

## SUMMARY OF CONCLUSIONS

### 1. Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2009

#### Issue: Privacy - Proposed section 29A - Requirement to disclose criminal record

17. The Committee notes that proposed section 29A requires a person's criminal record be disclosed when applying to change their name with the Registrar of Births, Deaths and Marriages. As stated in the Agreement in Principle Speech, the proposed amendments are intended to "ensure that people with a criminal record do not abuse the change of name system". The Committee notes the need to balance individual rights and liberties, in particular rights to privacy with the public interest of ensuring that people with a criminal record do not avoid detection by law enforcement agencies through changing their name. However, the Committee considers that it may be more appropriate to restrict the requirement to serious offences committed within a certain time period. Accordingly, it refers proposed section 29A to Parliament for its consideration.

#### Issue: Privacy - Proposed section 46A - Access to change of name information by law enforcement agencies

20. However, the Committee also notes that proposed section 46A(2) states that the Registrar must not enter into a memorandum of understanding unless satisfied that the terms of the memorandum, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy. The Committee notes these safeguards and refers to Parliament whether proposed section 46A unduly trespasses on personal rights and liberties, specifically rights to privacy.

#### Issue: Excessive Punishment – Proposed section 29A(3) – Requirement to Disclose Criminal Record

22. Proposed section 29A(3), which includes a penalty of 100 penalty units or two years imprisonment, or both for providing false or misleading information in relation to the disclosure of convictions of offences may be considered excessive punishment, particularly given that this offence may be in addition to another offence of providing misleading information under section 57 of the Act. The Committee notes the public interest in ensuring that persons with a criminal record do not avoid detection by law enforcement agencies through changing their name. However, the Committee refers to Parliament for its consideration whether proposed section 29A(3) strikes the appropriate balance between personal rights and liberties and the public interest.

## **2. Crimes (Appeal And Review) Amendment (Double Jeopardy) Bill 2009**

**Issue: Double Jeopardy – Schedule 1 Amendment of Crimes (Appeal and Review) Act 2001:**

26. The Committee is concerned that in effect, the amendments will enable the prosecution to retry a person for more than once under the exceptions to double jeopardy by allowing the proposed section 105 (1A) of Schedule 1 [2] to be made for a further retrial of a person already acquitted in another retrial under this Part of the Act on the ground that the acquittal at the retrial was tainted (such as perversion of the course of justice, bribery or perjury).
27. The Committee is also concerned that the Bill will erode the long established principle that an acquittal is not to be contradicted or undermined by a subsequent charge that raises the similar ultimate issues or similar facts as were involved in the acquittal.
28. The Committee refers to similar comments made in its Digest report number 13 of 26 September 2006 in relation to the then (Appeal And Review) Amendment (Double Jeopardy) Bill 2006. The Committee, at the time, had expressed its concerns that the amendments did not confine the new proceedings to retrial on the same offence (ie, the offence that had been the subject of the original acquittal). For example, new proceedings should be restricted to serious offences, which are the same as the ones charged at the original trial.
29. The Committee notes the Australian High Court judgment cited above, and is concerned that the Bill's proposed amendments may potentially lead to an abuse of process to charge a person with an offence of perjury or perversion of justice when proof of the charge could necessarily contradict or undermine an acquittal of the accused in respect of another criminal charge.
33. The Committee notes that the double jeopardy rule is a fundamental principle of the common law. The right not to be tried twice for the same offence is recognised as a fundamental human right under Article 14 (7) of the International Covenant on Civil and Political Rights (ICCPR) and other human rights instruments.
34. The Committee holds concerns that the proposed section 105 (1A) of Schedule 1 [2] will enable a person acquitted of a serious offence in a retrial (once) under the exception to double jeopardy to be retried (twice) again if the acquittal was tainted because of an administration of justice offence. This may potentially subject the person to be tried more than once in connection with similar facts or ultimate issues that were connected with the proceeding in which the person was first acquitted.
35. Accordingly, the Committee refers this to Parliament on the question of whether the Bill trespasses unduly on a person's right not to be tried twice for an acquittal that may be contradicted or undermined by a subsequent charge (administration of justice offence such as perjury or perversion of the course of justice) that may raise similar ultimate issues or similar facts as were involved in connection with the proceedings in which the person was acquitted.

36. The Committee also refers to Parliament the question of whether the Bill's proposed section 68A of Schedule 1 [1] trespasses unduly on the double jeopardy rule by sentencing the person twice and by potentially re-sentencing the person for a higher penalty or more severe sentence without the recognition of the element of double jeopardy suffered by the person in being re-sentenced especially if the person has already served a substantial part of their sentence.
37. The Committee is concerned that the amendments in this Bill may appear to risk incompatibility with Australia's obligations under the ICCPR despite the Bill giving effect to proposals in the recommendations of the Double Jeopardy Law Reform Working Group that were agreed to by the Council of Australian Governments (COAG).

### **3. Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009**

**Issue: Right to Notice (Procedural Fairness) and Right to Personal Physical Integrity – Schedule 1 [5] – proposed sections 75ZB (2) and 75ZC (2):**

15. The Committee is concerned that the proposed new section 75ZC (2) of Schedule 1 [5] for the making of an order for the carrying out of a forensic procedure on an untested registrable person when the person is not present could mean that the person has not been given notice of the proceedings. The making of an application to a court under proposed section 75ZB (2) for an order for the carrying out of a forensic procedure on an untested registrable person when the person has not been requested to consent could also mean the person has not been provided an opportunity to consent to the carrying out of the forensic procedure.
16. The Committee notes that making such an order for carrying out of a forensic procedure without the person subject of the order being given notice of the proceedings or given the opportunity to consent may trespass unduly on the person's right to be heard in proceedings affecting them, especially with reference to that person's right to personal physical integrity. The Committee refers this to Parliament.

**Issue: Presumption of Innocence – Schedule 1 [2] – proposed sections 75W (2), (3), (4) and (5); and Schedule 1 [4] – proposed section 75X (2):**

19. The Committee is concerned with the above amendments to sections 75W (2), (3), (4) and (5) proposed in Schedule 1 [2] and the amendment to section 75X (2) as proposed in Schedule 1 [4] of the Bill, with respect to the principle of presumption of innocence as a fundamental right established by Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR). This includes the right to be treated as though innocent. The Committee refers this to Parliament to consider whether the proposed amendments trespass unduly on individual rights and liberties as the amendments might undermine the individual right to be treated as innocent.

### **4. Education Further Amendment (Publication of School Results) Bill**

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

## 5. Liquor Amendment (Temporary Licence Freeze) Bill 2009

### Issue: Retrospectivity – Proposed Schedule 1 [3] (Clause 29)

13. Proposed Schedule 1 [3] (Clause 29) states that Division 1A of Part 4 extends to an application under this Act for any licence or other matter referred to in that Division that was made on or after 25 June 2009 but not granted or otherwise determined as at the commencement of the amending Act. The Committee will always be concerned with any retrospective effect of legislation, which impacts on personal rights and refers proposed Schedule 1 [3] (Clause 29) to Parliament for its consideration.

### Issue: Right to appeal - Proposed section 47I(7)

15. The Committee has concerns that proposed section 47I(7), which impacts on right to appeal to the Land and Environment Court unduly trespasses on personal rights and refers this to Parliament for its consideration.

### Issue: Proposed section 47J – Inappropriate Delegation of Legislative Power

17. The Committee is of the view that any amendments varying a freeze precinct could be more appropriately made to the Principal Act by an amending Act rather than through the regulations. Accordingly, the Committee refers to Parliament for its consideration whether proposed section 47J(d) is an inappropriate delegation of legislative power.

### Issue: Proposed Section 47A(1) – Definition of “Freeze Period”

18. Section 47A(1) provides that the freeze period ends on 24 June 2010 or such later date as may be prescribed by the regulations before the end of the freeze period. The Committee has concerns that this provision may be considered to be an inappropriate delegation of legislative power. Accordingly, it refers proposed section 47A(1) to Parliament for its consideration.

## 6. Occupational Health And Safety Amendment (Authorised Representatives) Bill 2009

### Issue: Retrospectivity – Schedule 1 [3] – insertion of Schedule 3, Part 6 – proposed clause 23:

15. The Committee notes that the amendments will validate any previous entry and inspection carried out under the Principal Act by a person who, at the time of entry or inspection, was an employee of an industrial organisation of employees and an authorised industrial officer, by providing that any such person is taken to have been an authorised representative and that any act or omission of such a person is validated if it would have been valid had Schedule 1 [1] commenced before the act or omission. The validation also applies for the purposes of the Principal Act or for any other Act or law and will flow through to other Acts that rely on the definition in the Principal Act such as section 173 of the *Coal Mine Health and Safety Act 2002*.

16. The Committee will usually be concerned with any retrospective effect of legislation which impacts on personal rights. However, the Committee notes that clauses 23 (2) and (3) of the proposed Schedule 3, Part 6 to be inserted by Schedule 1 [3], will not affect any decision of a court made before the commencement of the clause. The Committee also takes into consideration that at the time of the act or omission by the person carried out under the Principal Act for the purposes of the Act, the person was an employee of an industrial organisation of employees and was still an authorised industrial officer. Accordingly, the Committee is satisfied that the retrospectivity of the proposed amendments, in this instance, does not unduly trespass on individual rights.

