



SUMMARY OF CONCLUSIONS
LEGISLATION REVIEW DIGEST No. 6 of 2007
13 November 2007

Legislation Review Digest No. 6 of 2007 contains the Legislation Review Committee's consideration of Bills introduced into Parliament in the sitting week beginning 5 November 2007 and any reports on regulations since the previous *Digest*.

The Bills reported on:

- Assisted Reproductive Technology Bill 2007
- Coal Acquisition Legislation Repeal Bill 2007
- Consumer Claims Amendment Bill 2007
- Crimes Amendment (Consent – Sexual Assault Offences) Bill 2007
- Crimes Amendment (Sexual Procurement or Grooming of Children) Bill 2007
- Murray-Darling Basin Amendment Bill 2007
- Police Amendment Bill 2007
- Community Justice Centres Amendment Bill 2007
- Surveillance Devices Bill 2007

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Assisted Reproductive Technology Bill 2007

Issue: Privacy – Part 2 Division 2 – Provision of ART Services; Part 2 Division 3 – Use of Gametes and Part 3 – Central ART Donor Register

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| <p>17. The Committee considers that an appropriate privacy balance has been achieved between the privacy rights and needs of donor-conceived children, parents, donors, ART providers, and the primacy of the best interests of children conceived using the assisted reproductive technology, with respect to circumstances in aiming to save their lives or preventing serious damage to their health. Therefore, the Committee does not consider personal rights such as privacy concerns have been unduly trespassed.</p> |
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Issue: Onus of Proof – Part 5 Clause 53(1) Offences; Part 7 Clause 68 Onus of Proof Concerning Reasonable Excuse

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| <p>20. The Committee notes that Part 5 sets out the appointment of inspectors with the issuance of a certificate of authority to authorise the inspector's exercise of functions; limitation on self-incrimination; search warrants applications; and procedures for disallowance of seizures including applications to the Local Court.</p> <p>21. The Committee considers that given the above context of procedural rights, along with monetary penalties rather than imprisonment, as well as the overall aims of the Bill to recognise the rights of individuals to have control over the use of their genetic material, to promote the best interests of the child, and to prevent the commercialisation of human reproduction and commercial surrogacy, the reversal onus of proof on defendants that they had a reasonable excuse, does not trespass unduly on personal rights.</p> |
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Issue: Retrospectivity – Part 4 Surrogacy - Clause 45 Surrogacy Agreements Void

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| <p>23. This includes agreements made before this legislation commences (clause 45). The Committee will always be concerned with any retrospective effect of legislation which may impact on personal rights. However, since a key part of the objective of this Bill is to prevent the commercialisation of human reproduction by prohibiting commercial surrogacy, which is also consistent with existing law, by making all surrogacy arrangement, void and unenforceable, the Committee is of the view that in the circumstances, the retrospective effect of the proposed section does not trespass unduly on personal rights.</p> |
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Issue: Provide the executive with unfettered control over the commencement of an Act - Part 1 Clause 2 - Commencement by proclamation.

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| 24. | This Bill proposes to commence by proclamation. This is because a lengthy and detailed implementation period is required, during which the Department of Health will consult with stakeholders on regulations under the Bill. The Committee notes that it is important for stakeholders to be involved in the development of the donor register and that they are provided with information on their rights and obligations before the Act commences. Therefore, the Committee considers in these circumstances, the Bill commencing by proclamation rather than on assent, is not an inappropriate delegation of legislative power. |
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2. Coal Acquisition Legislation Repeal Bill 2007

Commencement by proclamation: Clause 2

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| 8. | The Committee will usually be concerned if a Bill is to commence on proclamation rather than on assent. However, given the need to allow for a transitional period, the Committee believes that providing for parts of the Bill to commence on proclamation is an appropriate delegation of legislative power. |
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3. Community Justice Centres Amendment Bill 2007

Commencement by proclamation: Clause 2

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| 14. | The Committee will usually be concerned if a Bill is to commence on proclamation rather than on assent. However, given the need to provide time for training and to enable community justice centres to prepare for the introduction of a national accreditation system for mediators, the Committee believes that providing for the Bill to commence on proclamation is an appropriate delegation of legislative power. |
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4. Consumer Claims Amendment Bill 2007

Commencement by proclamation: Clause 2

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| 11. | Although there may be good reasons why such discretion is required, 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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5. Crimes Amendment (Consent – Sexual Assault Offences) Bill 2007

Issue: Clause 2 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

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| 17. Although there may be good reasons why such discretion is required, 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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6. Crimes Amendment (Sexual Procurement Or Grooming Of Children) Bill 2007

Issue: Clause 2 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

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| 12. Although there may be good reasons why such discretion is required, 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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7. Murray-Darling Basin Amendment Bill 2007

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| 10. The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</i> |
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8. Police Amendment Bill 2007

Commencement by proclamation: Clause 2

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| 13. Although there may be good reasons why such discretion is required, 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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9. Surveillance Devices Bill 2007

Right to privacy: Clause 20

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| 31. The Committee notes that the appropriate use of surveillance devices can assist with the investigation and prosecution of offences. However, this needs to be balanced against the need to ensure that individuals are protected from arbitrary interference with their privacy. |
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- 32. The Committee notes that the Bill contains numerous safeguards to ensure that surveillance device warrants are only issued in appropriate circumstances.**
- 33. However, the Committee highlights that the maximum period for which a surveillance device warrant is in force has been set at 90 days as opposed to 30 days, with the possibility of its extension where necessary, as recommended by the NSW Law Reform Commission. The Committee was informed by the Minister's Office that the maximum period was set at 90 days as 30 days has been found to be insufficient in the majority of cases. Allowing for a greater maximum period saves resources by reducing the number of applications for an extension.**
- 34. Accordingly, the Committee asks Parliament to consider whether setting the maximum duration period for a surveillance devices warrant at 90 days as opposed to 30 days unduly trespasses on the privacy of individuals.**

Commencement by proclamation: Clause 2

- 37. The Committee will usually be concerned if a Bill is to commence on proclamation rather than on assent. However, given the need to provide time for training and the establishment of administrative procedures, the Committee believes that providing for the Bill to commence on proclamation is an appropriate delegation of legislative power.**