

SUMMARY OF CONCLUSIONS

1. Criminal Assets Recovery Amendment Bill 2009

Issue: Schedule 1, Part 4 *Criminal Assets Recovery Act 1990* - Retrospectivity

20. The Committee has concerns regarding the retrospective application of proposed Schedule 1, Part 4, in particular Clause 16 *Criminal Assets Recovery Act 1990* on personal rights and liberties, in particular the personal right to property. Accordingly, the Committee refers Schedule 1, Part 4 *Criminal Assets Recovery Act 1990* to Parliament for its consideration.

Issue: Schedule 1, Part 4 Clause 18 *Criminal Assets Recovery Act 1990* – Denial of Compensation; Retrospectivity

25. The Committee considers that right to seek compensation is an important personal right and should not be removed or restricted by legislation unless there is a compelling public interest in doing so. The Committee notes that Schedule 1, Part 4, in particular Clause 18 of the Bill excludes the State from liability for various matters arising from the enactment of the proposed Act. Accordingly, the Committee refers to Parliament for its consideration whether proposed Schedule 1, Part 4, Clause 18 unduly trespasses on personal rights and liberties by removing the right to compensation (including retrospectively removing this personal right).

Issue: Clause 10A(4) *Criminal Assets Recovery Act 1990*; Section 22 *Criminal Assets Recovery Act 1990*; Schedule 1, Part 4, Clauses 19 and 20 *Criminal Assets Recovery Act 1990* – Procedural Fairness

27. The Committee notes that section 10A(4) has been introduced to respond to the concerns of the High Court regarding principles of procedural fairness in *International Finance Trust Company Ltd & Anor v New South Wales Crime Commission and Others*. Accordingly, the Committee notes that the proposed amendments in section 10A(4) provide the Supreme Court with a discretion to require the Commission to give notice of an application if thinks fit and under section 10A(4) such a person is entitled to appear to adduce evidence at the hearing of the application.
34. Although notice is required to be given to a person to whom an application for an assets forfeiture order application under current section 22(9) *Criminal Assets Recovery Act 1990*, the Committee notes that proposed section 22(1B) *Criminal Assets Recovery Act 1990* enables the Commission to apply for, and to be granted, an assets forfeiture order under the *Criminal Assets Recovery Act 1990* without first applying for or obtaining a restraining order. Given the significant impact of an assets forfeiture order on personal rights, in particular personal rights to property, the Committee refers proposed section 22(1B) *Criminal Assets Recovery Act 1990* to Parliament for its consideration.

Issue: Schedule 1, Part 4, Clause 17(3) *Criminal Assets Recovery Act 1990* – Excludes review

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| 37. The Committee refers to Parliament whether Schedule 1, Part 4, Clause 17(3) <i>Criminal Assets Recovery Act 1990</i> , which prohibits restraining provisions from being the subject of an application for a review by the Supreme Court on a number of grounds, unduly trespasses on personal rights and liberties. |
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2. Election Funding and Disclosures Amendment (Property Developers Prohibition) Bill 2009

Issue – Schedule 1 [1] – Rights of Association

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| 18. The Committee notes that Schedule 1 [1] of the Bill may have the effect of excluding close associates of developers from political functions which may not be directly associated with the developers' interests, therefore affecting their rights of association. The Committee believes that this effect must be balanced with the public interest in this case and refers the matter to Parliament. |
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3. Industrial Relations (Commonwealth Powers) Bill 2009

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

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| 22. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i> . |
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