

# SUMMARY OF CONCLUSIONS

## SECTION A: Comment on Bills

1. Appropriation Bill 2010; Appropriation (Parliament) Bill 2010; Appropriation (Special Offices) Bill 2010; State Revenue Legislation Amendment Bill 2010

9. The Committee has not identified any issues under s8A(1)(b) of the <i>Legislation Review Act 1987</i>
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2. Coastal Protection and Other Legislation Amendment Bill 2010

**Issue: Procedural Fairness – Proposed Section 55L (6) – Schedule 1 [22] – Amendment of *Coastal Protection Act 1979* – Breach of coastal zone management plan - restraint:**

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| 18. The Committee notes that under the current section 55L (1), the Minister or a council may bring such proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a coastal zone management plan.  |
| 19. The Committee will always be concerned about legislation that authorises administrative decision-making without providing for the right of those affected to bring proceedings before a court, such as to seek an order to remedy or restrain a breach of a coastal zone management plan.  |
| 20. Therefore, the Committee has concerns with regard to the proposed section 55L (6) of Schedule 1, and refers this to Parliament for consideration as to whether it may be an undue trespass on the right to procedural fairness by removing the current right existing under section 55L (1) to bring proceedings in the Land and Environment Court to seek an order to remedy or restrain a breach of a coastal zone management plan, which has been made by the State or a NSW Government agency. |

**Issue: Ill And Wide Defined Powers – Proposed Section 55ZG (1) – Resolution of disputes under Part 4C and this Part (Part D) – Schedule 1 [26]:**

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| 23. The Committee is concerned that if a dispute arises between a council and a Coastal Authority that is a Minister in relation to any function under the proposed Part 4C or Part 4D, the Minister may hold broad powers to direct the council as to the exercise of the function under these Parts. The Committee refers the proposed section 55ZG (1) of the new Part 4D of Schedule 1 [26] to Parliament for consideration as to whether it may make rights and obligations unduly dependent upon insufficiently defined administrative powers in the context of a dispute arising between a a council and a Coastal Authority that is a Minister. |
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**Issue: Clause 2 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.**

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| 26. | The Bill also provides for guidelines to be published by the Minister in relation to the preparation of draft coastal zone management plans. Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power. |
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### 3. Courts Legislation Amendment Bill 2010

**Issue: Denial Of Compensation – Proposed Section 26X (1) of Part 2A, Division 7 – Schedule 1.6 *Civil Liability Act 2002*, of Schedule 1 [3] of the Bill – Limitation on exemplary, punitive and aggravated damages against protected defendant in cases of vicarious liability – Amendment of *Civil Liability Act 2002*:**

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| 27. | The Committee notes that the proposed section 26X (1) will broaden the scope of where the court can no longer award exemplary or punitive damages or damages in the nature of aggravated damages in an action against a protected defendant who has been found vicariously liable for personal injury damages where the act or omission that caused the injury or death was a tort (not just negligence).                        |
| 28. | The Committee is of the view that the right to seek damages or compensation, including that of exemplary or punitive damages and aggravated damages, including in intentional torts such as assault, false imprisonment and defamation, and not just negligence, is an important personal right and that this right should not be removed or restricted by legislation unless there is a compelling public interest in doing so. |
| 29. | The Committee refers this amendment of the <i>Civil Liability Act 2002</i> by the insertion of the new section 26X (1) of the proposed Part 2A, Division 7, to Parliament for consideration as to whether removing the right to exemplary or punitive damages or aggravated damages in tort (not just negligence), where the protected defendant is vicariously liable, may trespass unduly on personal rights and liberties.    |

**Issue: Retrospectivity – Schedule 1 [3] – Schedule 2 - Savings and transitional provisions - Amendment of *Children (Criminal Proceedings) Act 1987* – Application of amendments to section 41:**

33. The Committee will always be concerned to identify the retrospective effects of legislation that may have an adverse impact on a person, particularly, on a young person or child. The Committee observes the right established by Article 15 of the *International Covenant on Civil and Political Rights* that a person not be subject to a heavier penalty than what was applicable at the time of the commission of the offence.
34. Therefore, the Committee is concerned that the rights and liberties of such young persons may be unduly trespassed. The Committee refers schedule 1 [3] on the savings and transitional provisions in relation to the retrospective application of amendments to section 41, through the proposed sections 41(1A) and (1B) of the *Children (Criminal Proceedings) Act 1987*, to Parliament for consideration.

**Issue: Retrospectivity – Schedule 1 [4] – Savings and transitional provisions - Amendment of *Civil Liability Act 2002* – Application of section 26X - schedule 1.6 *Civil Liability Act 2002* of Bill's Schedule 1 [3] – Provision consequent on enactment of *Courts Legislation Amendment Act 2010*:**

36. Item [3] of the proposed amendments to the Act provides that a court cannot award exemplary or punitive damages or damages in the nature of aggravated damages in an action against a protected defendant for the award of personal injury damages in respect of the death or injury of an offender in custody where the act or omission that caused the injury or death was the tort of a person for which the protected defendant was vicariously liable.
37. However, the Committee notes that Item [4] of the proposed amendments to the Act provides for the amendment to be made by item [3] to extend to certain proceedings commenced before the commencement of the amendment.
38. The Committee considers that the retrospective application of the amendments to the *Civil Liability Act 2002* through the insertion of section 26X and schedule 1 [4] with the provision consequent on enactment of this Bill, may adversely impact and unduly trespass on personal rights to seek exemplary or punitive damages or aggravated damages in tort where the protected defendant has been found to be vicariously liable. Accordingly, the Committee refers this to Parliament.

#### **4. Crimes (Sentencing Legislation) Amendment (Intensive Correction) Bill 2010**

##### **Issue: Privacy and Personal Integrity**

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| <p><b>17.</b> The Committee notes the mandatory conditions that offenders under an intensive correction order must adhere to and identifies that some of these conditions appear to adversely interfere with an offender's privacy and personal integrity. Although the Committee recognises that, in totality, the intensive correction orders scheme is less affronting to personal rights and liberties than periodic detention, it is nonetheless incumbent on the Committee to identify these matters.</p> <p><b>18.</b> In any case, the Committee is concerned that the Bill confers onto the supervisors of offenders subject to intensive correction orders wide latitude in their management of an offender, without providing for appropriate guidelines to inform them of the suitability of their conduct. The Committee considers that, in the absence of such guidelines as a safeguard, the risk exists that a supervisor's authority could be applied inappropriately. The Committee refers this matter to Parliament for its consideration.</p> |
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##### **Issue: Denial of Review Rights**

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| <p><b>22.</b> The Committee recognises that this provision enables a fine defaulter, who would otherwise be committed to a period of imprisonment, the opportunity to convert their sentences into intensive correction orders. Despite this, the Committee is concerned by the finality of the decision by the Commissioner of Corrective Services and consequent lack of review rights. The Committee refers this matter to Parliament for its consideration.</p> |
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##### **Issue: Closed Justice**

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| <p><b>26.</b> The Committee is always concerned about provisions that enable courts to conduct proceedings in the absence of the parties concerned and, in the absence of any compelling reasons otherwise, prefers that parties are afforded the opportunity to be present at proceedings in the interests of the transparency justice.</p> |
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##### **Issue: Proclamation by Consent**

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| <p><b>29.</b> The Committee recognises the significant administrative arrangements that need to take place before this Bill can commence operation and therefore has not identified any issues under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i>.</p> |
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5. Fair Trading Amendment (Unfair Contract Terms) Bill 2010

**Issue: Commencement by Proclamation**

13. The Committee recognises the difficulties in determining a commencement date for uniform legislation, as it is reliant on the actions of other jurisdictions. However, the Committee is aware that it is intended that the Bill commence operation on 1 July 2010 and therefore has not identified any issues under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

6. Industrial Relations Amendment (Public Sector Appeals) Bill 2010

7. The Committee has not identified any issues under s8A(1)(b) of the *Legislation Review Act 1987*

7. Macedonian Orthodox Church Property trust Bill 2010\*

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

21. Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power.

8. Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010

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

16. Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power.

9. Statue Law (Miscellaneous Provisions) Bill 2010

**Issue: Retrospectivity**

7. The Committee considers that, as no person is detrimentally affected by the retrospective operation of this amendment, this provision does not trespass on personal rights or liberties.

## 10. Superannuation Legislation Amendment Bill 2010

### **Issue: Commencement by Proclamation**

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| <p><b>8. The Committee is generally concerned about commencement by proclamation. However, the Committee accepts the advice from the department that the commencement of the Act is contingent upon the drafting of the accompanying regulations.</b></p> |
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