

SUMMARY OF CONCLUSIONS

1. Animal Welfare Legislation Amendment Bill 2009

Issue: Ill and Widely Defined Powers - Schedule 1[4] – Proposed section 30A

- | | |
|-----|--|
| 18. | The Committee understands that proposed 30A provides the Director-General with discretion to disqualify a person (or corporation) from holding an authority under the <i>Exhibited Animals Protection Act 1986</i> for a period of up to five years where the Director General cancels the authority on misconduct grounds. The Committee notes that proposed section 30A defines misconduct grounds by reference to section 30 of the <i>Exhibited Animals Protection Act 1986</i> . However, the Committee believes that the definition of misconduct grounds in proposed section 30A could be more clearly defined. |
|-----|--|

2. Major Events Bill 2009

Issue: Oppressive official powers; Freedom of Speech and Right to Peaceful Assembly – Part 4 – Facilitation of Major Events – clause 46 (4)(e) – Directions to leave:

- | | |
|-----|--|
| 26. | The Committee appreciates the need for people to behave in a safe and orderly manner at major events and understands the provisions for a person who has contravened a provision, or has failed to comply with a request or direction, or is causing a significant disruption or behaving in an offensive manner, or in a manner likely to endanger the person or another person as set out under clauses 46 (4) (a) to (d) above. |
| 27. | However, the Committee is concerned with the scope of clause 46 (4)(e), concerning the person who “ <i>is about to contravene</i> a provision of this Act or the regulations” but who has not already contravened a provision or is not contravening a provision yet. |
| 28. | The Committee, therefore, holds concerns that clause 46 (4)(e) of Part 4, could appear oppressive and may trespass unduly on individual rights and liberties, with the potentially unintended impact on the right to free speech and the right to peaceful assembly, when the person has not yet contravened a provision. Accordingly, the Committee refers this to Parliament. |

Issue: Property – use or enjoyment of land – Part 4: Facilitation of Major Events – clause 61 – No liability in nuisance:

- | | |
|-----|---|
| 31. | However, given the public interest nature of the specific major event and the temporary nature and period of a major event, the Committee does not consider clause 61 to be an undue trespass on personal rights and liberties. |
|-----|---|

Issue: Denial of Compensation – Part 4: Facilitation of Major Events – clause 62 – Compensation not payable in respect of major event-related matters:

34. Therefore, by reading clause 62 (2) in conjunction with clause 62 (1) of Part 4, the Committee does not find clause 62 (1) trespasses unduly on personal rights and liberties.

Issue: Insufficient criteria regarding the scope of persons to whom a power may be delegated – Part 4: Facilitation of Major Events – clause 44 (2)(b),(c) Personal conduct; clause 45 (4)(b),(c) Request to undergo search as condition of entry to major event venue or facility; and clause 46 (8)(b),(c) Directions to leave:

39. The Committee is concerned that under clauses 44 (2)(b) and (c) and 45 (4)(b) and (c), an authorised officer could include ‘an officer or employee of a government agency’ and ‘a person, or a member of a class of persons, prescribed by the regulations’, which appears quite broad, without the requirements regarding qualifications, training or attributes of the person to be an authorised officer, especially if they could exercise the use of reasonable force in exercising their function under clause 45 (3).
42. The Committee is concerned that an authorised officer under clauses 46 (8)(b) and (c), ‘an officer or employee of a government agency’ and ‘a person, or a member of a class of persons, prescribed by the regulations’ appear quite broad, without the requirements regarding qualifications, training or attributes of the person to be an authorised officer, especially if they could exercise the use of reasonable force in exercising their function under clause 46 (7) and that it becomes an offence under clause 46 (5) when a person fails to comply with a direction under this proposed section.
43. The Committee refers to Parliament the question of whether the discretion to appoint authorised persons under the above clauses 44(2)(b) and (c); 45 (4)(b) and (c); and 46 (8)(b) and (c), without the requirements regarding qualifications, training or attributes, could make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers.

Issue: Matters which should be regulated by Parliament - Part 2: Major Events – clause 5 – declaration of major event by regulation; Part 3: Major Event Authorities – clause 8 – establishment of major event authorities by regulations; and Part 4: Facilitation of Major Events – Division 5 Safety and crowd management at major events – clause 43 (7)(g) – definition of *prohibited thing*:

46. The Committee is concerned that there may be a significant delegation of legislative power under Part 2, clause 5; and Part 3, clause 8; by allowing:
- regulations to declare an event to be a major event;
 - providing for the Minister administering the proposed Act to recommend the making of such a regulation;

- regulations declaring a major event could designate a responsible authority for the event;
 - regulations to establish a corporation as a major event authority.
48. The Committee regards that important definition of words in an Act such as the definition of a '*prohibited thing*' should be matters regulated by Parliament under an amendment legislation rather than to be prescribed by regulations.
49. The Committee also notes that the ability of Parliament to effectively scrutinise the criteria for the proper consideration of declaring an event to be a major event and debate on whether it is in the public interest for the event to be declared a major event, is dependant on Parliament sitting rather than through regulations made when Parliament may not be sitting.
50. Therefore, the Committee asks Parliament to consider whether clause 5 of Part 2; clause 8 of Part 3; and clause 43 (7)(g) of Part 4, may constitute as an inappropriate delegation of legislative power.

Issue: Insufficient criteria regarding the scope of persons to whom a power may be delegated – Part 4: Facilitation of Major Events – clause 44 (2)(c) Personal conduct; clause 45 (4)(c) Request to undergo search as condition of entry to major event venue or facility; and clause 46 (8)(c) Directions to leave:

52. Therefore, the Committee also refers to Parliament the question as to whether it is an appropriate delegation of legislative power to allow these significant matters to be conducted by a person or a member of a class of persons to be prescribed by regulation under clauses 44(2)(c); 45 (4)(c); and 46 (8)(c), without requirements concerning their qualifications, training or attributes.

Issue: Enabling declarations influencing the exercise of powers without any obligation for them to be tabled in Parliament or subject to disallowance – Part 4 – Division 8 *Protection of the Environment Operations Act 1997* – clause 57 Modification of environment impacts:

54. The Committee refers to Parliament the question as to whether the making of such declarations under clause 57, which would have effect despite the terms of any other Act or statutory instrument, and not disallowable by the Parliament, may represent an exercise of legislative power with insufficient parliamentary scrutiny.
55. The Committee considers that any such modification of environmental impacts may be more appropriately made by an amending legislation or by regulations rather than through a declaration made by the responsible authority for the major event, especially if the modifications will have effect despite the terms of any other Act or statutory instrument.

3. Protection Of Public Ownership Bill 2009*

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

4. Real Property Amendment (Land Transactions) Bill 2009

15. Schedule 1 [6], proposed section 129(2)(p) limits compensation payable when the loss or damage arises from the provision by the Registrar-General of information supplied in the notice referred to in section 39(1B). However the Committee is of the view that this provision will not unduly trespass on personal rights and liberties, particularly given proposed section 129(1)(g), which will provide compensation for loss or damage resulting from an error of the Registrar General in recording details supplied in the notice.

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

17. The Committee accepts the advice receive above and has not identified any further issues under s 8(1)(b)(iv) *LRA*

5. Shop Trading Amendment Bill 2009

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