



SUMMARY OF CONCLUSIONS

***LEGISLATION REVIEW DIGEST* No. 10 of 2005**

20 September 2005

Legislation Review Digest No. 10 of 2005 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 12 September 2005 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Anti-Discrimination Amendment (Religious Tolerance) Bill 2005***
- **Civil Liability Amendment (Offender Damages Trust Fund) Bill 2005**
- **Crimes Amendment (Protection of Innocent Accused) Bill 2005***
- **Defamation Bill 2005**
- **Duties Amendment (Abolition of Vendor Duty) Bill 2005**
- **Local Government Amendment (Stormwater) Bill 2005**
- **Property Legislation Amendment Bill 2005**
- **Protection of the Environment Operations Amendment Bill 2005**
- **Security Interests in Goods Bill 2005**
- **Sporting Venues (Offenders Banning Orders) Bill 2005**
- **Standard Time Amendment (Daylight Saving) Bill 2005**

Correspondence on Bills includes:

- **Child Protection (Offender Prohibition Orders) Bill 2004**
- **Road Transport (General) Bill 2004**

Correspondence on Regulations includes:

- **Hunter-Central Rivers Catchment Management Authority Regulation 2005**

Summary of Conclusions

SECTION A: Comment on Bills

1. Anti-Discrimination Amendment (Religious Tolerance) Bill 2005*

Freedom of speech

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| 22. | The Committee is of the view that the rights to free speech and to freely practice religion or no religion are fundamental human rights essential to an open and democratic society. As such, they should not be restricted except on compelling public interest grounds. |
| 23. | The Committee is also of the view that preventing religious vilification, which is inconsistent with an open and democratic society and which can have a serious and detrimental effect on individuals and society as a whole, is a highly compelling public interest reason to limit free speech. |
| 24. | The Committee notes the safeguards in the Bill to avoid undue restriction on free speech while protecting people from vilification. |
| 25. | Having regard to these safeguards and the compelling public interest in preventing and punishing religious vilification, the Committee is of the view that the Bill does not unduly trespass on the right to free speech. |

2. Civil Liability Amendment (Offender Damages Trust Fund) Bill 2005

Property rights: Clause 26L

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| 19. | The Committee is of the view that, having regard to the mitigating provisions in the Bill, the trespass on an offender's right to deal freely with his or her property is not undue. |
| 22. | The Committee is of the view that, having regard to the limitations in the Bill, it does not unduly trespass on an offender's right to be free from discrimination. |

3. Crimes Amendment (Protection of Innocent Accused) Bill 2005*

Strict liability: Proposed section 583

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| 11. | The Committee is of the view that, except in extraordinary circumstances, it is inappropriate for an offence with such heavy penalties to be an offence of strict liability. Therefore, the Committee is of the view that proposed section 583 trespasses on personal rights and liberties. |
| 12. | The Committee refers to Parliament the question as to whether this trespass on rights and liberties is undue. |

Right to free speech

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| 14. | The Committee refers to Parliament the question whether the new offence under proposed section 583 is an undue trespass on the fundamental right to free speech. |
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4. Defamation Bill 2005

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| 37. | The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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5. Duties Amendment (Abolition of Vendor Duty) Bill 2005

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| 2. | The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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6. Local Government Amendment (Stormwater) Bill 2005

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| 3. | The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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7. Property Legislation Amendment Bill 2005

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| 3. | The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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8. Protection of the Environment Operations Amendment Bill 2005

Strict liability offences: Schedule 1, Clause 66 (proposed s 142) & Clause 70 (proposed s 144AA)

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| 15. | The Committee is of the view that strict liability is a very serious matter and should be: <ul style="list-style-type: none">- imposed only after careful consideration of all available options;- subject to defences wherever possible where contravention appears reasonable; and- have only limited monetary penalties and no terms of imprisonment. |
| 16. | The Committee notes that monetary penalties that do not make it uneconomical to commit offences may fail to provide adequate disincentives. |
| 17. | The Committee refers to Parliament whether the penalties up to \$1,000,000 for strict liability offences under the Bill inappropriately trespasses on personal rights and liberties. |

9. Security Interests in Goods Bill 2005

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| 7. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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10. Sporting Venues (Offenders Banning Orders) Bill 2005

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| 6. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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11. Standard Time Amendment (Daylight Saving) Bill 2005

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| 2. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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SECTION B: Ministerial Correspondence — Bills Previously Considered

12. Child Protection (Offenders Prohibition Orders) Bill 2004

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| 4. The Committee thanks the Minister for his reply. |
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13. Road Transport (General) Bill 2004

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| 6. The Committee thanks the Minister for his response. |
| 7. The Committee is disappointed that the Minister has again not answered its question of why an authorised officer need not be a member of staff of a public authority. |

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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The Hon Peter Primrose MLC
Chairman