

# SUMMARY OF CONCLUSIONS

## SECTION A: Comment on Bills

### 1. Australian Jockey and Sydney Turf Clubs Merger Bill 2010; Totalizator Amendment Bill 2010

Issue: Commencement by Proclamation

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| 16. Considering that the provisions in these Bills which are to commence by proclamation are largely minor or technical in nature, the Committee does not regard the Minister's discretion to commence the provisions by proclamation to be an inappropriate delegation of power in this instance. |
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### 2. Children and Young Persons (Care and Protection) Amendment (Homelessness Reporting Age) Bill 2010 \*

Issue: Privacy – Clause 3 – Amendment of *Children and Young Persons (Care and Protection) Act 1998* – insertion of proposed section 120 (4) – homelessness of children, and proposed amendment of section 121 – homelessness of young persons:

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| 16. The Committee considers that the Bill may undermine Article 16 of the United Nations <i>Convention on the Rights of the Child</i> with regard to the privacy rights of young persons of 16 years of age by not requiring their consent when reporting on homelessness when their consent can be reasonably or practicably obtained. The Bill may also conflict with Article 12 (1) of the <i>Convention on the Rights of the Child</i> with respect to the rights of young persons to express their views freely in all matters affecting them given their capability of forming their own views in accordance with their age and maturity.                                   |
| 17. However, the Committee notes that Article 20 of the <i>Convention on the Rights of the Child</i> states that children are entitled to special protection and assistance by the State if they are deprived of their family environment. The Committee is also aware that Article 25 (1) of the <i>Universal Declaration of Human Rights</i> provides that everyone has a right to a standard of living adequate for health and well being, including housing.                                                                                                                                                                                                                  |
| 18. By weighing the above varying concerns, the Committee is of the view that the current requirement for the consent of young persons of 16 years of age provided by section 121 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> with respect to reporting homelessness to the Director-General may be the least restrictive or constitutes the least adverse impact on the rights of a child with respect to their privacy and freedom of expression or of thought. Accordingly, the Committee refers clause 3 to Parliament for consideration as to whether there may be the potential for an undue trespass on the individual rights of young people. |

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| 19. | However, the Committee is also of the firm belief that so long as there has been consent of the young person (above the age of 15 years) with regard to the reporting, then upon receipt of a homelessness report, the Director-General of the Department of Human Services should be required to take action by conducting an investigation or assessment and be required to provide or arrange for the provision of services or accommodation, in order to protect the young person's right to housing and to ensure special protection and assistance if he or she is deprived of a family environment. |
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### **3. Court Suppression And Non-Publication Orders Bill 2010**

**Issue: Close Justice**

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| 19 | The Committee will write to the Attorney-General to seek clarification regarding the scope of the Bill. |
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**Issue: Commencement by proclamation – Clause 2 - Provide the executive with unfettered control over the commencement of an Act.**

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| 22. | Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power. |
| 23. | The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i> .                                                                                                                                                                              |

### **4. Election Funding and Disclosures Amendment Bill 2010**

**Issue: Freedom of Speech**

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| 41. | The Committee notes that one of the major reforms proposed by this Bill is to place a cap on electoral campaign expenditure during an election period. That is, candidates for election, or their advocates, are limited in how much they can spend on electoral communication during the course of an election period.                                                                                                                                   |
| 42. | The Committee appreciates the public interest that exists in facilitating a framework in which all candidates participate on a more level playing field and the impact this has on promoting fair competition for election by minimising the difference in financial resources between contestants.                                                                                                                                                       |
| 43. | Notwithstanding, it is incumbent upon the Committee to identify issues that impact on individual rights. In this respect, the Bill may fetter the freedom of speech each candidate or advocate would otherwise have when contesting an election. Under the Bill, when a candidate running for election, or their advocate, reaches their stipulated spending cap, they would be in breach for any extra communication expenditure incurred over that cap. |

44. However, the reasonableness of any such restrictions must be tested against the overall objectives of the Act which is to ensure that no one voice is dominant. The Committee notes that the Premier in her Agreement in Principle speech stated that:
- Caps on donations require a significant increase in public funding to reduce the risk of such caps being invalid under the Commonwealth Constitution. Parties, groups and candidates must have sufficient resources to contest elections and engage in debate about political matters, or there is a risk that the High Court may find that the reforms invalidly limit the implied freedom of political communication.
45. The Committee refers this matter to Parliament for its further consideration to ensure that the right of an individual to engage in free speech is not unduly trespassed by passage of the Bill.

## **5. Electricity Supply Amendment (Solar Bonus Scheme) Bill 2010**

**Issue: Denial of Compensation – Amendment of *Electricity Supply Act 1995* – Schedule 1 [6] – proposed section 179A (1A) – Compensation not payable:**

39. The Committee is of the view that the right to seek compensation is an important personal right and that such a right should not be removed or restricted by legislation unless there is a compelling public interest in doing so. The Committee refers to Parliament to consider whether there is such a compelling interest for the proposed section 179A (1A) in schedule 1 [6] or whether it may trespass unduly on individual rights by removing the right to seek compensation in relation to the enactment, making or operation of the *Electricity Supply Amendment (Solar Bonus Scheme) Act 2009* or the proposed Act.

**Issue: Retrospectivity – Clause 2 – Commencement – Schedule 1 – Amendment of *Electricity Supply Act 1995*:**

41. The Committee will always be concerned where provisions are taken to have commenced on the day following the day on which the Bill is introduced into Parliament rather than after its assent. The Committee notes that the provisions will then apply retrospectively, and refers clause 2 to Parliament for consideration as to whether it may adversely impact or unduly trespass on personal rights.

## **6. Police Regulation (Superannuation) Amendment Bill 2010**

**Issue: Privacy – proposed section 15B (13) – Schedule 1 – Amendment of *Police Regulation (Superannuation) Act 1906* – Discharge of members medically unfit:**

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| <p>36. The Committee considers the proposed section 15B (13) which enables the Commissioner of Police may supply to STC (Police Superannuation Fund) medical information about the member of the police force, without the need to obtain the consent of the member despite any restrictions in applicable privacy legislation, may have the potential to unduly trespass on an individual's right to privacy.</p> <p>37. Accordingly, the Committee refers proposed section 15B (13) of the Bill to Parliament for consideration.</p> |
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## **7. Radiation Control Amendment Bill 2010**

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| <p>30. The Committee has not identified any issues under s8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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