



SUMMARY OF CONCLUSIONS

***LEGISLATION REVIEW DIGEST* No. 3 of 2006**

7 March 2006

Legislation Review Digest No. 2 of 2006 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 28 February 2006 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Crimes (Sentencing Procedure) Amendment (Gang Leaders) Bill 2006***;
- **Industrial Relations Amendment Bill 2006 and Public Sector Employment Legislation Amendment Bill 2006;**
- **Law Enforcement (Controlled Operations) Amendment Bill 2006;**
- **Motor Accidents Compensation Amendment Bill 2006 and Motor Accidents (Lifetime Care and Support) Bill 2006;**
- **Protection of the Environment Operations Amendment (Waste Reduction) Bill 2006; and the**
- **Royal Rehabilitation Centre Sydney Site Protection Bill 2006*.**

Correspondence on Regulations includes:

- **Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005**

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Crimes (Sentencing Procedure) Amendment (Gang Leaders) 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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2. Industrial Relations Amendment Bill 2006, and Public Sector Employment Legislation Amendment Bill 2006

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| 1. 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. Law Enforcement (Controlled Operations) Amendment Bill 2006

Retrospective authorisation: proposed s 14

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| 27. The Committee notes the potential for the application of proposed s 14 to lead to the abuse of powers granted under controlled operations authorised by the Act, thereby trespassing on the rights and liberties of third parties adversely affected by the conduct of such operations. |
| 28. The Committee also notes that proposed s 14(5) provides a strict regime for the granting of retrospective authorisation. |
| 29. The Committee refers to Parliament the question as to whether the ability to grant authorisation retrospectively unduly trespasses upon the rights and liberties of third parties adversely affected by the conduct of controlled operations under the Act. |

4. Motor Accidents (Lifetime Care and Support) Bill 2006, and Motor Accidents Compensation Amendment Bill 2006

Compulsory referral to the Scheme: cl 8(2) & 9 Motor Accidents (Lifetime Care and Support) Bill

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| 8. The Committee notes that the Bill provides for persons to be referred to the Scheme without their consent and, if accepted as a lifetime participant, thereby disentitles them to pursue the payment of damages for treatment and care. |
| 9. The Committee notes that a person may reasonably not wish to be subject to the ongoing assessment of treatment and care needs by the Authority or to the current and any future guidelines regarding the provision of care. |

10. The Committee also notes that the Bill provides an alternative model to the payment of damages, by providing for treatment of care needs for catastrophically injured persons that is capable of responding to actual rather than predicted care needs and is part of a scheme to provide for a greater range of catastrophically injured persons.
11. The Committee refers to Parliament the question of whether providing for persons to become lifetime participants in the Scheme, and thereby disentitling them from obtaining damages for treatment and care, without the person's consent, unduly trespasses on personal rights and liberties.

Deeming fault: cl 7B Motor Accidents Compensation Amendment Bill

16. The Committee has written to the Minister to seek his advice as to whether the deeming of fault under clause 7B may have legal consequences for the blameless driver.
17. The Committee refers to Parliament the question of whether the labelling of a blameless driver as "at fault" for the purposes of the Act may inappropriately trespass on a blameless driver's right not to have his or her reputation needlessly impugned.

Assessor qualifications: Parts 3 & 4, Motor Accidents (Lifetime Care and Support) Bill

22. The Committee notes that, for a right of appeal to be effective, the panel hearing the matter must be sufficiently competent to properly consider the issues raised.
23. The Committee has written to the Minister to seek his advice as to why there is no requirement that panels dealing with disputes regarding eligibility and treatment and care needs must include a person with suitable legal expertise.
24. The Committee refers to Parliament the question of whether not requiring such panels to include a person with suitable legal expertise makes rights, liberties or obligations unduly dependent upon decisions with unsafe review procedures.

LTCS Guidelines: cl 58 Motor Accidents (Lifetime Care and Support) Bill

29. The Committee notes that the Bill delegates to the Authority the power to make guidelines providing for matters fundamental to the ongoing provision of catastrophically injured persons, including the eligibility criteria for participation in the Scheme, the assessment of treatment and care needs, and the types of treatment and care that are covered by the Scheme.
30. The Committee notes that any such guidelines are disallowable by either House of Parliament, although they are not reviewable by the Legislation Review Committee.

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| 31. The Committee refers to Parliament the question of whether the Bill inappropriately delegates legislative power, or insufficiently subjects the exercise of that power to parliamentary scrutiny. |
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5. Protection of the Environment Operations Amendment (Waste Reduction) 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. Royal Rehabilitation Centre Sydney Site Protection Bill 2006

Retrospectivity: cl 5

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| 10. The Committee will always be concerned to identify the retrospective effects of legislation which may impact adversely on any person. |
| 11. The Committee notes that legislatively revoking a declaration duly made under the law trespasses upon a person's right to order his or her affairs in accordance with the current law. |
| 12. The Committee refers to Parliament the question of whether providing for the revocation of any declaration under s 75B of the Environmental Planning and Assessment Act 1979 in relation to the site unduly trespasses on personal rights and liberties. |

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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