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## SUMMARY OF CONCLUSIONS

### ***LEGISLATION REVIEW DIGEST* No. 2 of 2006**

### **7 March 2006**

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*Legislation Review Digest* No. 2 of 2006 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 28 February 2006 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Air Transport Amendment Bill 2006;**
- **Careel Bay Protection Bill 2006\*;**
- **Child Protection (International Measures) Bill 2006;**
- **Environmental Planning and Assessment Amendment Bill 2006;**
- **Fines Amendment (Payment of Victims Compensation Levies) Bill 2006;**
- **Firearms Amendment (Good Behaviour Bonds) Bill 2006\*;**
- **Fisheries Management Amendment Bill 2006;**
- **Land Tax Management Amendment (Tax Threshold) Bill 2006; and the**
- **National Parks and Wildlife (Adjustment of Areas) Bill 2006.**

Correspondence on Bills includes:

- **Smoke-free Environment Amendment Bill 2006.**

## SUMMARY OF CONCLUSIONS

### SECTION A: Comment on Bills

#### 1. **Air Transport Amendment Bill 2006**

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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. Careel Bay Protection Bill 2006\***

### **Retrospectivity: Proposed s 4(1)**

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| 11. | The Committee will always be concerned to identify the retrospective effects of legislation which may impact adversely on any person.  |
| 12. | 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. |
| 13. | The Committee refers to Parliament the question of whether the Bill trespasses on this right   |

## **3. Child Protection (International Measures) Bill 2006**

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| 4. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **4. Environmental Planning and Assessment Amendment Bill 2006**

### **No merits review: proposed s 94EAA**

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| 17. | The Committee considers that, in general, all decisions of an administrative nature should be subject to review. However, in some instances, policy considerations may dictate that an appeal is not necessary or practical.  |
| 18. | The Committee notes that the Bill removes the right to appeal to the Land and Environment Court in respect of the reasonableness of a condition of contributions plan made or amended by the Minister under proposed s 94EAA. |
| 19. | The Committee notes that this denial of merits review is to help secure the certainty of funds so that important infrastructure programs can be implemented.  |
| 20. | The Committee refers to Parliament whether the operation of proposed s 94EAA unduly subjects rights, liberties or obligations to a non-reviewable decision.   |

### **No merits review: proposed Part 4, Division 6, Subdivision 4**

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| 28. | The Committee notes that the Bill does not provide for any appeal rights in relation to the unreasonableness of a decision as to the amount of a special infrastructure contribution. |
| 29. | The Committee refers to Parliament whether proposed s 94EF unduly subjects rights, liberties or obligations to a non-reviewable decision.   |

## **5. Fines Amendment (Payment of Victims Compensation Levies) Bill 2006**

### **Retrospectivity: Schedule 3**

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| 9.  | The Committee will always be concerned to identify the retrospective effects of legislation which may impact adversely on any person.   |
| 10. | However, given that the Bill only effects the means of enforcement of levies owed and not the imposition of such levies, and that the legality of such enforcement is only in doubt due to a legislative oversight, the Committee does not consider that the retrospective validation of the enforcement of compensation levies unduly trespasses upon personal rights and liberties. |

## **6. Firearms Amendment (Good Behaviour Bonds) Bill 2006\***

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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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## **7. Fisheries Management Amendment Bill 2006**

### **Strict liability: Clauses 11, 14, 21, 25, (proposed sections 121, 122 & 122A) and 27 (proposed sections 127E & 127EA)**

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| 10. | The Committee notes that the licensing regime, including requirements for licensees to furnish certain periodic reports, are key elements in the regulation of the commercial fishing industry in NSW, which is aimed at protecting fish stocks, the natural environment and the viability of the commercial fishing industry.  |
| 11. | The Committee is of the view these are important matters of public policy and may justify the imposition of strict liability offences. The Committee is also of the view that it is appropriate to impose monetary penalties that are of sufficient severity to act as a deterrent and preserve the regulatory scheme, so long as this is balanced against the protection of fundamental personal rights and liberties. |
| 12. | The Committee refers to Parliament the question as to whether the penalties imposed for the strict liability offences under this Bill do properly strike that balance, or whether they unduly trespass on personal rights.  |

## **8. Land Tax Management Amendment (Tax Threshold) Bill 2006**

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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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## **9. National Parks and Wildlife (Adjustment of Areas) Bill 2006**

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| 4. | 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**

### **10. Smoke-free Environment Amendment Bill 2004**

6. The Committee thanks the Acting Deputy Director General for his reply.
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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.

Those bills marked with an \* are sponsored by Private Members.

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