



Unconfirmed Minute Extracts of Proceedings of the Legislation Review Committee (No. 23)

01:32 PM, Tuesday 21 August 2012

Room 1254

Parliament House

Members Present

Mr Bromhead (Chair), Mr Flowers, Ms Mihailuk, Mr Moselmane, Dr Phelps and Mr Shoebridge

1. Apologies

An apology was received from Dr Lee and Mr Edwards.

2. Confirmation of Minutes

Resolved, on the motion of Mr Flowers, seconded Dr Phelps:

'That the minutes of the meeting held on 14 August 2012 be confirmed and tabled, and that appropriate minute extracts be published on the Committee's website.'

3. Consideration of Bills without comments

Resolved, on the motion of Dr Phelps, seconded Mr Flowers:

"That the Committee not comment under section 8A(1) of the *Legislation Review Act 1987* on the following Bills:

- NSW Jobs Commission Bill 2012
- State Senate Bill 2012"

4. Consideration of Bills with comments (made under section 8A(1) of the *Legislation Review Act 1987*)

Mr Shoebridge moved that the draft report on the Crime Commission Bill 2012 be amended to omit the following words "the Committee considers clauses 36(5) and 37 to be reasonable in the circumstances" from the conclusion immediately following paragraph 37 of that draft report.

Discussion ensued. Question put.

The Committee divided.

Ayes: three (Mr Shoebridge, Ms Mihailuk and Mr Moselmane)

Noes: four (Mr Bromhead, Mr Flowers, Dr Phelps)

The Chair exercised his casting vote.

Motion negatived.

Resolved, on the motion of Dr Phelps, seconded Mr Flowers:

"That the Committee adopt the draft report on Crime Commission Bill 2012 unamended."

Resolved, on the motion of Dr Phelps, seconded Mr Flowers:

"That the Committee adopt the draft report on Crimes Legislation Amendment Bill 2012."

Mr Shoebridge moved that the draft report on the Courts and Other Legislation Amendment Bill 2012 be amended to include the following text immediately following the concluding paragraph numbered 32 of that draft report:

"Access to information"

The Committee refers to Parliament whether removing the statutory requirement that an application for probate or administration is to be published in a newspaper, and enable publication to be made by other means, inappropriately delegates legislative power."

Discussion ensued. Question put.

The Committee divided.

Ayes: six (Mr Bromhead, Mr Flowers, Ms Mihailuk, Mr Moselmane, Dr Phelps and Mr Shoebridge)

Noes: none

Passed.

Resolved, on the motion of Mr Shoebridge, seconded Ms Mihailuk:

"That the Committee adopt the draft report on Courts and Other Legislation Amendment Bill 2012 as amended."

Resolved, on the motion of Dr Phelps, seconded Mr Flowers:

"That the Committee adopt the draft report on Fines Amendment Bill 2012."

Dr Phelps moved that the draft report on the Interpretation Amendment (International Human Rights Obligations) Bill 2012 be amended to include the following text immediately following the text "issues considered by committee:

"Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Transfer of legislative power to the judiciary

The Committee is concerned that the practical effect of this Bill would be to vest legislative (or quasi-legislative) powers in the judiciary. Allowing the judiciary to use external treaties for interpretive purposes – in the absence of Australian legislative enactment of those treaties or their mention in the contested Act – effectively permits the creation of new laws that may not have been the intention of the Parliament in the original Act. Indeed, the propose Bill indicates that international obligations under a treaty may be used by the judiciary to override the plain words of a statute, not merely in the case of ambiguity or obscurity but in any circumstance."

Discussion ensued. Question put.

The Committee divided.

Ayes: three (Mr Bromhead, Mr Flowers, Dr Phelps)

Noes: three (Mr Shoebridge, Ms Mihailuk and Mr Moselmane)

The Chair exercised his casting vote.

Motion passed.

"That the Committee adopt the draft report on Interpretation Amendment (International Human Rights Obligations) Bill 2012 as amended."

Resolved, on the motion of Dr Phelps, seconded Mr Flowers:

"That the Committee adopt the draft report on Succession Amendment (International Wills) Bill 2012."

5. Legislation Review Digest

Resolved, on the motion of Dr Phelps, seconded Mr Flowers:

'That the Committee adopt the *Legislation Review Digest* number 22 as amended and that it be signed by the Chair and presented to the House.'

6. General Business

None.

7. Next meeting

The Committee was adjourned at 1:58 PM until 8:30 AM on 4 September 2012 in Room 1254.