

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Adoption Amendment (Same Sex Couples) Bill (No. 2) 2010*

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| 13. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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2. Crimes Amendment (Terrorism) Bill 2010

Issue: Right to Privacy

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| 12. The Committee notes its earlier comments made in the <i>Legislation Review Digest No 8 of 2005</i> that covert search warrants are likely to trespass on affected persons' privacy and property. In particular, the Committee raised its concern with the provision of the <i>Terrorism (Police Powers) Act 2002</i> that provided for the covert entry of premises of occupiers not suspected of any criminal activity in order to access adjoining premises, thereby infringing on the rights of innocent people. |
| 13. As this Bill seeks to extend the timeframe in which covert search warrants can be executed, the Committee reiterates its concerns about covert search warrants and their impact on individual privacy. |

3. Evidence Amendment Bill 2010

Issue: Commencement by Proclamation

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| 10. The Committee recognises that the nature of achieving uniform legislation can affect the ability of the NSW Parliament to set commencement dates for its own legislative agenda, especially when commencement is contingent on other jurisdictions to have also passed the model legislation. As the Committee has not identified any other concerns with this Bill that may trespass on the rights and liberties of individuals, the Committee does not regard the commencement by proclamation to be an inappropriate delegation of legislative power in this instance. |
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4. Plantations and Reafforestation Amendment Bill 2010

Issue: Right to Privacy; Search and Seizure Without Warrant – Section 61A Powers of Entry and Inspection.

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| <p>14. The Committee notes the requirements that an authorised officer to give notice to an owner or manager and the grounds of "reasonable suspicion" before entering the plantation or land as well as the risk of environmental harm occurring and the attempt to make prior contact when reasonable advance notice need not be given. However, the Committee is concerned about the extension of the Act to private land. While it may be implicit as a requirement of obtaining a plantation licence that authorised officers may enter the land to inspect, the power to enter unlicensed land on a "reasonable suspicion" and investigate and take samples and recordings without a warrant is a significant extension of the existing power. The Committee therefore refers the matter to Parliament.</p> <p>17. The right to withhold information or refrain from answering questions that might incriminate oneself is a fundamental and longstanding principle of common law. The Committee notes that section 61B(5) provides that any information given cannot be used in criminal proceedings. However, the Committee is of the view that the right to silence should not be eroded unless there are exceptional circumstances. Further, it is concerned that the right to silence is being taken away from owners of private land who are not currently licensed under this Act. The matter is therefore referred to Parliament.</p> |
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Issue: Retrospectivity – Proposed Section 64(5)&(6)

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| <p>19. The Committee is concerned that proposed section 61B(5)&(6) not only significantly extends the period in which proceedings can be brought for breaches of the Act, it also has the effect of potentially allowing for proceedings to be brought in instances where the limitation period would already have expired under the current provisions if the authorised officer had not become aware of the breach during the two year period after it occurred.</p> |
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Issue: Commencement on Proclamation - Clause 2 - Provide the Executive with unfettered control over the commencement of an Act

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| <p>22. The Committee accepts the Minister's explanation that commencement on proclamation is necessary as the Regulations and Act need to commence at the same time in order to be consistent.</p> |
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