

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Children (Education and Care Services National Law Application) Bill 2010

Issue: Commencement by proclamation – Clause 2 (1) and (2) – Provide the executive with unfettered control over the commencement of an Act:

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| 22. | Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power. |
| 23. | The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the Legislation Review Act 1987. |

2. Dust Diseases Tribunal Amendment (Damages-Deceased's Dependents) Bill 2010*

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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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3. Food Amendment Bill 2010

Issue: Strict Liability – Schedule 1 [3] - proposed section 106N (4) – Requirement for certain standard food outlets to display nutritional information – Amendment of *Food Act 2003*:

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| 27. | Proposed section 106N (4) provides for a strict liability offence. The imposition of strict liability may give rise to concern as the prosecuting authority is not required to prove that the individual intended to commit the offence, and may be seen as contrary to the right to the presumption of innocence. However, in some circumstances, the imposition of strict liability may be warranted after considering the community impact of the offence, the availability of defences and safeguards, and the type of penalty that may be imposed. |
| 28. | The Committee notes that terms of imprisonment are generally considered inappropriate in relation to strict liability offences. |

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| <p>29. However, the imposition of strict liability may be acceptable in circumstances where it is designed to ensure compliance to protect the public interest and after consideration of the type of penalties that may be imposed. The Committee further notes that proposed subsection (3) still requires the prosecuting authority to prove a person has intentionally contravened subsection (2). Therefore, under proposed subsection (5), if the court is not satisfied that the person has committed the offence intentionally but is satisfied that the person has committed an offence against subsection (4), that the court may find the person guilty of an offence against subsection (4) which carries the lesser penalty units.</p> <p>30. The Committee concludes that, given the lesser penalty units that may be imposed which are limited to monetary ones with no terms of imprisonment, as well as recognising the public benefit of ensuring compliance to achieve the objective of the Bill, personal rights and liberties are not unduly trespassed by the inclusion of strict liability under the proposed section 106N (4).</p> |
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4. Industrial Relations Amendment (Non-operative Awards) Bill 2010

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| <p>6. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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5. Library Amendment (Arrangement For Mutual Provision Of Library Services) Bill 2010

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| <p>7. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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6. Local Government Amendment (Environmental Upgrade Agreements) Bill 2010

Issue: Commencement by Proclamation

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| <p>9. The Committee appreciates that various administrative arrangements may need to take place before this Bill can commence operation, including the drafting of appropriate guidelines. Given that the Committee has not identified any other issue in this Bill that may unduly trespass on personal rights and liberties, the Committee does not regard the Minister's discretion to commence the Act by proclamation to be an inappropriate delegation of power in this instance.</p> |
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7. National Park Estate (South-Western Cypress Reservations) Bill 2010

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| <p>8. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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8. Planning Appeals Legislation Amendment Bill 2010

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

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| 24. | Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power. |
| 25. | The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the Legislation Review Act 1987. |

9. Public Holidays Bill 2010; Shop Trading Amendment Bill 2010

Issue: Denial of Compensation

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| 21. | The Committee acknowledges the right of Government to be exempt from paying compensation to affected retailers for declaring public holidays and notes the public policy grounds to restrict retail trading on certain public holidays. However, the Committee does not support denial of compensation in circumstances where the Government, or any statutory agency acting on legislative authority, has engaged in conduct that is 'unconscionable, misleading or deceptive' or which makes statements that are 'negligent, false or misleading'. |
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10. Roads Amendment (Private Railways) Bill 2010

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| 8. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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11. State Emergency and Rescue Management Amendment Bill 2010

Issue: Commencement by Proclamation

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| 9. | Considering that the amendments foreshadowed by this Bill are largely minor in nature, and given that the Committee has not identified any other issue in this Bill that may unduly trespass on personal rights and liberties, the Committee does not regard the Minister's discretion to commence the Act by proclamation to be an inappropriate delegation of power in this instance. |
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12. Superannuation Administration Authority Corporatisation Amendment Bill 2010

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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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13. Water Management Amendment Bill 2010

Issue: Strict Liability – Amendments to *Water Management Act 2000* - Schedule 2 [14] – proposed section 60B (2) and (3); Schedule 2 [15] –

proposed section 60C (2) and (3); Schedule 2 [51] – proposed section 91A (4) and (5); Schedule 2 [52] – proposed section 91B (5); and Schedule 2 [54] – proposed section 91G:

29. The Committee, therefore, notes the above numerous clauses in the Bill which provide for strict liability offences. The imposition of strict liability may give rise to concern as the prosecuting authority is not required to prove that the defendant intended to commit the offence, and may be seen as contrary to the right to the presumption of innocence. However, in some circumstances, the imposition of strict liability may be warranted after considering the community impact of the offence, the availability of defences and safeguards, and the type of penalty that may be imposed. Terms of imprisonment are generally considered inappropriate in relation to strict liability offences.
30. The Committee is of the view that where the above proposed strict liability offences have available defences and their penalties do not attract terms of imprisonment, along with the consideration of the community impact of the offences and compliance with the Bill's objective, the above proposed provisions may not be unduly trespassing on individual rights and liberties.
31. Strict liability also arises in proposed section 60C (2): A person who takes water from a water source to which this Part applies otherwise than in accordance with the water allocation for the access licence by which the taking of water from that water source is authorised is guilty of an offence. Tier 2 penalty.
32. Strict liability is again contained in proposed section 60C (3): If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (2), and the water supply work is nominated in relation to an access licence held by some other person, both persons are taken to have contravened that subsection.
33. However, there does not appear to be the availability of any corresponding defences for the strict liability offences contained in the above proposed section 60C (2) and (3). Accordingly, the Committee refers to Parliament to consider whether the proposed section 60C (2) and (3) of Schedule 2 [15] of the Bill may unduly trespass on the rights and liberties of those charged with such strict liability offences.

Issue: Removal of basic landholder right as a defence – Amendment to *Water Management Act 2000* – Schedule 2 [57] – proposed section 91M (2) – Section 91M General defence:

36. However, proposed section 91M (2) will remove the currently available general defence of "the water was taken pursuant to a basic landholder right" in relation to the doing of anything without an approval, to a prosecution under the Division 1A offences (other than for defences available for offences under the new sections 91A (4) and 91B (5)).

37. Therefore, the Committee refers this to Parliament for consideration as to whether the proposed section 91M (2) of Schedule 2 [57] may constitute an undue trespass on the accused person's rights and liberties.

Issue: Excludes appeal – Amendments to *Water Management Act 2000* - Schedule 1 [6] – proposed section 368 (2)(c) and Schedule 2 [94] – proposed section 368 (2)(a1) - Section 368 Appeals to Land and Environment Court:

41. The Committee notes the importance of judicial review for protecting individual rights and in upholding the rule of law.
42. The Committee is also of the view that the above proposed sections appear broad and may have the potential to deny natural justice by removing the opportunity for review of a decision. Accordingly, the Committee asks Parliament to consider whether individual rights or liberties may be unduly dependent on non-reviewable decisions by removing appeals to the Land and Environment Court against decisions proposed by the new section 368 (2)(c) of Schedule 1 [6] and new section 368 (2)(a1) of Schedule 2 [94] of the Bill.

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

44. Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power.
45. The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the Legislation Review Act 1987.