

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Appropriation (Budget Variations) 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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2. Charter of Budget Honesty (Election Promises Costing) Amendment Bill 2010

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| 9. 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. Commercial Arbitration Bill 2010

Issue: Disclosure Of Confidential Information And Self Incrimination - Clause 27D (7) of Part 5 – Power of arbitrator to act as mediator, conciliator or other non-arbitral intermediary:

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| 32. The Committee raises the concern as to whether clause 27D (7) may contradict or undermine subclause (2)(b) with regard to treating the confidentiality of information obtained by the arbitrator acting as mediator from a party with whom he or she communicated separately if that party did not agree to the information being treated as non-confidential or if the arbitration agreement relating to mediation did not provide for the treatment of such information or communication. |
| 33. The Committee will be concerned if a Bill removes or restricts a person's potential right against self incrimination. The right against self incrimination is well recognised both at common law and in international law. Article 14(3)(g) of the <i>International Covenant on Civil and Political Rights</i> provides that a person has a right not to be compelled to testify against himself or herself. |

34. However, the right against self-incrimination needs to be balanced with the public benefit that may flow from obtaining or disclosing information. Nonetheless, any abrogation of the right against self-incrimination should not be more than is justified in the circumstances. Accordingly, the Committee is concerned that confidential information that is obtained separately from a party during mediation when the same arbitrator acted as a mediator, and when such information may not have been ordinarily obtained under arbitration, may be circumstances that do not justify any disclosure of confidential information and abrogation of the potential right against self incrimination. The Committee believes that this should be in keeping with safeguard provisions proposed for other persons such that they will not be compelled under any subpoena or a court order to answer any question or produce any document that the person could not be compelled to answer or produce in a proceeding before the Court as available under clause 27A (3) and clause 27B (5).
35. Therefore, the Committee refers this to Parliament to consider whether clause 27D (7) of Part 5 in providing for the disclosure of otherwise confidential information, may lead to the circumstances of restricting the potential right against self-incrimination and an undue trespass on the rights and liberties of individuals.

Issue: Excludes Appeal And Review – Clause 27I (4) of Part 5 – The Court may allow disclosure of confidential information in certain circumstances:

40. Therefore, the Court may order the disclosure of confidential information in certain circumstances where such an order may not be subject to an appeal.
41. The Committee will be concerned when a Bill seeks to exclude a review or an appeal and refers this to Parliament to consider whether clause 27I (4) of Part 5 may subject individual rights such as those concerning the disclosure of confidential information, to be unduly dependent on decisions that cannot be appealed or reviewed.

Issue: Clause 1B of Part 1A - Commencement By Proclamation - Provide the executive with unfettered control over the commencement of an Act.

43. 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*.

4. Coroners Amendment (Domestic Violence Death Review Team) Bill 2010

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

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| 17. Therefore, the Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i> . |
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5. Liquor Legislation Amendment Bill 2010

Issue: Oppressive Official Powers - Schedule 2 Amendment of the *Local Government Act 1993* – Confiscation of alcohol in alcohol-free zones

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| 7. Schedule 2 now extends alcohol-free zone powers and penalties under Section 632 of the <i>Local Government Act 2010</i> to precincts under liquor accords. The Committee has previously expressed concerns about the fact that the operation of alcohol free zones and associated penalties regarding the issuing of notices and confiscation or disposing of alcohol may sometimes affect differentially, or impact disproportionately, on marginalised groups. |
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6. Local Government Amendment (General Rate Exemptions) Bill 2010

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| 9. 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. Transport Administration Amendment Bill 2010

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

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| 12. 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> . |
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