

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Crimes (Forensic Procedures) Amendment Bill 2009

Issue: Rights of the Child

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| 17. | Taking into consideration of the above protections afforded by the Bill, the Committee is of the view that this Bill does not constitute an undue trespass on the rights of the child under the age of 10 years old. |
| 18. | The Committee also notes from the Agreement in Principle speech with regard to a magistrate making an order for a child under 10 to undergo a forensic procedure for a particular purpose, that: “these orders are designed to assist law enforcement activities. They do not aim to allow, nor do they empower, the police to investigate or act against children under 10 in any way”. |
| 19. | However, the Committee suggests that to remove any doubt and to clarify any uncertainty that may undermine the rights of the child, a similar wording to the effect that ‘the orders are not to allow or empower investigation against a child under 10 years of age’ could be considered by Parliament for insertion into any relevant parts of the proposed Act including in the proposed section 81F (1). |

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

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| 21. | 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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2. Electricity Supply Amendment (energy savings) bill 2009

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| 13. | 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. Energy Legislation Amendment (Infrastructure Protection) Bill 2009

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

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| 18. | 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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4. Heritage Amendment Bill 2009

Issue: Clause 2 (2) – Schedule 1 [18]-[23] and Schedule 2 [7]-[9] - Retrospectivity:

29. The Committee was advised that amendments to section 118 of the *Environmental Planning and Assessment Act 1979* “relates to planning panels”. In this regard, the Committee was informed “that the retrospective commencement of the provision does not, in itself, extend the powers of any existing panels to deal with development control plans and contributions plans as this would require orders to be made which could not apply retrospectively”.
30. The Committee was also advised that the amendments to section 36 of the *Heritage Act 1977* in respect of “the Planning Assessment Commission are minor statute law revision arrangements required by amendments made to the *Environmental Planning and Assessment Act* in 2008. The amendments are proposed to have commenced on 3.11.08 to coincide with the establishment of the Planning Assessment Commission on that date”.

Issue: Right of Appearance – clauses which allow amendment of Act by a regulation - Schedule 1 [19] - Proposed Section 36 (1); Schedule 1 [30] – Proposed Section 72; and Schedule 1 [31] – Proposed Section 79 – Amendment of *Heritage Act 1977*:

34. The Committee observes that from the Bill’s Explanatory Note: Schedule 1 [19]; Schedule 1 [30] and Schedule 1 [31] will “enable regulations to be made to remove or change the right of a party to legal or other representation” “at a review by the Planning Assessment Commission of a recommendation that an item be listed on the State Heritage Register” [item 19]; or “at a review by the Planning Assessment Commission of an appeal against a decision by the Heritage Council about an application for approval of actions in relation to an item that is subject to an interim heritage order or listed on the State Heritage Register” [item 30]; or “at a review by the Planning Assessment Commission of an appeal under the Planning Act or other Act that is to be determined by the Minister for Planning” [item 31].
35. The Committee was advised that “the proposed amendments to the Heritage Act are simply to ensure consistency with the provisions that relate to the Planning Assessment Commission under the *Environmental Planning and Assessment Act 1979*”.
36. The Committee notes that the right of appearance by the affected person will not be removed by this Bill but the right of appearance by the person’s legal practitioner or their agent may be precluded or changed by regulations. The Committee refers this to Parliament and asks whether this may constitute an inappropriate delegation of legislative powers by limiting or changing the right of appearance by a legal or other representation through regulations rather than by legislation.

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

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| 38. | 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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5. Land Acquisition (Just Terms Compensation) Amendment Bill 2009

Issue: Schedule 1 [1] - Right to Property

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| 9. | The Committee is always concerned about infringements on individual property rights. However, the Committee is satisfied that the Bill is necessary to clarify that native title land and land vested in an authority must be acquired under the restrictions of the authority's parent legislation which is more onerous than s7A and 7B of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> . |
| 10. | The Committee also does not consider that, in clarifying that land subject to native title and land vested in councils falls within Part 1 of Chapter 8 of the <i>Local Government Act 1993</i> , the powers of councils to compulsorily acquire land from private landowners has been unduly extended. |

Issue: Schedule 1 [4] - Retrospectivity

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| 14. | The Committee accepts that the retrospective application of the Bill is necessary to ensure certainty of land tenure and, as it does not affect previous court determinations, the Committee considers that it does not unduly trespass on personal rights and liberties. |
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6. Mining Amendment (Safeguarding Land and Water) Bill 2009*

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| 18. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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7. Motor Accidents (Lifetime Care and Support) Amendment Bill 2009

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

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| 13. | 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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1. Correspondence On Explanatory Materials And Explanatory Memoranda Accompanying Bills

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| 8. | The Committee thanks the Premier for his reply. |
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