

SUMMARY OF CONCLUSIONS

1. Child Protection (Nicole's Law) Bill 2009*

Issue: Privacy – Clause 5 (1) and (2) – publication of certain information

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| 18. | The Committee is concerned that the above proposed section 5 may undermine the right to privacy especially if the publication and availability of information may potentially generate 'vigilante' actions from other individuals and subject the person to arbitrary or unlawful interference with that person's privacy, family, home or unlawful attacks on their reputation. |
| 19. | The Committee is of the view that intrusion into a person's privacy is not justified unless it can be shown the benefits to be gained outweigh the personal rights. The Committee notes that legislation and regulations are already in place to address registrable persons under the <i>Child Protection (Offenders Registration) Act 2000</i> , including the existence of the Child Protection Register. |
| 20. | Therefore, the Committee holds concerns that this Bill aims to introduce the publication of certain information, including the residential addresses or suburbs and postcodes, details of registrable offences, under the proposed section 5, for all registrable persons, without requiring the considerations of whether the person would pose a substantial or demonstrable safety risk to that person or to another person, and whether there is a reasonable cause to believe that the person may commit an offence against another person. |
| 21. | The Committee refers to Parliament the question as to whether the proposed section 5 is justified with regard to unduly trespassing on a person's right to privacy, when considering and weighing the existing legislative protections already in place for the community in relation to registrable persons under the <i>Child Protection (Offenders Registration) Act 2000</i> . |

2. Crimes Legislation Amendment (Possession of Knives in Public) Bill 2009*

Issue: Excessive Punishment; Rights of children – Schedule 1 [1] – Proposed section 11C *Summary Offences Act 1988*

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| 16. | The Committee understands that the intention of the proposed legislation is to act as a deterrent against the possession of knives in public spaces and schools. However, the Committee is concerned that the change in the penalty structure and significant increase in the penalties will disproportionately impact on children and young people and may constitute excessive punishment. Accordingly, the Committee refers proposed section 11C <i>Summary Offences Act 1988</i> to Parliament for its consideration. |
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Issue: Excessive Punishment; Rights of children – Schedule 2 – proposed section 27 *Law Enforcement (Powers and Responsibilities) Act 2002*

21. The Committee understands the intention of the proposed legislation is act as a deterrent against the possession of knives in public spaces and schools. However, the Committee is concerned that the increase in the penalty will disproportionately impact on children and young people and may constitute excessive punishment. Accordingly, the Committee refers proposed section 27 *Law Enforcement (Powers and Responsibilities) Act 2002* to Parliament for its consideration.

3. Crown Lands Amendment (Special Purpose Leases) Bill 2009

Issue: Ill-Defined and Wide Powers – Clause 3 – Amendment of *Crown Lands Act 1989* – clause 3 (1) - amendment of Part 4, Division 3A heading; and clause 3 (2) – amendment of section 44B(1) Development districts

15. The Committee notes that the *Legislation Review Digest Report* number 8 of 16 June 2008 has commented on the *Western and Crown Lands Amendment (Special Purpose Leases) Bill 2008* when it was introduced to Parliament.
18. At the time, in the *Legislation Review Digest Report* number 8 of 16 June 2008, the Committee had referred to Parliament regarding the then proposed section 44B, as the Committee considered the amendment may make individual rights unduly dependent on an insufficiently defined and wide administrative power. The Committee, again, makes similar observations with regard to clause 3 of this Bill.
19. The Committee notes that the scope for the Minister's declaration that *any* land within the Eastern and Central Division along with the current Western Division, to be a development district for the purposes of Division 3A of Part 4, appears to be wide. The Committee also notes that the Minister may make further notifications to alter the district's boundaries, abolish the district or vary its designated purposes subject to sections 44B (3) and (4), which could appear to be broad in scope.
20. Therefore, the Committee considers clause 3 (which amends section 44B of the *Crown Lands Act 1989*), may make individual rights unduly dependent on an insufficiently defined and wide administrative power, and refers this to Parliament.

4. Education Amendment (School Attendance) Bill 2009

Issue: Schedule 1 [5] – Proposed section 22D(9) – Excessive Punishment

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| 20. | The Committee notes that proposed section 22D(9) intends to act as a deterrent against non-attendance of children at school. However, the Committee has serious concerns regarding the impact of the penalties on parents and young people, in particular those from disadvantaged backgrounds, including Aboriginal young people and parents. Accordingly, the Committee refers proposed sections 22D(9) to Parliament for its consideration. |
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Issue: Schedule 1 [6] – Proposed section 23 – Excessive Punishment; Children's Rights

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| 25. | The Committee notes that prosecution of parents and children in the Local Court for non-attendance at school is intended as a last resort. However, the Committee has serious concerns regarding the impact of the increased penalties in proposed section 23(1) on young people and their parents, in particular those from disadvantaged backgrounds, including Aboriginal young people and parents. Accordingly, the Committee refers section 23 to Parliament for its consideration. |
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Issue: Schedule 1 [5] – Proposed section 22A – Obtaining information about children of compulsory school age; Proposed section 22C(6) & (7) – Privacy

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| 31. | The Committee notes that the intention of the Bill is to ensure that children and young people attend school, which may be facilitated in certain situations through the provision of certain information about a child or young person. However, the Committee has concerns about the impact of proposed section 22A (and section 22C(6) & (7)) on the personal rights and liberties of children and young people, in particular their right to privacy. The Committee is also concerned that proposed section 22A(5) (and section 22C(7)) provides that the authority or duty of an institution or person to provide information applies despite obligations in the <i>Privacy and Personal Information Protection Act 1998</i> or the <i>Health Records and Information Privacy Act 2002</i> . |
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Issue: Clause 2 – Commencement by Proclamation - Provide the executive with unfettered control over the commencement of an Act.

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| 33. | The Committee accepts the above reasons 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. Housing Amendment (Registrable Persons) Bill 2009

Issue: Retrospectivity - proposed section 58B (5) of Part 7A - Schedule 1 [1] – Termination of lease of registrable person in certain circumstances:

11. The Committee notes that the proposed section 58B (5) of new Part 7A extends to a lease entered into before the commencement of this new Part. The Committee will always be concerned where the law is changed retrospectively in a manner that may adversely affect any person.
12. The Committee notes that legislatively terminating a lease that had been duly made under the law at the time before the commencement of the new section, may trespass on a person's right to order his or her affairs in accordance with the current law. Accordingly, the Committee considers this proposed section 58B (5) of Part 7A may trespass unduly on personal rights and refers this to Parliament.

Issue: Denial of Compensation – proposed section 58D of Part 7A - Schedule 1 [1] – No compensation payable:

14. The Committee will always be concerned where legislation proposes that no compensation is payable for acts or omissions of a person in good faith in the purported administration or execution of a part of a legislation.
15. However, the Committee notes the proposed subsection (2) of 58D provides that the Director-General must ensure the tenant is repaid any rent, fee or charges for occupying the public housing referable to a period after termination of the lease under the proposed new Part. The Committee considers that by reading the proposed subsection (2) together with the proposed subsection (1) of the new section 58D of Part 7A, there does not appear to be an undue trespass on individual rights in this instance.

Issue: Procedural Fairness – proposed section 58E of Part 7A – Schedule 1 [1] – Certain termination provisions do not apply to termination under this Part:

18. The Committee holds concerns with regard to the proposed section 58E of Part 7A, and asks Parliament to consider whether that it may be an undue trespass on the right to procedural fairness by legislating away the need to give relevant notices of termination (and required time periods) and the right of review concerning the making of such terminations of tenancy agreements as ordinarily provided for under Part 5 of the *Residential Tenancies Act 1987*.

Issue: Excludes review – proposed section 58F of Part 7A - Schedule 1 [1] – Protection of exercise of functions of Director-General and Commissioner of Police under this Part:

20. The Committee will always be concerned if a Bill purports to oust the jurisdiction of the courts. The Committee notes the importance of judicial review for protecting individual rights against potentially oppressive administrative action and the importance of upholding the rule of law.

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| 21. | The Committee is also concerned that the proposed section has the potential to deny a person natural justice by removing the opportunity for review of the exercise of functions (including the non-exercise or improper exercise of functions and the proposed or threatened exercise of functions), by the Director-General or the Commissioner of Police (including that of their delegates). |
| 22. | The Committee is of the view that the proposed section 58F of Part 7A could make individual rights and liberties appear unduly dependent on non-reviewable decisions and refers this to Parliament. |

6. Industrial Relations Further Amendment (Jurisdiction Of Industrial Relations Commission) Bill 2009

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

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| 12. | 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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7. Liquor And Registered Clubs Legislation Amendment Bill 2009

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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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8. Prevention of Cruelty to Animals Amendment Bill 2009

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| 11. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> |
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9. Road Transport (Driver Licensing) Amendment (Demerit Points) Bill 2009*

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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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10. Rural Fires Amendment Bill 2009

Issue: Proposed section 22A - Power to remove persons or obstacles

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| 14. | The Committee is of the view that proposed section 22A may abrogate certain common law rights relating to trespass and personal property. However, the Committee understands that the grant of power in proposed section 22A may be in the public interest and required in certain circumstances to protect members of the public. |
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Issue: Part 2, Division 3A - Proposed 33B - Power to enter land up to 24 hours after fire

22. The Committee is of the view that proposed section 33B may abrogate certain common law rights relating to trespass and personal property. However, the Committee understands that the grant of power in proposed section 33B is intended to allow the NSW Rural Fire Service to investigate the cause or origin of a fire. The Committee also notes that the power to entry is not a “timeless power” but rather is only provided for a period of up to 24 hours after the fire has been put out to provide for an investigation of the cause and origin of a fire.

Issue: Proposed section 33C – Search Warrants

28. The Committee understands that the intention of proposed section 33C is to provide the NSW Rural Fire Service with powers to investigate a fire in its aftermath. However, the Committee notes that the proposed powers in section 33C may unduly trespass on personal rights and liberties and refers the matter to Parliament.

Issue: Proposed section 33D – Functions of the Commissioner that may be exercised by others – Insufficient criteria regarding the scope of persons to whom a power may be delegated

31. Proposed section 33D provides that any function conferred or imposed on the Commissioner by these sections may be delegated to a fire fighting authority or a member of staff of a fire fighting authority. The Committee believes that the powers in the proposed Bill could be more clearly defined to specific which officers may be appropriately delegated certain powers by the NSW Rural Fire Service Commissioner.

Issue: Proposed Schedule 2.2 [8] and [9] - Children’s Rights; Excessive Punishment

35. The Committee has concerns that the increased maximum penalties in proposed Schedule 2.2 [8] and [9] may have a disproportionate impact on children and young people. However, the Committee notes that child arsonists are usually dealt with differently from adults, for example specific provisions are made for children in the sentencing process through Youth Justice Conferencing.

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

37. 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.

11. Transport Administration Amendment (Rail Trails) Bill 2009

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| 6. | The Committee has not identified any issues under section 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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