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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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5. Children and Young Persons (Care and Protection) Miscellaneous Amendments Bill 2006

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| 4. | 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. Companion Animals Amendment Bill 2006

Procedural fairness: Clause 50, proposed section 58G

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| 7. | The Committee is of the view that, given that a dog is the property of its owner, no action should be taken to kill a dog without first giving notice to the owner and providing the owner with an opportunity to make representations. |
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| 8. | The Committee refers to Parliament the question as to whether this amendment, by allowing a dog to be killed with no requirement that notice be given to the owner and providing no opportunity for the owner to make representations, unduly trespasses on personal rights and liberties. |
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7. Crimes and Courts Legislation Amendment Bill 2006

Retrospectivity: proposed new s 25 & s 26 of the *Civil Liability Act 2002*

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| 14. | The Committee will always be concerned to identify the retrospective effects of legislation which may impact adversely on any person. |
| 15. | The Committee notes that proposed cl 25 and cl 26 of Part 7 of Schedule 1 to the <i>Civil Liability Act 2002</i> deem that the proposed amendments to s 3B(1) and s 26 have always been applicable to the operation of the Act. This may directly and adversely affect the damages rights of individuals under the Act when a Court considers the application of the Part 2A offender damages trust fund provisions. |
| 16. | The Committee refers to Parliament the question of whether the retrospective application of the Bill's amendments unduly trespasses upon the rights of persons who would not otherwise be subject to the Act's restrictions relating to damages. |

Reversal of onus of proof: proposed new s 11B, s 36Y & s 36Z of the *Drugs Misuse and Trafficking Act 1985*

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| 23. | The Committee notes that proposed s 11B places on the defendant the onus of proof on whether a tablet press is used to produce tablets in connection with an activity that is not unlawful, which is the essence of the offence. |
| 24. | The Committee notes that reversing the onus of proof is inconsistent with the presumption of innocence, which is a fundamental human right. |
| 25. | The Committee notes that while reversing the onus of proof may be appropriate in certain circumstances, proposed s 11B does not fall squarely within the Commonwealth Guidelines for such provisions. |
| 26. | The Committee refers to Parliament the question whether proposed s 11B trespasses unduly on the right to the presumption of innocence by reversing the onus of proof. |
| 35. | The Committee notes that proposed s 36Y and s 36Z place on the defendant the onus of proof regarding whether a child was endangered, which is the essence of the offence. |
| 36. | The Committee notes that the basis for creating these aggravated offences is concern for the welfare of children who may be exposed to drug premises. |

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| 37. | The Committee notes that s 36Z(4) also places the onus of proof on a defendant charged with assisting in the organisation or conduct of drug premises to prove that he or she did not know or could not reasonably have known, that the premises to which the charge relates were being organised or conducted as drug premises. |
| 38. | The Committee notes that reversing the onus of proof is inconsistent with the presumption of innocence, which is a fundamental human right. |
| 39. | The Committee notes that while reversing the onus of proof may be appropriate in certain circumstances, proposed s 36Y(2) and s 36Z(2) arguably fall outside the Commonwealth Guidelines for such provisions. |
| 40. | The Committee refers to Parliament the question whether proposed s 36Y and s 36Z trespass unduly on the right to the presumption of innocence by reversing the onus of proof. |

8. Education Legislation Amendment Bill 2006

Ministerial Guidelines: Proposed Division 4

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| 11. | The Committee notes that the matters listed in proposed section 26J to be included in ministerial guidelines provide some safeguards against an undue trespass on a student's privacy rights. However, the Committee is of the view that matters which are central to the operation of the new regime should be provided for in the Act itself and not in guidelines, especially if those guidelines are not disallowable. |
| 12. | The Committee has written to the Minister for advice as to why the matters set out in section 26J are not included in the Act. |
| 13. | The Committee refers to Parliament the question as to whether providing for the matters set out in section 26J to be dealt with by ministerial guidelines rather than in the Act itself is an inappropriate delegation of legislative power. |

9. Environmental Planning Legislation Amendment 2006

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| 3. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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10. Home Building Amendment (Statutory Warranties) Bill 2006

Retrospectivity: Schedule 1[5]

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| 7. | As the Bill does not change the nature of a statutory warranty and only allows further enforcement proceedings to be brought if a deficiency could not reasonably be known of when the warranty was earlier enforced, and given the important aim of consumer protection, the Committee does not consider that the retrospective application of the Bill trespasses unduly on personal rights and liberties. |
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11. Industrial Relations (Child Employment) Bill 2006; Industrial Relations Further Amendment Bill 2006; & Workers Compensation Amendment (Permanent Impairment Benefits) Bill 2006

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| 23. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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12. Legal Profession Further Amendment Bill 2006

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| 4. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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13. Rural Communities Impacts Bill 2006*

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| 4. | The Committee did not identify any issues arising under s 8A(1)(b) of the <i>Legislation Review Act 1989</i> . |
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14. Rural Lands Protection Amendment Bill 2006

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| 3. | The Committee did not identify any issues arising under s 8A(1)(b) of the <i>Legislation Review Act 1989</i> . |
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15. Superannuation Administration Amendment (Trust Deed Schemes) Bill 2006

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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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16. Trees (Disputes Between Neighbours) Bill 2006

Restriction of action in nuisance: Proposed section 5

15. Given that the bill establishes a targeted system to resolve disputes between neighbours, and does not limit other common law actions, the Committee does not consider that the limitation on the ability to bring an action in nuisance is a trespass on the rights of landowners or occupiers.

17. Water Industry Competition Bill 2006

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

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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Allan Shearan MP
Chair