



SUMMARY OF CONCLUSIONS

***LEGISLATION REVIEW DIGEST* No 8 of 2005**

20 June 2005

Legislation Review Digest No 8 of 2005 contains the Legislation Review Committee's consideration of bills introduced into Parliament in the sitting week beginning 7 June 2005 and any reports on regulations since the previous *Digest*.

The Bills reported on include:

- **Drug Misuse and Trafficking Amendment Bill 2005**
- **Gaming Machines Amendment Bill 2005**
- **Legal Profession Amendment Bill 2005**
- **Local Government Amendment Bill 2005**
- **Passenger Transport Amendment (Maintenance of Bus Services) Bill 2005**
- **Pawnbrokers and Second-hand Dealers Amendment Bill 2005**
- **State Revenue Legislation Amendment Bill 2005**
- **Statute Law Miscellaneous Provisions Bill 2005**
- **Terrorism Legislation Amendment (Warrants) Bill 2005**

Summary of Conclusions

SECTION A: Comment on Bills

1. Drug Misuse And Trafficking Amendment Bill 2005

Henry VIII clause: proposed new s 44A

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| <p>8. The Committee will always be concerned to identify when rules or regulations may amend Acts.</p> <p>9. However, having regard to the objects of the Act, the potential need for immediate Executive action, and the fact that any such amendments will be subject to disallowance by Parliament, the Committee considers that proposed s 44A does not inappropriately delegate legislative power.</p> |
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2. Gaming Machines Amendment Bill 2005

Strict liability: Schedule 1, clauses 7, 8, 12, 18 and 24 and Schedule 2, clause 1

10. The Committee considers that strict liability offences should only be imposed when clearly in the public interest, and that the severity of punishment should reflect the lack of criminal intent.
11. The Committee notes that the offences created by the Bill are of a regulatory nature in that they are to ensure hoteliers, registered clubs, certain licensees, technicians and casinos comply with their obligations under the Principal Act and the *Casino Control Act*.
12. The Committee notes that a number of the offences for which there are no statutory fault elements have a maximum penalty of 100 penalty units (\$11,000).
13. The Committee has written to the Minister to seek his advice as to the need for penalties of 100 penalty units for offences that do not include a statutory fault element where those penalties may be applied to individuals.

3. Legal Profession Amendment Bill 2005

Strict liability: proposed s 722

9. Given the need for relevant persons to take care not to disclose personal information except if one or more of the circumstances specified in proposed s 722(2) applies, and the limit on any monetary penalty, the Committee does not consider that the lack of an explicit element of criminal intent in proposed s 722(1) trespasses unduly on personal rights and liberties.

Henry VIII clause: proposed s 300(f)

15. The Committee will always be concerned to identify when a provision in a Bill provides for regulations to make or give exemptions from an Act.
16. The Committee notes that proposed s 300(f) provides a broad power of exemption from the requirements of Part 3.1, which relate to trust money and trust accounts. It further notes that regulations under s 300(f) may provide for the giving of exemptions by others, thus envisaging a further delegation of legislative power.
17. The Committee refers to Parliament the question as to whether s 300(f) comprises an inappropriate delegation of legislative power.

4. Local Government Amendment Bill 2005

Freedom of information: Schedule 2, Clause 2.1

21. The Committee is of the view that freedom of information is an important principle of democracy and the rule of law and that individuals have a general right to access information held by government.
22. The Committee is also of the view that the right to freedom of information is not absolute. However, legislation that restricts or removes access to information held by government needs to be justified on strong public interest grounds and such restriction should only be made to the extent necessary to achieve the desired result.
23. The Committee notes the importance of the Department's investigative and complaint handling functions in strengthening the democratic process by exposing corruption and other serious wrongdoing or maladministration by local government. The Committee also notes the importance of enabling the Department to carry out these functions without undue hindrance.
24. The Committee notes that the exemption proposed in this Bill are limited to the Department's investigative and complaint handling functions only.
25. The Committee has written to the Minister for further clarification as to the full scope of the exemption provided for in the Bill and whether the Bill's objects could be achieved by a more limited exemption.
26. The Committee refers to Parliament the question whether the proposed exemption from the *FOI Act* is an undue trespass on the individual right to access information held by government.

5. Passenger Transport Amendment (Maintenance Of Bus Service) Bill 2005

Denial of compensation rights: proposed cl 37(1)(e)

22. The Committee notes that the Bill's amendments preclude any claims for compensation for the implementation of step-in arrangements, thereby trespassing on the personal rights of bus service operators.
23. The Committee further notes that the arrangements can include the termination of a contract and the taking of assets for up to 12 months.
24. The Committee notes that the arrangements can, at the discretion of the Director-General, include certain payments to the existing service providers or third parties.
25. The Committee also notes that, given that failure to comply with a requirement under step-in arrangements is an offence, the denial of compensation rights is particularly significant.

26. The Committee refers to Parliament the question as to whether the exclusion of claims for compensation constitutes an undue trespass on the rights of bus service operators.

Implementation of step-in arrangements: proposed cl 39A

33. The Committee notes that the Director-General is given extensive powers with respect to the implementation and operation of step-in arrangements under the amendments to the Act.

34. The Committee also notes that the Bill does not specify the criteria to which the Director-General is to have reference in exercising these powers.

35. The Committee notes the significant public interest in maintaining continuity of public transport services.

36. The Committee refers to Parliament the question of whether the Bill makes personal rights, liberties and obligations subject to unclear administrative powers.

42. The Committee notes that proposed cl 36(1)(c) excludes from judicial review any decisions of the Director-General in relation to step-in arrangements.

43. The Committee also notes that the rights of bus operators may be dependent upon such decisions concerning the implementation of step-in arrangements.

44. The Committee notes the significant public interest in maintaining continuity of public transport services.

45. The Committee refers to Parliament whether proposed cl 36(1)(c) operates to make personal rights unduly dependent upon non-reviewable decisions.

Notice and determinations in respect of step-in arrangements: proposed cl 39A

48. The Committee notes that the process of determining and implementing step-in arrangements is to be undertaken by the Director-General without any process of Parliamentary scrutiny.

49. The Committee refers to Parliament the question of whether this constitutes an inappropriate delegation of Parliamentary power.

6. Pawnbrokers and Second-hand Dealers Amendment Bill 2005

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

7. State Revenue Legislation Amendment Bill 2005

Privacy: *Fines Act 1996*, Schedule 2, clauses 2 & 3

9. The Committee is of the view that the right to privacy is an important right that should only be abrogated to the extent necessary to achieve the policy objectives of the legislation and only on strong competing public interest grounds.
10. The Committee notes that a principal purpose of the provision is to enable a garnishee order to be enforced. The Committee also notes that disclosure of personal information for this purpose is only authorised in limited and specified circumstances directly related to the object of enforcement of garnishee orders.
11. The Committee is of the view that these clauses do not *unduly* trespass on the individual right to privacy.

Strict liability: Schedule 2, clause 3 [proposed s 117B]

17. The Committee considers that strict liability offences should only be imposed when clearly in the public interest, and that the severity of punishment should reflect the lack of criminal intent.
18. The Committee has written to the Minister to seek his advice as to the need for penalties of 100 penalty units for an offence that does not include a statutory fault element where that penalty may be applied to individuals.
19. The Committee refers to Parliament the question whether the strict liability offence in proposed section 117B, with a maximum penalty of 100 penalty units, unduly trespasses on individual rights.

8. Statute Law (Miscellaneous Provisions) Bill 2005

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

9. Terrorism Legislation Amendment (Warrants) Bill 2005

Covert searches: proposed s 270

40. The Committee notes that the broad covert search powers significantly trespass on the personal right to privacy.
41. The Committee notes that the purpose of these powers is to prevent terrorist activity.
42. The Committee notes that the Bill provides for very significant trespasses on the rights and liberties of persons who are not suspected of being involved in the commission of a terrorist act.

43. The Committee also notes that occupants of premises who are subject to the full search and seizure powers of a warrant are not normally provided with an occupiers notice if they were not at the time believed to be knowingly concerned in the commission of the terrorist act.
44. The Committee also notes that the Bill provides no protection in relation to reasonable responses by occupiers discovering covert intruders who are executing a warrant.
45. The Committee refers to Parliament the question of whether the Bill trespasses unduly on the rights to privacy and property.

Extension of warrants authorising use of listening devices: Schedule 3

47. The Committee notes the Attorney General's comments regarding the longer term nature of investigations into terrorist activities and the strong public interest in the investigation of such activities.
48. The Committee further notes that the use of listening devices is a significant trespass on the right to privacy.
49. The Committee refers to Parliament the question as to whether the extension from 21 days to 90 days of the maximum period for a warrant authorising the use of a listening device trespasses unduly on the right to privacy.

Criminalising association with organisations proscribed by Commonwealth regulation: Schedule 4

61. The Committee notes that freedom of association is a fundamental right that should only be restricted to the extent necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.
62. The Committee notes that Schedule 4 of the Bill criminalises membership of organisations specified as terrorist organisations in regulations made by the Governor-General under s 102.1 of the Commonwealth Criminal Code.
63. The Committee further notes that the definition of "membership" of a terrorist organisation is extremely broad and includes acts extremely remote from any acts of violence.
64. The Committee notes that "membership of a terrorist organisation" under the Bill may be punished by 10 years' imprisonment and exposes a person to the highly intrusive covert search warrant regime in the Bill.
65. The Committee also notes that proposed section 310J(2) reverses the onus of proof.
66. The Committee refers to Parliament the question as to whether Schedule 4 unduly trespasses on the right to freedom of association and the presumption of innocence.

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.

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The Hon Peter Primrose MLC
Chairman