

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Central Coast Water Corporation 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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| 13. Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power. |
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2. Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)

Issue: Procedural Fairness – Proposed Section 55L (6) – Schedule 1 [22] – Amendment of *Coastal Protection Act 1979* – Breach of coastal zone management plan – restraint:

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| 29. As reported in <i>Digest 9 of 2010</i> , the Committee remains concerned with regard to the proposed section 55L (6) of Schedule 1, and refers this to Parliament for consideration as to whether it may be an undue trespass on the right to procedural fairness by removing the current right existing under section 55L (1) to bring proceedings in the Land and Environment Court to seek an order to remedy or restrain a breach of a coastal zone management plan which has been made by the State or a NSW Government agency. |
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Issue: Ill And Wide Defined Powers – Proposed Section 55ZG (1) – Resolution of disputes under Part 4C and this Part (Part D) – - Schedule 1 [26] - Amendment of *Coastal Protection Act 1979*:

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| 32. As already reported in <i>Digest 9 of 2010</i> , the Committee still holds concerns that if a dispute arises between a council and a Coastal Authority that is a Minister in relation to any function under the proposed Part 4C or Part 4D, the Minister may hold broad powers to direct the council as to the exercise of the function under these Parts. Therefore, the Committee still refers the proposed section 55ZG (1) of the new Part 4D of Schedule 1 [26] to Parliament for consideration as to whether it may make rights and obligations unduly dependent upon insufficiently defined administrative powers in the context of a dispute arising between a council and a Coastal Authority that is a Minister. |
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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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| 35. | Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power. |
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3. Community Justice Centres Amendment Bill 2010

Issue: Privilege

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| 15. | Ordinarily, the Committee would regard privilege as instrumental to the administration of justice and recognises it as an important legal right that should be maintained in most circumstances. The Committee has generally raised its concerns with any attempt to abrogate privilege. |
| 16. | However, the Committee notes that the proposed provision goes to ensuring that there is recourse for a party to a matter to enforce an agreement in circumstances where the other party has breached the terms of the agreement. In other words, the amendment will enable agreements made through mediation to be legally binding. In this respect, the provision merely places agreements made under the auspices of a mediator pursuant to the <i>Community Justice Centres Act</i> on the same footing as common-law contracts, where a right to privilege is generally not conferred on the contract itself. |
| 17. | The Committee regards the ability of an aggrieved party to tender into evidence information that demonstrates that an enforceable agreement has been made, and the substance of that agreement, as fair and reasonable in the circumstances set out by the proposed amendment. |

4. Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) 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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5. Motor Accidents Compensation Amendment Bill 2010

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| 12. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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6. Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010

Issue: Excessive Punishment

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| <p>16. The Committee recognises the seriousness of action taken against an individual that is substantially in reprisal for making disclosures deemed to be in the public interest and appreciates the need for tough penalties. The Committee also recognises a desirability to achieve broad nationwide consistency in whistleblower legislation and maintain a strong deterrent effect.</p> <p>17. However, the Committee considers the immediate doubling of the maximum penalty, without any evidence that the current penalty has not been effective, to be of concern. The Committee refers the matter to Parliament for its consideration.</p> |
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Issue: Commencement by Proclamation

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| <p>20. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation. The Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i>.</p> |
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7. Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010

Issue: Commencement by Proclamation

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| <p>8. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation. The Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i>.</p> |
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8. Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010

Issue: Commencement by Proclamation

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| <p>15. The Committee understands that regulations need to be finalised before the Bill can commence operation and that, assuming the regulations are ready for gazetting, the intended commencement date is 31 October 2010. Given these considerations, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i>.</p> |
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9. Veterinary Practice Amendment Bill 2010

Issue: Limiting avenues of appeal

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| <p>13. Although it is incumbent on the Committee to identify provisions that appear to limit avenues of appeal, it appears fair and reasonable in the circumstances that the Veterinary Board has the final authority on whether it is willing and able to hear complaints that are more than three years old.</p> |
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Issue: Self-incrimination

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| <p>19. 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 fundamental, longstanding principle and would ordinarily raise its concern to any abrogation or variation of that right.</p> <p>20. In the Committee's view, the provision set out in proposed section 44A(1) erodes the privilege against self-incrimination insofar that it disallows a veterinary practitioner from refraining to produce documents that may incriminate himself or herself. Further, proposed section 44A(3) provides that any such document produced is 'not inadmissible' in criminal proceedings against the veterinary practitioner, further weakening any privilege against self-incrimination. The Committee refers this matter to Parliament for its further consideration.</p> |
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