



SUMMARY OF CONCLUSIONS

***LEGISLATION REVIEW DIGEST* No 6 of 2005**

23 May 2005

Legislation Review Digest No 6 of 2005 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 3 May 2005 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Appropriation (Budget Variations) Bill 2005**
- **Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005**
- **Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005**
- **Fair Trading Amendment (Responsible Credit) Bill 2005**
- **Fisheries Management Amendment (Catch History) Bill 2005**
- **Workplace Surveillance Bill 2005**

Correspondence on Regulations includes:

- **Occupational Health and Safety Amendment (Transitional) Regulation 2004**

Summary of Conclusions

SECTION A: Comment on Bills

1. Appropriation (Budget Variations) Bill 2005

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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. Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005

Rights associated with the Rule of Law: Schedule 1 Amendment of *Crimes (Sentencing Procedure) Act 1999*

Retroactivity

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| 35. | The Committee notes that by removing Blessington's right to have his application for redetermination determined until he has served at least 30 years of his sentence, the Bill removes whatever chance he currently has of being released on licence before that time. |
| 36. | It may be expected that legislative and administrative changes to systems of parole and remissions will affect persons serving long sentences. However, extending the period within which an application for redetermination is to be determined from after 8 to after 30 years of imprisonment is to make a significant adverse change. |
| 37. | The Committee notes that the resulting regime, whereby the possibility of a very limited right to release only accrues after serving 30 years of a sentence, is much harsher than a "life sentence" at the time Blessington committed the relevant crimes. |
| 38. | The Committee also notes that it is a fundamental human right expressed in Article 15 of the ICCPR and in the common law that a harsher penalty should not be imposed against a person than the one that was applicable at the time that the offence was committed. |
| 39. | The Committee further notes that this right is recognised to be of such importance that, under the European Convention of Human Rights, it is one of the few non-derogable rights. |
| 40. | The Committee refers to Parliament the question as to whether the Bill unduly trespasses on a person's fundamental right not to have a harsher penalty imposed than the one that was applicable at the time the offence was committed. |

Relatively general and prospective

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| 47. | The Committee notes that, while a recommendation by a sentencing judge made prior to 1997 would indicate that the person being sentenced had committed a heinous crime, the appropriateness of such a comment as a criterion for the mandatory application of the strict redetermination regime increased by the Bill may be questioned on the basis that such comments: |
| - | had no statutory basis at the time; |
| - | were not reviewable at the time; |

- would not at the time have had any legal force regarding whether a prisoner should be released on licence;
 - were often made without hearing evidence on sentence or submissions; and
 - since they were made on the impulse of the judge, were unlikely to have been made in the sentencing of many, if not most, of those who had committed heinous crimes.
48. The Committee refers to Parliament the question as to whether the Bill, by extending the application of the regime based on such “recommendations” and removing the possibility of effective review of such “recommendations”, unduly trespasses on the right to equality before the law.
50. The Committee refers to Parliament the question as to whether the Bill unduly trespasses on Blessington’s right to enjoy the “fruits of victory” in judicial proceedings.

Undue delay: proposed cl 21(2)

57. The Committee refers to Parliament the question as to whether the Bill requiring that Blessington’s application for redetermination made in 1996 not be determined until 2019 unduly trespasses on his right to have a criminal proceeding affecting his liberty determined within a reasonable time.

***Ad hominem* legislation**

63. The Committee notes that the Bill is specifically aimed at ensuring that Blessington remains in prison.
64. The Committee further notes that the separation of the legislative and judicial powers, while not an explicit requirement of the Constitution of New South Wales, is an important protection against political interference in personal rights, particularly in relation to criminal matters.
65. The Committee also notes that making laws for the purpose of ensuring Blessington’s ongoing imprisonment trespasses on his right to have his rights determined by an independent arbiter according to the rule of law.
66. The Committee refers to Parliament the question as to whether the Bill, by changing the law to ensure the continuing detention of Blessington, unduly trespasses on his right to have the length of his sentence determined by an independent arbiter according to the rule of law rather than by legislative intervention by the Parliament.

Convention on the Rights of the Child

72. The Committee notes that the Convention on the Rights of the Child, to which Australia is a party, requires that life imprisonment without the possibility of release shall not be imposed for offences committed by persons below eighteen years of age.

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| 73. | The Committee notes that the Bill ensures that there is negligible prospect of Blessington ever being released for a crime he committed when 14 years of age. |
| 74. | The Committee considers that in doing so the Bill is contrary to the spirit of the Convention on the Rights of the Child. |
| 75. | The Committee has written to the Attorney General to seek his advice as to whether the Bill contravenes Australia's obligations under that Convention, and if so, the justification for that contravention. |
| 76. | The Committee refers to Parliament the question as to whether the Bill unduly trespasses on the right to not be imprisoned for life for a crime committed while a child. |

Nullifying the right to appeal: Schedule 1[1]

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| 85. | The Committee notes that, under the Act, judicial comments while sentencing that subsequently have been made to comprise a non-release recommendation give those comments the character of an order that the offender shall never be released. |
| 86. | The Committee notes that the Bill renders any judicial review of such comments ineffective in restoring any rights affected under the Act by such comments. |
| 87. | The Committee considers that, just as any decisions or orders affecting the liberty of a person should be subject to judicial review, so any comments which are later given the character of orders should also be subject to such review. |
| 88. | The Committee refers to Parliament the question as to whether the Bill, by effectively denying any right to review non-release recommendations, trespasses on the right to have decisions affecting a person's liberty subject to judicial review. |

3. Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005

Broad powers that prevail over primary legislation: Proposed section 32H

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| 7. | The Committee will always be concerned to identify when a Bill provides that regulations should modify the application of or prevail over an Act. |
| 8. | However, given that the regulation making powers are limited to procedural issues relating to the claims process, the initial amendments to the regulation are included in the Bill, and the Parliament maintains the power to disallow any subsequent amendments, the Committee does not consider that proposed s 32H comprises an inappropriate delegation of legislative power. |

4. Fair Trading Amendment (Responsible Credit) Bill 2005*

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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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5. Fisheries Management Amendment (Catch History) Bill 2005*

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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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6. Workplace Surveillance Bill 2005

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| 20. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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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.

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Chairman