

# SUMMARY OF CONCLUSIONS

## SECTION A: Comment on Bills

### 1. Coroners Bill 2009

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

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| 50. | The Committee has not identified any issues identified under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i> . |
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### 2. Courts and Other Legislation Amendment Bill 2009

#### Schedule 1.2 Right to Privacy

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| 16. | The Committee does not consider that Schedule 1.2 unduly trespasses on personal rights to privacy when weighed with the public benefits in conducting informed research in the area of discrimination. It also notes that the secrecy provisions of the Act will be extended to people who have been provided with information by the board for research purposes. |
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#### Schedule 1.5 Freedom of Association

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| 26. | The Committee is concerned that new s 17A (3A) (b) may deny an offender his/her right to live in their home, their right to visit or live with close family, their right to work and their right to worship which are recognised under a number of International Covenants. The Committee refers the matter to Parliament as to whether this is an undue trespass on rights and liberties.   |
| 31. | The Committee is always concerned with restrictions on freedom of association which is a fundamental right established by Article 22 (1) of the <i>International Covenant on Civil and Political Rights</i> . The Committee has most recently commented on this in relation to the <i>Crimes (Criminal Organisations Control) Bill 2009</i> which appeared in Legislation Review Digest 5 of 2009. The Committee is concerned that restricting access to close family is extremely onerous to offenders who may have few other ties to the community. The Committee refers the matter to Parliament as to whether this is an undue trespass on rights and liberties. |

### **3. Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009**

**Issue: Schedule 1 [7] – proposed Section 98A – Amendment of *Electricity Supply Act 1995* – Compensation not payable – Denial of Compensation:**

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| 8. | The effect of this proposed section 98A is to ensure that compensation is not payable by or on behalf of the State to retail suppliers, market consumers and certain other persons who supply or consume electricity. The Committee is of the view that that the right to seek damages or compensation is an important personal right and that these rights should not be removed or restricted by legislation unless there is a compelling public interest in doing so. Therefore, the Committee asks Parliament to consider whether there is a compelling public interest in this instance to remove the right to seek compensation by legislation. |
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### **4. Game And Feral Animal Control Amendment Bill 2009\***

**Issue: Schedule 1 [8] – Membership and procedure of Game Council – Right of Access and Representation:**

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| 25. | The Committee is concerned that the proposed amendment of Schedule 1 [8] aims to remove the direct representation of a person appointed on the nomination of the Aboriginal Land Council on the Game Council by replacing that membership with the Minister administering the <i>Aboriginal Land Rights Act 1983</i> . This may appear to be disproportionate to the number of other community or stakeholders' representations on the Game Council who are not represented by their responsible Ministers, such as, direct nominations of the State Management Council of Livestock Health and Pest Authorities and, of the Australian Veterinary Association, as well as, the 8 persons who are appointed on the nomination of hunting organisations.  |
| 26. | The Committee is concerned with Schedule 1 [8], that the removal of the requirement for a person to be appointed on the nomination of the New South Wales Aboriginal Land Council on the Game Council, who would be a nominated representative of the community, could potentially disadvantage Aboriginal communities by affecting their access to and representation on the Game Council as the Aboriginal Land Council represents a peak body to protect the interests of its members and the broader Aboriginal communities that range in their diversity from modern to traditional in their beliefs and practices, with regard to land. This may lead to unintended but potential undue trespass on rights and liberties of Aboriginal communities with regard to Aboriginal land. Accordingly, the Committee refers this to Parliament. |

**Issue: Schedule 1 [21] – Power to detain and search vehicles or vessels – Privacy and Property:**

28. The Committee notes the power requiring a vehicle to stop, without being accompanied by a police officer, in order to stop, then detain and search the vehicle or vessel, could be a significant trespass on rights of privacy and property. The Committee further notes that this power can be exercised by inspectors appointed by the Game Council which includes a broad range of people such as a statutory officer, a public servant, a member of staff of the Game Council and a person belonging to a class of persons prescribed by regulations.
29. By having regard to the aims of section 44, where the power to search the vehicle or vessel without a warrant, by civilian inspectors ranging from staff of the Game Council, statutory officers, public servants of public or local authorities through to a class of persons prescribed by regulations, the Committee refers to Parliament whether the proposed amendment by Schedule 1 [21] to omit section 44 (3) of the requirement for an inspector to be accompanied by a police officer when exercising the power under the section to stop a vehicle, may unduly trespass on personal rights and liberties.

**5. NSW Lotteries (Authorised Transaction) Bill 2009**

**Issue: Clause 15 (Part 3) – Contracts for sale of land – Compensation:**

22. Given the extension of Crown immunity and immunity afforded to the State, Minister and public authority of the State, the Committee is concerned that under clause 15 of Part 3, the rights and remedies of purchasers who may suffer as a result of the exercise of a right conferred under the Bill in relation to the sale of land, may constitute as a potential undue trespass on the purchasers' rights to obtain remedies or relief and compensation that could have been otherwise available under section 52A of the *Conveyancing Act 1919*. Accordingly, the Committee refers this to Parliament.

**Issue: Clause 22 (Part 4) – Protection of contractual and other obligations – Clause 23 (Part 4) – Compensation not payable:**

25. Given the extension of Crown immunity and immunity afforded to the State, Minister and public authority of the State, the Committee is concerned that under clause 22 and clause 23 of Part 4, the rights and remedies of parties who may suffer as a result of the exercise of a right conferred under the Bill, may constitute as a potential undue trespass on a party's right to obtain remedy or relief and compensation that could have been otherwise available under various civil obligations. Accordingly, the Committee refers this to Parliament.

26. However, the Committee also notes that subsection (3) of proposed section 22 refers to the section as not affecting the rights and obligations of the parties to a transaction arrangement in respect of the performance of obligations under the transaction arrangement, which provides for some protection to parties in respect of performance of obligations under specific transaction arrangements. The Committee notes that subsection (2) of proposed section 23 similarly refers to the section as not applicable to compensation payable under a transaction arrangement to a party to the transaction arrangement in connection with the performance of obligations under that transaction arrangement. This provides for some protection to parties in respect of compensation payable under specific transaction arrangements.

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

28. The Committee accepts the above reasons and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

## **6. NSW Trustee and Guardian Bill 2009**

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

7. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

## **7. Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009**

**Issue: Consumers' Protection and Rights - Removal of licensing for optical dispensers (Schedule 1 and Schedule 4.1-4.4, 4.6 [2] and [4], 4.7 and 4.9-4.11); for supply of kit homes (Schedule 2 and Schedules 3, 4.5 and 4.6 [1] and [3]); for building consultancy (Schedule 2 and Schedules 3, 4.5 and 4.6 [1] and [3]); for non-structural flooring work (Schedule 3 [4] and [13]); and for mechanical services (Schedule 3 [4], [14] and [3]).**

25. The Committee appreciates the cost savings to be made with the removal of the above licensing, particularly, removing regulation that does not add value and to reduce red tape, in order to improve the free flow of skills around the country to benefit the New South Wales economy and at the same time, to balance the needs for consumer protection and not to expose the public or consumers to undue health and safety risks.

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| 29. | The Committee appreciates the cost savings reasons behind the removal of the requirement for such licensing for the class of non-structural flooring. However, the Committee holds concerns for the individual builders and ultimately, the consumers, especially if the Home Warranty Insurance applies only to work greater than \$12,000 in value where most of these types of contracts will not exceed this threshold and will not be covered by Home Warranty Insurance. The Committee is concerned that this may erode the compensation, remedy or relief available to protect the rights of builders and consumers. The Committee, therefore, draws this matter to the attention of Parliament.                     |
| 31. | The Committee appreciates the reasons behind the removal of the licensing for this class of building consultancy. However, the Committee is concerned with consumers' protection given that pre-purchase inspections play an important role in the expensive transaction of purchasing a property. The Committee is also concerned that minimum standards for inspection reports including the requirement for a builders licence or accreditation will be removed for such pre-purchase property or building inspections. The Committee will be concerned that this may erode the purchasers' rights and basis for informed decision-making. Accordingly, the Committee brings this matter to the attention of Parliament. |
| 32. | The Committee understands that the New South Wales Better Regulation Office has conducted a review, completed in April, which looked at the costs and benefits of licensing these occupations for consumers, licensees and Government. The review included a public consultation process. The Committee suggests that the outcomes of the review or its report with the cost and benefit analysis and responses to public consultation or submissions, could be made better available through the tabling of that report in Parliament, in order to assist Parliament in its function to scrutinise the exercise of legislative powers in relation to this Bill.  |

## **8. Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009**

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| 6. | The Committee has not identified any issues under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i> . |
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## **9. Rookwood Necropolis Repeal Bill 2009**

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

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| 7. | 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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## **10. Rural Lands Protection Amendment Bill 2009**

**Issue: Schedule 1.2 – amends section 2 of *Rural Lands Protection Amendment Act 2008* No 112 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.**

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| 19. The Committee accepts the above reasons 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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## **11. State Emergency and Rescue Management Amendment Bill 2009**

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| 10. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **SECTION B: Ministerial Correspondence**

### **1. Parking Space Levy Bill 2009**

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| 6. The Committee thanks the Minister for his reply. |
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### **2. Tow Truck Industry Regulation 2008**

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| 4. The Committee thanks the Minister for his reply. |
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