

## **SUMMARY OF CONCLUSIONS**

### **1. Building and Construction Industry Security of Payment Amendment Bill 2010**

**Issue: Retrospectivity – Schedule 1 [4] – insertion of Schedule 2, Part 4 –  
Application of amendments:**

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| <p>17. The Committee will always be concerned to identify the retrospective effects of legislation which may have an adverse impact on a person. The Committee acknowledges the difficulties that subcontractors, being those businesses at the bottom of the contractual chain, have with the enforcement of outcomes of adjudications of payment disputes. However, the respondent (the contractor) and the principal contractor (third legal party) that has a contractual agreement with the respondent, are also entitled to rely on the certainty of the current law at the time to order their affairs accordingly.</p> <p>18. Accordingly, the Committee asks Parliament to consider whether the retrospective application of the proposed Act may unduly trespass on the rights of individuals.</p> |
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**Issue: Commencement by proclamation – Clause 2 – Provide the executive with unfettered control over the commencement of an Act:**

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| <p>21. 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.</p> <p>22. The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the Legislation Review Act 1987.</p> |
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### **2. Children and Young Persons (Care and Protection) Amendment Bill 2010**

**Issue: Excludes Merits Review**

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| <p>16. It is incumbent upon the Committee to identify provisions in Bills that exclude an individual from seeking a merits review before a relevant tribunal, such as the proposal to restrict access to the Administrative Review Tribunal to review permanency plans.</p> <p>17. However, the Committee is aware that there is an alternative and more appropriate avenue for redress through application for review by the Children's Court. The Committee notes that the intention of the amendment is to prevent forum shopping or the seeking of additional review in circumstances where a decision has been made by the Children's Court that fails to satisfy the applicant.</p> <p>18. Given the preservation of alternative review rights, the Committee does hold any concerns with the proposed amendment.</p> |
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**Issue: Commencement by Proclamation**

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| 21. | On advice received from the Minister's Office, the Committee understands that those parts of the Bill to be proclaimed will commence operation on 1 January 2011 with the voluntary out-of-home care provisions to commence operation on 1 February 2011, subject to advice from the Children's Guardian. |
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**3. Contract Cleaning Industry (Portable Long Service Leave Scheme) Bill 2010**

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| 23. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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**4. Courts and Crimes Legislation Further Amendment Bill 2010**

**Issue: Oppressive Official Powers**

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| 24. | The Committee is concerned that the considerable extension of the class of individuals who will be required to pay into the victims compensation levy constitutes an oppressive official power.   |
| 25. | This is because the levy will apply to individuals convicted of offences in which there are no victims, despite the objectives of the Victims Compensation Fund being to provide relief funded, in part, from those individuals who have committed crimes in which there is an obvious and direct victim. The Committee is concerned about the disconnect between the intentions of the Victims Compensation Fund and the manner in which revenue being paid into it is being sourced.  |
| 26. | The levy may also constitute excessive punishment as, in providing for only two types of fees, the levy fails to give adequate weight to the nature of the offence an individual has been convicted of in determining what payment is required. The result may therefore be that an individual is penalised to an extent that is disproportionate to the offence committed. Further, the requirement to pay an additional levy may place serious financial burdens on individuals who, having been convicted of an offence, may not have the capacity to pay. |
| 27. | In light of these concerns, the Committee refers this matter to Parliament for its further consideration.   |

**5. Crimes (Sentencing Procedure) Amendment Bill 2010**

**Issue: Commencement by Proclamation**

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| 12. | Given that the amendments foreshadowed by this Bill require changes to the complex area of sentencing procedure, the Committee recognises that an appropriate time period is required to inform affected persons about these changes before commencement. As the Committee has not identified any issues with this Bill, it does not consider commencement by proclamation to be an inappropriate delegation of power in this instance. |
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## **6. Crimes (Serious Sex Offenders) Amendment Bill 2010**

**Issue: Retrospectivity - Schedule 1 [3]**

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| <p>10. While the Committee is aware that individual rights must be weighed against public safety, it is always concerned about retrospective application of the law, particularly in criminal matters. By changing the definition of "serious sex offence" to include sex offences which were perpetrated before the 1989 changes to the <i>Crimes Act 1900</i> (NSW) offenders may now be subject to supervision or detention orders who did not previously qualify to be under them.</p> <p>16. The Committee is concerned that the threshold of the test by which a court can impose or extend a supervision or detention order has been lowered. Further, the court has been given a test which is partially speculative in nature and may be overly susceptible to a variance in application.</p> |
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**Issue: Schedule 1 [8] and 1[24] – Right to a fair hearing**

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| <p>22. The Committee is concerned that the affect of requiring the court to consider the views of the original sentencing judge and the views of victims of the offender by virtue of Schedule 1[8] and Schedule 1[24] when making or extending orders may compromise an offender's right to a fair hearing.</p> |
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## **7. Education Amendment (Ethics) 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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## **8. Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010\***

**Issue: Privacy**

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| <p>14. The Committee notes that the effect of this provision would be to oust the authority of the <i>Privacy and Personal Information and Protection Act 1998</i> and therefore may subsequently interfere with the privacy rights of individuals. The Committee would only generally accept any encroachment on privacy rights in circumstances where there is a compelling interest to do so. It is unclear if the circumstances set out in the Bill meet that condition. The Committee refers this matter to Parliament for its further consideration.</p> |
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**Issue: Search of Property**

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| <p>18. The Committee is concerned about the extent of the power inherent in this provision as it removes the requirement that a council inspector first obtain a search warrant before entering a private residence. The Committee is not aware of any compelling public interest or urgency in dispensing with the longstanding necessity of first obtaining a search warrant.</p> |
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19. This provision may also adversely affect the rights of property holders by requiring them to justify the use of their property and who they permit to reside there.
20. In light of these concerns, the Committee refers this matter to Parliament for its further consideration.

**Issue: Reversal of the Onus of Proof**

24. The Committee notes that this provision effectively reverses the onus of proof by requiring the defendant to actively negate the elements of the offence. This is inconsistent with a presumption of innocence. The Committee is of the view that the burden of proving the elements of the offence should almost always rest with the prosecution.
25. This provision may also adversely affect the rights of property holders by requiring them to justifying the use of their property and who they permit to reside there.
26. In light of these concerns, the Committee refers the matter to Parliament for its further consideration.

**Issue: Ill and Widely Defined Powers**

29. Given the various powers foreshadowed by this Bill in relation to boarding houses, including the power for council inspectors to search boarding houses, and the reversing of the onus of proof on proprietors to prove that they are not operating a boarding house, the lack of a comprehensive definition could be considered insufficient and confusing.

**Issue: Commencement by Proclamation**

32. The Committee is of the view that Bills should commence on assent or on a specified date and that, should a Bill commence on proclamation, there should be good reasons doing so. The Committee is not aware of the reasons for providing a timeframe in which this Bill can commence operation on any day within that timeframe.

**9. Fair Trading Amendment (Australian Consumer Law) Bill 2010**

11. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

**10. Greenhouse Gas Storage Bill 2010**

**Issue: Self – Incrimination**

18. Historically, the common law has recognised a privilege against self-incrimination in which individuals have the right (within certain limitations) to not do or say anything that might be used as evidence against them in criminal proceedings. The Committee recognises that the right against self-incrimination as a longstanding principle and would ordinarily raise its concerns to any abrogation or variation of that right.

19. In the circumstances set out by the Bill, the Committee is of the view that the proposed provisions do not erode the privilege against self-incrimination. As such, the Committee does not consider these provisions to unduly trespass on individual rights and liberties.

Issue: Commencement by Proclamation

23. Considering the various administrative arrangements that need to take place before this Bill can commence operation, the Committee does not regard the commencement by proclamation provision to be an inappropriate delegation of power in this instance.

## **11. Liquor Amendment (Drinking Age) Bill 2010\***

Issue: Personal liberties – Schedule 1 [1], [2] and [3] – omitting "18 years" and inserting instead "21 years":

12. The Committee is of the view that it may be an undue trespass on individual rights and liberties to authorise the state to take away existing rights and liberties currently enjoyed by persons of or over 18 years and under 21 years of age, in the context of the *Liquor Act* without compelling justification and that it may potentially be a form of discrimination against a person on the ground of the age of the person between the age of 18 years and under 21 years old, in light of the fact that persons who have attained the age of 18 years are treated as adults, capable of forming an opinion and giving consent, and are also eligible to vote.
13. The Committee believes that the rights and liberties currently associated with the legal drinking age, while not absolute, should only be removed by compelling public harm minimisation justifications and only to the extent necessary to achieve the objective while leaving the rights and liberties of individuals as intact as possible. Accordingly, the Committee refers this Bill to Parliament for consideration as to whether it trespasses unduly on individual rights and liberties; whether there are sufficient compelling public harm minimisation justifications, and whether the extent to achieve the objective is necessary without causing trespass to personal rights and liberties that is undue.

## **12. Local Government Amendment (Confiscation Of Alcohol) Bill 2010\***

Issue: Oppressive Official Powers – Clause 3 – Amendment of *Local Government Act 1993* No 30 – Section 632A Confiscation of alcohol in alcohol prohibited areas:

15. The Committee is concerned with widening the scope of the definition of 'alcohol prohibited area' as proposed by clause 3 of this Bill, which will extend the power to confiscate and tip out alcohol beyond to an area that is not situated in the precinct or area to which a precinct liquor accord or a community liquor accord applies.

16. The Committee is concerned that this may not only undermine or weaken the aims of Division 2 of Part 8 of the *Liquor Act 2007* with regard to measures for minimising alcohol-related violence or anti-social behaviour, or to support the good order or amenity of such areas in connection with the presence of or proposed increase of licensed premises in the precinct or area, but, in particular, the power to confiscate alcohol will be extended to outside or beyond a precinct or area covered by a precinct liquor accord or a community liquor accord. This may potentially impact more adversely and disproportionately on members of marginalised groups such as those who may tend to use public space or be more highly visible in public place, including young people, Aboriginal people, people who are homeless, and those with mental health, drug and/or alcohol related problems .
17. The Committee has already raised similarly based concerns in the context of the then Liquor Legislation Amendment Bill 2008 reported in *Digest 14 of 2008*.
18. Therefore, the Committee refers clause 3 of this Bill to Parliament for consideration as to whether it may trespass unduly on personal rights and liberties arising from its potential to disproportionately affect individuals of marginalised or disadvantaged groups (such as young people, Aboriginal people, people who are homeless, and those with mental health, drug and/or alcohol related problems).

### **13. Long Service Corporation Bill 2010**

11. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

### **14. National Broadband Network Co-ordinator Bill 2010**

15. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

### **15. Parliamentary Electorates and Elections Further Amendment Bill 2010**

**Issue: Exclude Judicial Review**

20. The Committee recognises the importance of establishing procedures to enable individuals who are otherwise impaired from voting to be able to exercise their democratic franchise. The Committee also appreciates that the Electoral Commissioner is the most appropriate authority to establish such procedures.
21. However, the Committee is concerned that the Bill will prevent any court or tribunal – including the Court of Disputed Returns – from scrutinising the processes to be established by the Electoral Commissioner for technology assisted voting.

22. Given the Electoral Commissioner is charged with functions to ensure electoral processes are sufficiently scrutinised and conducted with transparency, the Committee does not consider it appropriate that relevant courts or tribunals are denied the ability to oversight the procedures that give rise to technology assisted voting, if the need arises. As such, the Committee refers this matter to Parliament for its further consideration.

## **16. Plumbing Bill 2010**

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

10. The Committee accepts that the Bill must commence on proclamation as time is needed to complete the entire regulatory framework surrounding the Bill

## **17. Public Health Bill 2010**

**Issue:** Standard of proof – Clause 61 (1) of Division 4 of Part 4 – [Director-General may direct persons to undergo medical examination]; Clause 82 of Division 2 of Part 5 – [Health practitioners to make hospital CEO aware of notifiable diseases]; and Clause 83 of Division 2 of Part 5 – [Hospital CEO to notify Director-General of notifiable diseases]:

31. The Committee holds some concerns regarding these provisions that have lowered the threshold for the standard of proof from belief on reasonable grounds to one of suspicion. Clause 61 enables the Director-General to require a person to undergo a medical examination if the Director-General reasonably suspects that the person is suffering from a Category 4 or 5 condition. Clause 82 requires a medical practitioner to notify the chief executive officer of a hospital if the medical practitioner suspects that a patient who is, or has been, receiving treatment at the hospital is or was suffering from a notifiable disease. Similarly, clause 83 requires the chief executive officer of a hospital to provide the Director-General with information concerning persons suffering from a notifiable disease who are, or have been, patients at the hospital if the officer suspects that a patient or former patient has or has had a notifiable disease.
32. Giving consideration to the public health reasons, the Committee refers the above clauses to Parliament and asks whether the compelling public health interests may outweigh concerns regarding any potential trespass on individual rights and liberties that might arise from the lowering of the standard threshold from a belief on reasonable grounds to one of suspicion.

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

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| 34. | 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. |
| 35. | The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the Legislation Review Act 1987.  |

## **18. Public Sector Employment and Management Amendment 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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## **19. Road Transport Driver Licensing Bill 2010**

**Issue: Clause 2 - Commencement by Proclamation**

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| 7. | The Committee has sought comment on why the Bill is to commence on proclamation rather than assent from the Minister for Roads' Office. It has received the response that the Roads and Traffic Authority are still assessing the internal system changes necessary to implement the new demerit point system. The Committee accepts the explanation and thanks the Minister's Office for its response. |
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## **20. Rural Fires Amendment Bill 2010**

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| 4. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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## **21. State Revenue Legislation Further Amendment Bill 2010**

**Issue: Retrospectivity**

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| 18. | Schedule 1 [1] of this Bill is to commence, retrospectively, on 1 July 2010. It is incumbent on the Committee to identify those provisions in legislation that are to commence retrospectively. |
| 19. | The Committee notes that many of the changes foreshadowed by the amendments are of a machinery or technical nature which would not adversely affect the rights and liberties of individuals.    |



20. However, clause 7 of the Bill proposes to amend section 62A of the *Duties Act 1997* which changes the duty payable for transfers to self managed superannuation funds, including the provision that \$500 is chargeable on certain transfers. The Committee is concerned with the retrospective application of this provision given it will likely cause a financial burden to individuals who had not planned for or considered that such charges would be payable at the time of transaction. As such, the Committee refers this matter to Parliament for its further consideration.

## **22. Statute Law (Miscellaneous Provisions) Bill (No 2) 2010**

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

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*.

## **23. Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Bill 2010\***

19. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

## **24. Vocational Education and Training (Commonwealth powers) Bill 2010**

Issue: Commencement by Proclamation

9. As the Bill is part of a national scheme the Committee does not consider the commencement by proclamation provision to be an inappropriate delegation of power in this instance.

## **25. Wagering Legislation Amendment Bill 2010**

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

26. 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.
27. The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.