

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Banana Industry Repeal Bill

10. The Legislation Review Committee has not identified any issues under s8A(1)(b) of the <i>Legislation Review Act 1987</i>.
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2. Community Relations Commission and Principles Of Multiculturalism Amendment Bill 2010

21. 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. Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010

Issue: Commencement by Proclamation

11. The Committee recognises that administrative arrangements need to take place, including the establishment of a price comparison service, 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>.

4. Firearms Legislation Amendment Bill 2010*

11. The Legislation Review Committee has not identified any issues under s8A(1)(b) of the <i>Legislation Review Act 1987</i>.
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5. Health Legislation Amendment Bill 2010

Issue: Privacy

20. The Committee notes that the amendments provided for in this Bill have the potential to impact on the privacy rights of individuals. However, the Committee also recognises that the disclosure of information provided for by these amendments are broadly in line with the Information Protection Principles of the <i>Privacy and Personal Information Protection Act 1998</i>.

23. The Committee recognises the importance of ambulance service officers to be able to perform their duties without threat or fear of harassment or violence. However, the Committee is concerned that the offence provisions of this amendment may differentially impact on individuals with mental health impairments and, as such, the maximum penalty provisions may appear disproportionate to the offence committed when considering the potential mental health concerns of the offender. The Committee refers this matter to Parliament for its consideration.

Issue: Commencement by Proclamation

25. Although there may be good reasons why such discretion is required, such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about the proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than an on assent, is an inappropriate delegation of legislative power.

6. Jury Amendment Bill 2010

Issue: Right To Fair Trial – Clause 5 (1) and (2) – Persons holding particular office; and Clause 6 (1), (2), (3) and (4) – Persons employed or engaged in certain occupations in the public sector - Schedule 1 – Persons excluded from jury service:

39. The Committee understands that juries need to be representative of society but the Committee is also aware that the accused person on trial needs to be judged by one's own peers in the form of a jury. According to Lord Devlin, "judgment by peers rather than by professionals is what the jury provides".
40. Therefore, the traditional argument against allowing lawyers, police officers and persons from related or similar occupations to serve on juries, seeks to ensure that such persons with specialist knowledge, training and experience in the legal system, law enforcement, criminal investigations, use of evidence, evidentiary rules and procedures, will not disproportionately influence or bias the outcomes of a jury's decision, which may adversely impact on the fair trial of the accused.
41. In 2007 the NSW Law Reform Commission recommended that if Australian lawyers should continue to be ineligible, then the class of ineligible lawyers should be confined to those currently practising in NSW. The Commission noted that this was effectively the case in all other Australian jurisdictions, except Victoria.

42. The Commission also noted that serving police officers are expressly ineligible in most Australian jurisdictions. Although it did note that the restriction on members of law enforcement or criminal investigation agencies other than police, and on retired police officers, was stricter in NSW than most Australian jurisdictions. Currently, Victoria is the only other State to exclude retired officers permanently. Tasmania excludes former police officers for 10 years, and WA excludes them for five years.
43. The Committee appreciates the focus and need to broaden the pool of eligible jurors but asks Parliament to consider whether this also needs to be balanced with the wider interest in protecting everyone's right to a fair trial, which includes an impartial jury. Accordingly, the Committee is concerned about removing the current ineligibility of police officers, Australian lawyers (regardless of any practice), judicial officers, a coroner, Crown Prosecutor, Public Defender, Director or Deputy Director of Public Prosecutions, the Ombudsman and Deputy Ombudsman among others, once the 3 year period has passed if such persons no longer hold such an office or are no longer employed or engaged in that occupation. The Committee considers that such persons, although they may no longer be engaged in such occupations or be holding such an office, could still retain their many years of specialist knowledge, training and experience, which may in turn, still influence the decision-making of juries if they served as a juror.
44. Therefore, the Committee asks Parliament to consider whether under Schedule 1, clause 5 (1) and (2) with regard to persons holding particular office; and clause 6 (1), (2), (3) and (4) with regard to persons employed or engaged in certain occupations in the public sector, may undermine the right to fair trial and form an undue trespass on personal rights and liberties.

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

46. 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*.

7. Marine Parks Amendment (Moratorium) Bill 2010*

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

8. National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010

Issue: Commencement by Proclamation

14. The Committee recognises that administrative arrangements need to take place before the Act can commence operation, including the adoption of lease and license assessment criteria, and therefore has not identified any issues under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

9. Residential Tenancies Bill 2010

Issue: Procedural Fairness – Part 5, Division 2 (Termination By Landlord) - Clauses 91 (2), 92 (3), 93 (4), 94 (2), And Part 5, Division 3 (Termination By Tenant) – Clauses 103 (4) and 104 (4):

35. The Committee will be concerned about legislation that authorises decision-making and termination orders without the requirement of giving a termination notice beforehand (even if at short notice) to the affected person (whether the person is a tenant or a landlord).
36. The Committee appreciates that there may be special circumstances involving potential illegal purposes, or alleged threat, abuse, intimidation or harassment, hardship to the landlord, or breach of agreement by the landlord, or hardship to the tenant in a fixed term agreement. However, the Committee considers the right to procedural fairness may be undermined if there is no requirement to give a termination notice (even if it is short notice). This is particularly significant for the affected tenant under proposed section 91 (3) and proposed section 92 (2) as the termination order may specify that the order for possession takes effect immediately. This may potentially have the unintended effect of making a person homeless and undermines the right of a person to adequate housing especially if the person may not have received any termination notice beforehand.
37. Therefore, the Committee asks Parliament to consider whether clauses 91 (2), 92 (3), 93 (4), 94 (2) of Division 2 (Termination By Landlord) of Part 5 and clauses 103 (4) and 104 (4) of Division 3 (Termination By Tenant) of Part 5, may trespass unduly on personal rights and liberties including procedural fairness and right to notice.

Issue: Retrospectivity – Clause 6 – Part 1, Division 2 – Application of Act:

41. Therefore, the Committee does not consider the retrospective effect may trespass unduly on personal rights and liberties given the safeguards included in the savings, transitional and other provisions provided in Schedule 2.

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

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| <p>43. The Committee also notes from the Agreement in Principle speech that this Bill involves some main changes in a significant reform package, and that it is the first comprehensive revamp of the laws in more than 20 years. This will likely involve appropriate administrative, community awareness and transitional arrangements to be made. The Committee considers that, in these circumstances, clause 2 may not give rise to an inappropriate delegation of legislative power.</p> |
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Issue: Henry VIII Clauses And Matters Which Should Be Regarded by Parliament - Clause 12 (1) of Part 1, Division 2 – Exemptions from operation of Act:

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| <p>45. The Committee notes that allowing for regulations to effectively determine whether the operation of the Act or regulations could be exempt with regard to matters or definitions, which should also be regarded by Parliament, such as specified persons, agreement or premises, may delegate the power to make a fundamental component of the legislative scheme. Therefore, the Committee refers this to Parliament and asks Parliament to consider whether clause 12 (1) of Division 2 of Part 1, may constitute an inappropriate delegation of legislative power.</p> |
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