

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010

Issue: Lack of Fairness; Onus of Proof

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| 20. | Firstly, the Committee acknowledges that recouping the loss of having a film or game classified from a defendant found guilty of a classification offence presents an additional financial burden for the accused. The Committee notes that a penalty scheme already exists for individuals convicted of classification offences under the Principal Act and it is not proposed that this Bill reduce the maximum amounts liable under these offences. |
| 21. | While it is generally regarded that an individual found guilty of an offence should not have to bear all or part of the costs incurred by their prosecution, the Committee notes that Section 60 of the Principal Act specifically states that if a person is convicted of an offence under the Act, the court may order the person to pay by way of costs, in addition to any other costs that the court may order, the amount of any fee incurred by the prosecution for the classification of the material concerned (i.e. for the classification certificate) and for the provision of an evidentiary certificate. |
| 22. | Secondly, the Committee is concerned with the power imbalance between the prosecution and the accused, with a well resourced and knowledgeable prosecution trying to enter into an agreement with a likely less resourced and knowledgeable accused. This situation may also be potentially intimidating and there is a risk that the accused may agree to the classification notice sent by the prosecution without proper consideration or being properly informed of the issues and risks in doing so. The Committee also has concerns with this process insofar that it circumvents the proper channels for film or game classifications by bypassing the need for an application to the Classification Board for appropriate determination. |
| 23. | Thirdly, this process also displaces the evidentiary burden, which traditionally lies on the prosecution to prove the elements of an offence, by enabling the prosecution to come to an agreement with the accused to produce material that could then be used to prosecute the accused. On this issue, the Committee is concerned that this process makes it easier on the prosecution to meet the evidentiary burden. |
| 24. | Lastly, the Committee notes that the Bill provides that if the prosecution serves a notice on the accused that a film or game should be classified at a certain rating, the accused fails to sign and return that notice, and then the Classification Board classifies that film or game at a higher rating than that specified in the notice, then the notice operates as if the notice had specified that higher classification. |

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| 25. | The Committee notes that a similar provision in which the Classification Board's decision which stipulates that a particular film or game is at a <i>lower</i> rating than that specified in a notice given by the prosecution to the accused, then the notice operates as if the notice had specified that <i>lower</i> classification, does not exist in the Bill. On this issue, the Committee notes the inherent unfairness in the current scope of the existing provision. |
| 26. | The Committee considers that these issues may be an undue trespass on personal rights and liberties as there is a lack of fairness in their scope and operation and potentially puts the accused at a significant disadvantage. To this end, the Committee refers these matters to Parliament for its consideration |

2. Constitution Amendment (Recognition of Aboriginal People) Bill 2010

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| 5. | The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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3. Industrial Relations Advisory Council Bill 2010

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| 7. | The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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4. National Parks and Wildlife Amendment (Adjustment of Areas) Bill 2010

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| 7. | The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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