



SUMMARY OF CONCLUSIONS
LEGISLATION REVIEW DIGEST No. 4 of 2007
23 October 2007

Legislation Review Digest No. 4 of 2007 contains the Legislation Review Committee's consideration of Bills introduced into Parliament in the sitting week beginning 15 October 2007 and any reports on regulations since the previous *Digest*.

The Bills reported on:

- Animals (Regulation of Sale) Bill 2007*
- Bail Amendment Bill 2007
- Courts Legislation Amendment Bill 2007
- Crimes (Sentencing Procedure) Amendment Bill 2007
- Criminal Legislation Amendment Bill 2007
- Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Bill 2007
- Evidence Amendment Bill 2007
- Food Amendment Bill 2007
- Law Enforcement (Powers and Responsibilities) Amendment Bill 2007
- Roads Amendment (Lane Cove Tunnel Filtration) Bill 2007*
- Summary Offences Amendment (Spray Paint Cans) Bill 2007
- Tow Truck Industry Amendment Bill 2007

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Animals (Regulation of Sale) Bill 2007*

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| 15. The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</i> |
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2. Bail Amendment Bill 2007

Issue: Excessive Punishment – Clause 1 of Schedule 1 Amendments – Section 8B Presumption against bail for serious firearms and weapons offences

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| 9. The Committee asks Parliament to consider whether the extension of a presumption against bail in respect of offences against sections 44A and 62 of the <i>Firearms Act 1996</i> , trespasses unduly on personal rights and liberties, such as the presumption of innocence. |
| 11. The Committee asks Parliament to consider whether the limits on the number of bail applications may trespass unduly on personal rights and liberties, such as the right to be treated as though innocent. However, the Committee notes that this section does not affect the power of a court to review a decision in relation to bail under Division 2 of Part 6 or the right of a person to request such a review. |

Issue: Retrospectivity – Clause 4 of Schedule 1 Savings and transitional provisions – Proposed Section 36

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| 14. The Committee asks Parliament to consider whether the retrospective effect of this amendment may trespass unduly on personal rights and liberties, where an accused person would not have a presumption against bail in respect of the alleged commission of the particular firearms offences before the commencement of the amending legislation. |
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Issue: Retrospectivity – Clause 4 of Schedule 1 Savings and transitional provisions – Proposed Section 37 - Limit on bail applications

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| 17. The Committee asks Parliament to consider whether the retrospective effect of this amendment on the limit on bail applications may trespass unduly on personal rights and liberties, with regard to bail applications made before the commencement of this amending legislation. |
| 19. The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation instead of on assent, is an inappropriate delegation of legislative power. |

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| 20. The Committee notes that the Bill is to commence on proclamation and understands that this is so the courts and the legal profession can be advised of changes before they take effect. |
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3. Courts Legislation Amendment Bill 2007

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| 12. The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</i> |
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4. Crimes (Sentencing Procedure) Amendment Bill 2007

Retrospectivity: Schedule 1[16]

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| 13. The Committee will always be concerned to identify the retrospective effects of legislation that may have an adverse impact on a person. |
| 14. The Committee notes the right established by Article 15 of the <i>International Covenant on Civil and Political Rights</i> that a person not be subject to a heavier penalty than what was applicable at the time of the commission of the offence. |
| 15. Accordingly, the Committee concludes that the rights and liberties of such persons are unduly trespassed. |

Commencement by proclamation: Clause 2

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| 17. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power. |
| 18. The Committee notes that the Bill is to commence on proclamation and understands that this is so the courts and the legal profession can be advised of changes before they take effect. |

5. Criminal Legislation Amendment Bill 2007

Double jeopardy: Schedule 1[10]

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| 16. It is the opinion of the Committee that there are sound reasons for the State not being able to make repeated attempts to convict an individual for an alleged offence. |
| 17. The Committee notes that the proposed amendments to s 208 of the <i>Criminal Procedure Act</i> would not prevent any later proceedings in any court for the same matter against the same person, if the previous proceedings were withdrawn by the prosecution. |

18. However, the Committee notes that s 208 refers to circumstances where the matter was withdrawn by the prosecution rather than a situation where the accused was previously convicted or acquitted of the charges.
19. Accordingly, the Committee asks Parliament to consider whether the rights and liberties of such persons are unduly trespassed.

Reversal of onus of proof: Schedule 4[1] and [4]

26. The Committee notes that these offences place the onus of proof on the defendant in relation to establishing that it was not unlawful for him or her to possess instructions for the manufacture or production of a prohibited drug, or more than a set quantity of a prohibited drug precursor. This is a key element of the offence.
27. The Committee notes that the presumption of innocence is a fundamental right. Reversing the onus of proof is inconsistent with this right.
28. However, the Committee notes that a reversal of the onus of proof may be appropriate in some circumstances particularly where knowledge of the factual circumstances is in the possession of one party.
29. Accordingly, the Committee asks Parliament to consider whether the reversal of the onus of proof in these circumstances unduly trespasses on rights and liberties.

Commencement: Clause 2

32. The Committee has concerns about parts of the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power.

6. Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Bill 2007

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

7. Evidence Amendment Bill 2007

Commencement by proclamation: Clause 2

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| <p>11. The Committee will usually be concerned if a Bill is to commence on proclamation rather than on assent. However, given the need to provide the legal profession with time to understand the amendments and the expressed intention to determine the commencement date in consultation with relevant parties, the Committee believes that providing for the Bill to commence on proclamation is an appropriate delegation of legislative power.</p> |
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8. Food Amendment Bill 2007

Issue: Privacy – Clause 17 of Schedule 1 – Proposed section 136A Certain information may be provided to and by Food Authority

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| <p>14. The Committee notes some of this information to be exchanged between the enforcement agencies and NSW Health in the proposed amending section, may include personal information such as the details of a food business from which the identify of a person can be ascertained or personal health information such as the symptoms and recent food consumption history of an affected individual. The amendment will enable councils, the Food Authority, the Department of Health and any public health organisation as defined in the <i>Health Services Act 1997</i> to lawfully exchange such information.</p> <p>15. However, the Committee also notes that such an exchange of information is limited to the circumstances where the agency providing the information considers it as essential to exercise its functions under the Food Act and the <i>Public Health Act 1991</i>.</p> <p>16. Therefore, the Committee considers this to be an appropriate balance between the need to protect the public from illness caused by contaminated food and the need to ensure the privacy of individuals, and is not an undue trespass to personal rights and liberties.</p> <p>18. The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.</p> |
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9. Law Enforcement (Powers and Responsibilities) Amendment Bill 2007

Commencement by proclamation: Clause 2

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| 10. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power. |
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10. Roads Amendment (Lane Cove Tunnel Filtration) Bill 2007*

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| 6. The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</i> |
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11. Road Transport (General) Amendment (Written-off Vehicles) Bill 2007

Strict liability: Schedule 1[5] – Proposed sections 254, 256, 257, 258, 259, 264, 267, and 268

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| 17. The Committee stresses that the presumption of innocence is a fundamental right. It highlights that the imposition of strict liability removes the requirement that the prosecution prove the defendant intended to commit the offence. |
| 18. However, the imposition of strict liability may be acceptable in circumstances where it is designed to protect the public interest and after consideration of any defences available and the type of penalties that may be imposed. |
| 19. Given the public interest in ensuring compliance with proposed Part 6.2, the existence of some safeguards, and the maximum penalty that may be imposed is 20 penalty units, the Committee concludes that personal rights and liberties are not unduly trespassed by the inclusion of strict liability offences. |

Commencement by proclamation: Clause 2

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| 21. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement on proclamation rather than on assent is an inappropriate delegation of legislative power. |
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12. Summary Offences Amendment (Spray Paint Cans) Bill 2007

**Issue: Strict Liability – Clause 4 of Schedule 1 – Proposed Section 10E
Confiscation of spray paint cans from minors**

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| 11. | The Committee concludes that personal rights and liberties are not unduly trespassed by the strict liability offence given the inclusion of the following, balanced with the public interest of preventing graffiti: |
| 12. | - a defence of lawful excuse for the possession of a spray paint can; |
| 13. | - inclusion of procedures to be followed with regard to the seizure of spray paint cans; |
| 14. | - the procedure to be followed after their seizure, including if the spray paint can is not immediately disposed, it must then be kept for a period of 7 days to allow the person to make an application for its return; |
| 15. | - police officers to give reasons for seizing a spray paint can; |
| 16. | - police officers to inform persons from whom the spray paint can is seized with a receipt specifying details of the seized spray paint can and claim for the seized can; and |
| 17. | - provision to make an application to court for the return of the seized spray paint can. |

13. Tow Truck Industry Amendment Bill 2007

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| 13. | The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power. |
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