



SUMMARY OF CONCLUSIONS

***LEGISLATION REVIEW DIGEST* No. 10 of 2006**

5 September 2006

Legislation Review Digest No. 10 of 2006 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 29 August 2006 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Apiaries Amendment Bill 2006;**
- **Channel 7 Former Epping Site Protection Bill 2006*;**
- **Crimes Legislation Amendment (Gangs) Bill 2006;**
- **Deer Bill 2006;**
- **Parliamentary Electorates and Elections Amendment Bill 2006;**
- **Police Amendment (Police Promotions) Bill 2006; and**
- **Police Integrity Commission Amendment Bill 2006.**

Correspondence on Bills includes:

- **Commission for Children and Young People Amendment Bill 2006.**

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Apiaries Amendment Bill 2006

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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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2. Channel 7 Former Epping Site Protection Bill 2006*

Retrospectivity: CI 5(3)

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| 9. The Committee will always be concerned to identify the retrospective effects of legislation which may adversely impact on any person. |
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| <p>10. The Committee notes that legislatively revoking a declaration duly made under the law trespasses upon a person's right to order his or her affairs in accordance with the current law.</p> <p>11. The Committee refers to Parliament the question of whether providing for the revocation of any declaration made under s 75B of the <i>Environmental Planning and Assessment Act 1979</i> in relation to the site unduly trespasses on personal rights and liberties.</p> |
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3. Crimes Legislation Amendment (Gangs) Bill 2006

Clarity of criminal laws: Proposed Part 3E of the *Crimes Act 1900*

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| <p>38. The Committee notes that the Bill aims to undermine the foundations of criminal gangs by making it an offence to knowingly or recklessly participate in a criminal group, where such participation contributes to the occurrence of any criminal activity.</p> <p>39. The Committee is concerned that the meaning of "participate" in proposed s 93IK is unclear and may result in criminal liability for participation in a group to arise in circumstances where a person did not intend to advance the criminal objectives of the group as set out in proposed s 93IJ.</p> <p>40. The Committee is also concerned that meaning of the phrase "contributes to the occurrence of any criminal activity" in proposed s 93IK is unclear and may apply to conduct not connected to the commission of a particular time on a particular occasion.</p> <p>41. The Committee is concerned that this lack of clarity may allow a person to be convicted of the proposed offence under s 93IK, which carries a maximum penalty of 5 years' imprisonment, on the basis of conduct which is relatively peripheral to the commission of a minor summary offence by others, where the accused merely foresees that it is possible (ie, being reckless) that his or her conduct will contribute to the occurrence of such a crime in the future.</p> <p>42. The Committee has written to the Minister seeking his advice as to whether, under proposed Part 3E:</p> <ul style="list-style-type: none">- it is intended that a person who knows that a client is a member of a criminal group and foresees that his or her services may contribute to the occurrence of criminal activity, although not intending to advance the criminal objectives of the group, should be liable;- a person must intend to pursue the objectives of the criminal group in order to be defined as a "participant";- it is necessary for the prosecution to prove that the accused knowingly or recklessly contributed to the commission of a specific crime; and |
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| <ul style="list-style-type: none">- the term “contribute” replicates the traditional complicity formulation of “counselling, procuring, aiding or abetting”. <p>43. The Committee refers to Parliament whether the lack of clarity in the Bill unduly trespasses on the individual right to legal certainty.</p> |
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Power to disperse groups: s 87MA

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| <p>53. The Committee notes that the special powers under the Bill and the manner in which they may be exercised have the potential to significantly trespass on the personal right of peaceful assembly.</p> <p>54. The Committee considers that such special powers must have sufficient checks to ensure that they are only exercised when required to ensure public safety.</p> <p>55. The Committee notes that the authorisation of special powers can be given by the Commissioner of Police or by a Deputy or Assistant Commissioner of Police where the relevant officer has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder.</p> <p>56. The Committee also notes that there are considerable penalties for failing to comply with a direction to disperse.</p> <p>57. The Committee refers to Parliament the question of whether the terms of the Bill unduly trespass upon the right to peaceful assembly.</p> |
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Removal of fortification: Part 16A

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| <p>63. The Committee notes that a structure may be deemed to be a fortification for the purposes of proposed s 210A on the grounds that it could have the effect of preventing or impeding police access to the premises and is “excessive for the particular type of premises”.</p> <p>64. The Committee also notes that the Bill provides that a Local Court may only make a fortification removal order if it is satisfied that there are reasonable grounds to believe that the premises are being used, have been used or are likely to be used in relation to the commission of a serious indictable offence, and the owner of relevant premises must be notified of the intention to remove a fortification.</p> <p>65. The Committee refers to Parliament the question of whether the enforcement of a fortification removal order constitutes an undue trespass on the right to privacy</p> |
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4. Deer Bill 2006

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| 2. 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. Parliamentary Electorates and Elections Amendment Bill 2006

Privacy of personal information: Proposed Part 4, Division 3A

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| 8. The Committee notes the public interest in the permitted uses of the electoral roll set out in the Bill and the significant penalties for inappropriate use of the information. |
| 9. The Committee notes that the Bill includes date of birth as information to be recorded on the roll and available for public inspection and provided to political parties, Members of Parliament, candidates for elections, and, when found to be in the public interest, to other persons on request. |
| 10. The Committee notes that the Bill removes occupation particulars from copies of the roll available for public inspection but allows such information to be included in copies of the roll provided to political parties, Members of Parliament, candidates for elections, and, when found to be in the public interest, to other persons on request. |
| 11. The Committee refers to Parliament the question whether the access provided to the particulars recorded on the roll under the Bill trespasses unduly on the right to privacy. |

6. Police Amendment (Police Promotions) Bill 2006

Review rights to be in subordinate legislation: Schedule 1[5], Proposed s. 79

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| 11. The Committee is of the view that a fair promotions and appointments process should include an adequate system of review and appeal of decisions related to that process. The Bill allows for a process of review and appeal to be established by regulation and the second reading speech makes clear that it is the Government's intention that the regulations will so provide. |
| 12. However, given the importance of a proper review and appeal mechanism for a fair promotions and appointments process, the Committee refers to Parliament the question of whether, to avoid an undue delegation of legislative power, such matters should be provided for in the primary legislation. |

7. Police Integrity Commission Amendment Bill 2006

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| 14. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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SECTION B: Ministerial Correspondence — Bills Previously Considered

8. Commission for Children and Young People Amendment Bill 2005

7. The Committee thanks the Minister for her reply.

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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