



**SCRUTINY OF ACTS AND  
REGULATIONS COMMITTEE**

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**55<sup>th</sup> Parliament**  
**Annual Review 2003**  
**Regulations 2003**

*Ordered to be Printed*

**By Authority. Government Printer for the State of Victoria.  
N° 62 Session 2003-2004**

**Parliament of Victoria,  
Australia**

**Scrutiny of Acts and  
Regulations Committee**

**Subordinate Legislation  
Regulations 2003**

**Bibliography  
ISBN 0 7311 3091 X**



## SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

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	The Hon. Lidia Argondizzo MLC	
	Mr Ken Jasper MLA*	
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EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE  
LEGISLATIVE COUNCIL

Thursday, 27 March 2003

- 2 **PARLIAMENTARY COMMITTEES** — Mr Lenders moved, by leave—
- (1) **SCRUTINY OF ACTS AND REGULATIONS COMMITTEE** — That the Honourables Lidia Argondizzo and Andrew Olexander be members of the Scrutiny of Acts and Regulations Committee. Question — put and resolved in the affirmative.
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EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE  
LEGISLATIVE ASSEMBLY

Wednesday, 26 March 2003

- 7 **JOINT INVESTIGATORY COMMITTEES** — Motion made, by leave, and question — That —
- (6) Ms D'Ambrosio, Mr Jasper, Mr Leighton, Mr Lockwood, Mr McIntosh, Mr Perera and Mr Thompson be members of the **Scrutiny of Acts and Regulations Committee**.  
(*Mr Batchelor*) — put and agreed to.

# TERMS OF REFERENCE

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## Parliamentary Committees Act 2003

### **17. Scrutiny of Acts and Regulations Committee**

The functions of the Scrutiny of Acts and Regulations Committee are –

- (a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly–
  - (i) trespasses unduly upon rights or freedoms;
  - (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
  - (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
  - (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;
  - (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
  - (vi) inappropriately delegates legislative power;
  - (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
- (b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –
  - (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the *Constitution Act 1975*, or raises an issue as to the jurisdiction of the Supreme Court;
  - (ii) if a Bill repeals, alters or varies section 85 of the *Constitution Act 1975*, whether this is in all the circumstances appropriate and desirable;
  - (iii) if a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975*, but where an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;
- (c) to consider any Act that was not considered under paragraph (a) or (b) within 30 days immediately after the first appointment of members of the current Committee and to report to the Parliament with respect to that Act on any matter referred to in those paragraphs;
- (d) the functions conferred on the Committee by the *Subordinate Legislation Act 1994*;
- (e) the functions conferred on the Committee by the *Environment Protection Act 1970*;
- (f) the functions conferred on the Committee by the *Co-operative Schemes (Administrative Actions) Act 2001*;
- (g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

# PRINCIPLES OF REGULATION REVIEW

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## 21. Review of statutory rules by the Scrutiny Committee

- (1) The Scrutiny Committee may report to each House of the Parliament if the Scrutiny Committee considers that any statutory rule laid before Parliament —
  - (a) does not appear to be within the powers conferred by the authorising Act;
  - (b) without clear and express authority being conferred by the authorising Act —
    - (i) has a retrospective effect; or
    - (ii) imposes any tax, fee, fine, imprisonment or other penalty; or
    - (iii) purports to shift the onus of proof to a person accused of an offence; or
    - (iv) provides for the sub-delegation of powers delegated by the authorising Act;
  - (c) appears to be inconsistent with the general objectives of the authorising Act;
  - (d) makes unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of that Act;
  - (e) contains any matter or embodies any principles which should properly be dealt with by an Act and not by subordinate legislation;
  - (f) unduly trespasses on rights and liberties of the person previously established by law;
  - (g) makes rights and liberties of the person unduly dependent upon administrative and not upon judicial decisions;
  - (ga) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*;
  - (gb) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
  - (h) is inconsistent with principles of justice and fairness;
  - (i) requires explanation as to its form or intention;
  - (j) has been prepared in contravention of any of the provisions of this Act or of the guidelines with respect to the statutory rule and the contravention is of a substantial or material nature;
  - (k) is likely to result in administration and compliance costs which outweigh the likely benefits sought to be achieved by the statutory rule.
- (2) A report of the Scrutiny Committee under this section may contain any recommendations that the Scrutiny Committee considers appropriate, including a recommendation that a statutory rule should be —
  - (a) disallowed in whole or in part; or
  - (b) amended as suggested in the report.

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## CHAIRS' FOREWORD

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There has been a long proud tradition of bipartisan regulation review in the Victorian Parliament for almost 48 years. The scrutiny of regulations originally commenced in 1956. This Annual Review summarises the operations of the Regulation Review Subcommittee during 2003. No doubt the nature and form of regulations have changed since 1956. However the Regulation Review Subcommittee and its predecessor, the Legal and Constitutional Committee have always been committed to the dual notions of scrutiny and accountability in their assessment of regulations. Such notions are fundamental to good government.

The Regulatory Impact Statement process and the requirements set out in the Subordinate Legislation Act 1994 play a vital role in ensuring that the community remains involved with the development of regulations. That contribution helps to ensure that regulations are workable and effective.

This year the Regulation Review Subcommittee has considered some 157 regulations. There were no adverse reports in respect of any regulations. However, on several occasions the Subcommittee wrote to the relevant Minister requesting advice or a response. Generally Ministerial responses were helpful and clarified the issues raised.

The Subcommittee continues to raise matters where it considers there has not been sufficient compliance with the provisions of the *Subordinate Legislation Act 1994*. This is set out in more detail in Chapter 2. In particular the Subcommittee wishes to emphasise the importance of complying with all the Regulatory Impact Statement requirements. The proper consideration of alternatives to the regulations, a rounded cost benefit analysis and close consideration of all submissions is vitally important to the success of the process. The Subcommittee is of the view that on occasions, fuller consideration could be given to alternatives and the submissions made. Transparency is crucial. Members of the public need to have confidence in the process.

We wish to thank the current members of the Regulation Review Subcommittee for their work. At times it may appear that the work is technical but the scrutiny of regulations remains an invaluable part of the democratic process. In 2003 our Legal Adviser, Ms Jenny Baker left during the year to take up a new role at Parliament. The Regulation Review Subcommittee thanks her for her dedication and commitment and in particular for her work on the *Report on the Subordinate Legislation Act 1994*. Ms Helen Mason commenced work as the Subcommittee's new Legal Adviser. We thank Ms Mason for her hard work, expertise and provision of timely advice. Finally, all Subcommittees require administrative staff to ensure its smooth running from day to day. In that respect the Subcommittee is extremely fortunate to have the constant administrative support of Ms Sonya Caruana and Mr Simon Dinsbergs. The Subcommittee thanks them for their effort.

## **Scrutiny of Acts and Regulations Committee**

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Each year presents different challenges. Though the number of regulations made is relatively steady, the subject matter varies enormously. The Subcommittee looks forward to dealing with the issues and challenges with which it will no doubt be presented.

**Mr Peter Lockwood, MLA**  
**Chair,**  
**Regulation Review**  
**Subcommittee**  
**May 2004**

**Ms Lily D'Ambrosio, MLA**  
**Chair,**  
**Scrutiny of Acts and**  
**Regulations Committee**  
**May 2004**

# CHAPTER 1 - INTRODUCTION

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This *Annual Review* examines the major issues arising out of the review and scrutiny by the Regulation Review Subcommittee (the Subcommittee) of regulations made in Victoria in 2003.

## WHAT IS THE REGULATION REVIEW SUBCOMMITTEE?

The Scrutiny of Acts and Regulations Committee (the Committee) is a joint investigatory Committee of the Parliament of Victoria with members from both Houses and from the Government and Opposition. The Regulation Review Subcommittee is a subcommittee of the Scrutiny of Acts and Regulations Committee and is responsible for scrutinising regulations and for conducting any inquiries concerning regulations.<sup>1</sup>

## WHAT ARE 'REGULATIONS'?

Regulations are often referred to as 'subordinate legislation' or 'statutory rules'. Legislation made by Parliament is referred to as primary legislation or Acts of Parliament. Legislation cannot be made by bodies other than Parliament unless Parliament authorises those bodies (by means of an Act of Parliament) to make 'subordinate legislation' or 'statutory rules'. The Subcommittee prefers the word 'regulations' to 'subordinate legislation' or 'statutory rules' as its members believe this is a more commonly understood term. In this *Annual Review* 'regulations' will be used to refer to all 'statutory rules' or 'subordinate legislation'.

The term 'regulations' encompasses a variety of legislative instruments such as statutory rules, court rules, local laws, orders-in-council, proclamations, notices, guidelines, ministerial directions, codes of practice and so on. The power to make regulations is delegated by Parliament to the Executive and other non-Parliamentary bodies including government departments, statutory authorities and agencies. The powers delegated to the Executive by Parliament are contained in Acts of Parliament.

## PARLIAMENTARY OVERSIGHT

The validity of a regulation depends upon the regulation-making power conferred by the Act under which the regulation is made.

Parliament authorises the Executive to make regulations because there is insufficient time to debate and pass all the legislation which needs to be enacted, especially where the proposed legislation is very technical or scientific. While regulations are sometimes perceived to be of lesser importance than Acts of Parliament, regulations do control and prohibit the conduct of citizens and may adversely affect the rights and liberties of citizens in much the same way as Acts of Parliament. The potential for abuse of the regulation-making power and erosion of citizens' rights always

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<sup>1</sup> It should be noted that prior to 1 May 2000 the Regulation Review Subcommittee was known as the Subordinate Legislation Subcommittee.

exists. As Mr Justice Stephen commented in *Watson v. Lee*<sup>2</sup> the history of delegated legislation:–

*reflects the tension between the needs of those who govern and the just expectations of those who are governed. For those who govern, subordinate legislation, free of the restraints, delays and inelasticity of the parliamentary process, offers a speedy and flexible mode of law-making. For the governed it may threaten subjection to laws which are enacted in secret and of whose commands they cannot learn: their reasonable expectations that laws shall be both announced and accessible will only be assured of realization by the imposition and enforcement of appropriate controls upon the power of subordinate legislators, whose power, as Fifoot observed "requires an adequate measure of control if it is not to degenerate into arbitrary government".*

Parliamentary scrutiny committees, with power to examine regulations made by the Executive, are one of the most important safeguards against the misuse of Executive power. Since the 1930s most Westminster style Parliaments have kept control over regulations through the use of scrutiny committees. Scrutiny committees exist in all Australian states and territories. Some of these scrutiny committees examine bills and regulations, while others examine only regulations.<sup>3</sup>

Victoria has had a committee to scrutinise regulations since 1956.<sup>4</sup> From 1982 to 1992 the Legal and Constitutional Committee was responsible for scrutinising regulations. In 1992, the Scrutiny of Acts and Regulations Committee was created by the *Parliamentary Committees (Amendment) Act 1992* (Vic) and it took over the scrutiny of regulations.

## **SCOPE OF THE SUBORDINATE LEGISLATION ACT 1994**

The Subordinate Legislation Act 1994 (Vic) (the Act) contains the procedures for making regulations and the scrutiny functions of the Regulation Review Subcommittee. Only those regulations which come within the definition of 'statutory rule' as contained in section 3 of the Act are subject to its procedures and to scrutiny by the Subcommittee. Section 3 defines 'statutory rule' to include:–<sup>5</sup>

- Regulations made, approved or consented to by the Governor-in-Council;
- Regulations which may be disallowed by the Governor-in-Council excluding regulations made by local authorities;

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<sup>2</sup> (1979) 155 CLR 374 at 394.

<sup>3</sup> Australian jurisdictions which examine regulations and bills include the ACT, the Commonwealth, New South Wales, Queensland and Victoria and those committees include – the Standing Committee on Legal Affairs; Scrutiny of Bills Committee (Cth); Senate Committee on Regulations and Ordinances (Cth); Legislation Review Committee (NSW), Scrutiny of Legislation Committee (Qld) and Scrutiny of Acts and Regulations Committee (Vic). The New South Wales Legislation Review Committee only recently acquired the function of scrutinising bills under section 8A of the *Legislation Review Amendment Act 2002*. Previously the Committee was known as the Regulation Review Committee and it scrutinised regulations only.

Australian jurisdictions which examine regulations only include Northern Territory, South Australia, Tasmania and Western Australia and those committees include – Subordinate Legislation and Publications Committee (NT); Legislation Review Committee (SA); Subordinate Legislation Committee (Tas) and Delegated Legislation Committee (WA).

<sup>4</sup> *Subordinate Legislation Act 1956* (Vic).

<sup>5</sup> *Subordinate Legislation Act 1994* (Vic), s. 3.

- Rules relating to a court or tribunal or the procedure, practice or costs of a court or tribunal;
- Instruments prescribed to be statutory rules by the Governor-in-Council; and
- Instruments deemed to be statutory rules by their own authorising Act.

Regulations in the form of statutory rules constitute only a small portion of the continually growing number of different types of regulations made each year. Some examples of regulations which fall outside the definition of 'statutory rule' are – guidelines, ministerial directions, local laws, codes of practice, notices, declarations and licences. Regulations which fall outside the definition of 'statutory rule' are not subject to:–

- the procedures of the *Act*. However they remain subject to any requirements contained in legislation under which they are made;
- scrutiny by the Subcommittee and generally not subject to Parliamentary review. However it should be noted that some regulations which fall outside the definition of 'statutory rule' are subject to specific Parliamentary review requirements. For example, planning schemes (and amendments) must be tabled in Parliament within 10 sitting days after being approved.<sup>6</sup>

The Committee remains concerned about regulations which fall outside the definition of 'statutory rule' because it means that they are not subject to consistent regulation-making procedures nor generally to Parliamentary review, allowing the potential for powers to be used improperly and for rights to be adversely affected. This issue is discussed in detail in the Committee's *Report on the Subordinate Legislation Act 1994*.<sup>7</sup>

## ROLE OF THE SUBCOMMITTEE

The Subcommittee examines and reviews:–

- regulations within the meaning of 'statutory rule' contained in the *Act*;
- State Environment Protection Policies and Waste Management Policies made under the *Environment Protection Act 1970* (Vic);
- Directions made under the *Public Sector Management and Employment Act 1998* (Vic).

The Subcommittee generally meets once each month to discuss regulations. Meetings of the Subcommittee are not open to the public. However the Subcommittee may invite members of the public or representatives from various organisations or government departments and agencies to address it at one of its meetings. At its meetings the legal adviser presents the Subcommittee with written and verbal advice in respect of each regulation. The Subcommittee members discuss each regulation and any issues and concerns. When the Subcommittee is satisfied that a regulation complies fully with the requirements of the Act it passes a motion approving the regulation.

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<sup>6</sup> *Planning and Environment Act 1987* (Vic).

<sup>7</sup> This Report was tabled in Parliament in September 2002.

Where the Subcommittee is dissatisfied with any matters or needs clarification, it corresponds with the responsible Minister. The Subcommittee will highlight its concerns to the Minister. It will seek in the first instance an explanation or amendment of the regulation. If the Subcommittee does not receive a satisfactory explanation it may prepare a Report to Parliament. This Report is submitted to all members of the Committee for formal approval and adoption.<sup>8</sup> The Committee may adopt or reject the Report or part of it or make any changes it thinks necessary.<sup>9</sup> A Report to Parliament may include a recommendation that a regulation be amended or disallowed in whole or in part. Alternately a Report provided by way of information to the Parliament may simply outline the Committee's concerns. As a regulation has already commenced operation by the time it comes before the Subcommittee, the power to recommend disallowance is only used in exceptional circumstances. Generally, such a power would be used where all other efforts to resolve the issue have failed.

Where the Committee decides to Report to Parliament it may also recommend that a regulation be suspended whilst Parliament considers the issues contained in the Report.<sup>10</sup> Such a course may be undertaken in the interests of justice and fairness. When regulations are suspended in this manner they are deemed not to have been made. This means they have no effect. People are not required to comply with them during the period of suspension.<sup>11</sup>

### DISALLOWANCE

Any Member of either House of Parliament may give notice of a disallowance motion but must do so within 18 sitting days of the tabling of the regulation in that House. Disallowance will not be effective unless that House passes a disallowance resolution within 12 sitting days of the disallowance notice. If the Committee wants to Report to Parliament recommending disallowance, it must also comply with the 18 sitting days requirement. This means that the Subcommittee must review and discuss all regulations within strict time limits.

### SCRUTINY OF REGULATIONS

The Subcommittee scrutinises regulations after they have been made to determine whether they comply with the legislative principles specified in the Act.<sup>12</sup> These principles require the Subcommittee to ensure that regulations do not unduly trespass on rights and freedoms and comply with the procedural and practical requirements of the Act. The Subcommittee does not comment on matters involving government policy. The review focuses on the technical criteria contained in the Act. More specifically, under section 21 of the Act the Subcommittee ensures that regulations:–

- Are within the powers of the authorising Act;
- Do not, without clear and express authority –
  - have a retrospective effect;
  - impose a tax, fee, fine, imprisonment or other penalty;

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<sup>8</sup> The Regulation Review Subcommittee has all the powers and privileges of the full Committee. However it cannot report directly to Parliament.

<sup>9</sup> *Parliamentary Committees Act 1968* (Vic), s. 4L(5).

<sup>10</sup> *Subordinate Legislation Act 1994* (Vic), s. 22(1).

<sup>11</sup> *ibid*, s. 22(5).

<sup>12</sup> *Subordinate Legislation Act 1994* (Vic), s. 21.

- purport to shift the onus of proof to a person accused of an offence;
- provide for the sub-delegation of powers delegated by the authorising Act;
- Are consistent with the general objectives of the authorising Act;
- Do not make unusual or unexpected use of the powers conferred by the authorising Act having regard to the general objectives of the authorising Act;
- Do not contain any matters which should be contained in an Act of Parliament rather than subordinate legislation;
- Do not unduly trespass on rights and liberties of the person previously established by law;
- Do not make rights and liberties of the person unduly dependent on administrative rather than judicial decisions;
- Do not authorise or require any acts or practices which may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000* (Vic);
- Do not authorise or require any acts or practices which may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2000* (Vic);
- Are consistent with principles of justice and fairness;
- Do not require explanation as to form or intention;
- Do not substantially or materially contravene the practical requirements of the Act or the *Premier's Guidelines*<sup>13</sup>; and
- Are not likely to result in administration and compliance costs which outweigh the benefits sought to be achieved.

The Subcommittee also ensures compliance with the procedural requirements of the Act. Where a Regulatory Impact Statement (RIS) has been prepared, some of the procedural issues the Subcommittee examines include whether:–

- all appropriate certificates have been received by the Subcommittee;
- consultation is adequate and in particular whether appropriate organisations and individuals have been consulted;
- certificates are dated and signed by the responsible Minister;
- certificates contain all the required information;
- the competition policy assessment has been completed in accordance with the *Guidelines for the Application of the Competition Test to New Legislative Proposals*,<sup>14</sup> and
- the RIS is adequate and in particular whether it properly explains the nature and extent of the problem to be dealt with by the new regulation; the extent to which alternatives have been considered and the appropriateness of those alternatives; the costs and benefits of the proposed regulations and whether the benefits outweigh the costs.

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<sup>13</sup> Department of Premier & Cabinet, *Premier's Guidelines* (made pursuant to section 26 of the Act), December 1997.

<sup>14</sup> Competition Policy Taskforce, *Guidelines for the Application of the Competition Test to New Legislative Proposals*, December 1995.

Where a regulation is excepted or exempted from the RIS process, some of the procedural requirements the Subcommittee examines include whether:–

- the regulation is correctly exempted or excepted or whether it should have been made with a RIS;
- the regulation is exempted or excepted under the appropriate category in the Act;
- the exemption or exception certificate specifies the section under which the exemption or exception was granted;
- the exemption or exception certificate is signed and dated by the responsible Minister;
- the exemption certificate contains reasons for granting the exemption as required by section 9(2);
- a regulation exempted by a Premier's certificate sunsets within 12 months.

The Subcommittee also ensures that –

- explanatory memoranda clearly set out the nature and extent of any changes and the reasons for the changes; and
- there is compliance with all notice, gazettal and tabling requirements of the Act.

## **SCRUTINY OF ENVIRONMENT PROTECTION AND WASTE MANAGEMENT POLICIES**

The Subcommittee also has responsibility for reviewing policies made under Part 3 of the *Environment Protection Act 1970* (Vic). These policies include State Environment Protection Policies and Waste Management Policies.

More specifically State Environment Protection Policies include:–

- policies concerning the environment generally;<sup>15</sup>
- policies concerning the removal, disposal or reduction of litter in the environment;<sup>16</sup>
- policies concerning the re-use and recycling of substances.<sup>17</sup>

Until recently waste management policies made under the *Environment Protection Act 1970* (Vic) applied only to industrial waste. With changes brought about by the *Environment Protection (Resource Efficiency) Act 2002* (Vic) waste management policies now apply to waste generally.<sup>18</sup> Waste management policies are now enacted under s. 16A of the *Environment Protection Act 1970* (Vic).<sup>19</sup>

Waste Management Policies include policies dealing with:–<sup>20</sup>

- the generation, storage, treatment, transport and disposal and general handling of waste;

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<sup>15</sup> *Environment Protection Act 1970* (Vic), s. 16(1).

<sup>16</sup> *ibid*, s. 16(1B).

<sup>17</sup> *ibid*, s. 16(1C).

<sup>18</sup> See definition of 'waste' in the *Environment Protection Act 1970* (Vic), s. 4.

<sup>19</sup> Previously Industrial Waste Management Policies were made under section 16(1A) of the *Environment Protection Act 1970* (Vic).

<sup>20</sup> *Environment Protection Act 1970* (Vic), s. 16A.

- the procedures to be implemented in the recycling, recovery, reclamation and re-use of waste and recycled substances;
- the methods of disposal of specified substances;
- the routes and methods of transportation of waste;
- the location of treatment and disposal plants;
- the allocation of responsibility for waste management operations and disposal; and
- the use and disposal of notifiable chemicals.

State Environment Protection Policies and Waste Management Policies are made by the Governor-in-Council on the recommendation of the Environment Protection Authority (EPA) by publishing an Order declaring the policy in the *Victorian Government Gazette*.<sup>21</sup> These policies must be tabled in each House of Parliament on or before the sixth sitting day after the Order is published in the *Victorian Government Gazette*.<sup>22</sup>

Section 18A of the *Environment Protection Act 1970* (Vic) sets out the requirements which must be followed when making State Environment Protection Policies and Waste Management Policies. Certain policies are excluded from the provisions concerning the preparation of policies. For example, the variation of a State Environment Protection Policy or Waste Management Policy which the EPA determines to be fundamentally declaratory, machinery or administrative in nature. Otherwise the following procedures must be followed:–

- during a minimum period of 21 days, the EPA must publish on three occasions in a relevant newspaper – notice of intention to declare a policy. The notice must include the area affected and advise that any person affected may submit information to the EPA;
- the EPA must consider information provided to it by any person affected or likely to be affected;
- the EPA must consult with any government department or statutory authority whose responsibilities may be affected by the policy;
- the EPA must prepare a draft policy;
- the EPA must prepare a draft impact assessment;
- during a minimum period of 21 days the EPA must publish on three occasions in a relevant newspaper – notice of preparation of a draft policy. The notice must include the reasons for and objectives of the policy, a description of the area affected, details of where a copy of the draft policy may be obtained and specify that any person likely to be affected may make a submission;
- the EPA must allow a period of at least three months for submissions;
- the EPA must consider all submissions; and
- the EPA must write a separate letter to each person who has lodged a submission.

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<sup>21</sup> *ibid*, s. 16(1).

<sup>22</sup> *ibid*, s. 18D(1).

Section 18C of the *Environment Protection Act 1970* (Vic) sets out the matters which a policy impact assessment must discuss:–

- the purposes of the policy;
- the alternatives for achieving the objectives, including consideration of not declaring the policy or varying the existing policy; and
- an assessment of the possible financial, social and environmental impacts of each alternative in qualitative and, where practicable, in quantitative terms.

A copy of the following documents must be forwarded to the Committee:–

- the final policy impact assessment;
- a summary of submissions;
- a statement of the EPA's evaluation of the submissions and any changes made to the draft policy;
- a copy of the review panel's advice if there was a review panel.

The Committee may report to Parliament where these policies are beyond power or do not comply with the provisions of the *Environment Protection Act 1970* (Vic). Section 18D(3) provides that the Committee may report to Parliament where a policy:–

- does not appear to be within the powers conferred by the *Environment Protection Act 1970* (Vic);
- has been prepared in contravention of the *Environment Protection Act 1970* (Vic); or
- contains any matter in contravention of *Environment Protection Act 1970* (Vic).

Initial reviews of State Environment Protection Polices and Waste Management Policies are carried out by the Subcommittee. Where the Subcommittee is unable to resolve any issues, it may recommend to the Committee that a report be made to Parliament. A report to Parliament by the Committee may make any recommendations considered appropriate including that a policy be disallowed in whole or in part.<sup>23</sup>

The disallowance provisions contained in sections 23 and 24 of the Act apply to State Environment Protection Polices and Waste Management Policies.<sup>24</sup> This means that the 18 sitting day deadline applies, that is the Committee must table a motion for disallowance within 18 sitting days after the Policy has been tabled before that House.

## **SCRUTINY OF DIRECTIONS OF THE COMMISSIONER FOR PUBLIC EMPLOYMENT**

The Subcommittee also reviews Directions made by the Commissioner for Public Employment. These Directions concern the application of employment and conduct principles contained in sections 7 and 8 of the *Public Sector Management*

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<sup>23</sup> *ibid*, s. 18D(4).

<sup>24</sup> *ibid*, s. 18D(6).

*Employment Act 1998* (Vic). The employment principles require agency and public sector authority heads to establish employment processes that will ensure that:<sup>25</sup>

- employment decisions are based on merit;
- employees are treated fairly and reasonably;
- equal employment opportunities are provided; and
- employees have a reasonable avenue of redress against unfair or unreasonable treatment.

The conduct principles require public sector employees to:<sup>26</sup>

- act impartially;
- act with integrity and avoid any real or apparent conflicts of interest;
- be accountable for their results; and
- to provide responsive service.

Section 40 of the *Public Sector Management Employment Act 1998* (Vic) provides that the tabling and scrutiny provisions of the Act apply to Directions. This gives the Committee the power of review. If Directions do not comply with the tabling requirements or the principles of review contained in section 21 of the Act, the Committee may report to Parliament recommending disallowance in whole or in part or amendment.

Directions were last issued in 1998 – *Directions on Public Sector Employment and Conduct Principles in the Victorian Public Service 1998*. These Directions covered five major areas:–

- selecting on merit;
- managing and valuing diversity;
- managing under performance;
- reviewing personal grievances; and
- upholding public sector conduct.

The Subcommittee reviewed the 1998 Directions and found that adequate consultation had taken place and that they complied with the requirements of the *Public Sector Employment and Management Act 1998* (Vic).

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<sup>25</sup> *Public Sector Management Employment Act 1998* (Vic), s. 7.

<sup>26</sup> *ibid*, s. 8.



## **CHAPTER 2 – SIGNIFICANT ISSUES**

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In 2003, the Subcommittee held 12 meetings and 1 informal meeting. During those meetings it considered 157 statutory rules made during 2003. Of those rules 33 were accompanied by regulatory impact statements. Of the total 157 regulations made, 28 were actually considered by the Subcommittee in early 2004. In addition the Subcommittee considered one State Environment Protection Policy.

The Subcommittee did not make any reports to Parliament during 2003. However of the statutory rules examined during 2003, the Subcommittee had concerns with 27. In each instance it wrote to the responsible Ministers seeking clarification. Generally, the Subcommittee received satisfactory responses to the issues raised. The Subcommittee thanks the Ministers for their responses.

The Subcommittee's experience this year was that any problems it encountered in respect of the review of the regulations tended to fall within a discrete number of areas. For ease of understanding, the Subcommittee has classified the issues into particular categories. The categories however remain fluid and of course may change from year to year. The categories are as follow: -

- (a) The statutory rule has been prepared in contravention of any of the provisions of the Act or of the guidelines with respect to the statutory rule and the contravention is of a substantial or material nature**
- (b) Consultation**
- (c) Technical matters – Incomplete certificates – Dates of publication in the Government Gazette and newspaper**
- (d) Sighting of material incorporated by reference**
- (e) Section 9(1)(a) – Is there any appreciable economic or social burden on any sector of the public?**
- (f) Other matters – general clarification**
- (g) State Environment Protection Policy – Tabling Requirements**

**(A) THE STATUTORY RULE HAS BEEN PREPARED IN CONTRAVENTION OF ANY OF THE PROVISIONS OF THE ACT OR OF THE GUIDELINES WITH RESPECT TO THE STATUTORY RULE AND THE CONTRAVENTION IS OF A SUBSTANTIAL OR MATERIAL NATURE**

Under section 21(1)(j) of the Act the Subcommittee examines regulations to ensure that they have been properly prepared. It examines them to see whether they have been prepared in contravention of any of the provisions of the Act or of the guidelines with respect to the statutory rule. It examines the regulations to see whether the contravention is of a substantial or material nature. This was highlighted in SR 117 – *Control of Weapons (Amendment) Regulations 2003*.

**Example 1:**

**SR 117 – Control of Weapons (Amendment) Regulations 2003**

Subcommittee's letter<sup>27</sup>

*The Regulation Review Subcommittee met informally on 4 December 2003 and considered the above Regulations. The Regulation Review Subcommittee agreed to write to you regarding the above Regulations.*

1. *Failure to comply with Regulatory Impact Statement (RIS) requirements in respect of search powers*

*S 10 of the Subordinate Legislation Act 1994 sets out the requirements in respect of a RIS. The relevant parts are set out. The RIS must include: –*

- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;*
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;*
- (e) the reasons why the other means are not appropriate;*

*Page 4 of the RIS states “Discussion of proposed regulations for searches without warrant under the Control of Weapons Act 1990 and the Firearms Act 1996. These provisions are not subject to a costs benefits regulatory impact analysis as they do not impose a burden on the community, but rather reduce it by restricting the power to conduct searches. The Department of Justice, however, welcomes comment on them;”*

*The provisions in respect of search powers in the RIS are confined to half a page. The RIS merely outlines the provisions in respect of search powers. There is no cost/benefit analysis. There is no statement which addresses other practicable means of obtaining the objectives of the Regulations including other regulatory as well as other non-regulatory options. It seems to the Subcommittee that in respect of the search powers, the RIS in its current form fails to comply with the requirements of S 10(c), (d) and (e) of the Subordinate Legislation Act 1994.*

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<sup>27</sup> Letter dated 16 December 2003 to the Hon. Andre Haermeyer, MP, Minister for Police and Emergency Services from the Regulation Review Subcommittee.

2. Clarification of advertisement dates

*It is not clear from the material provided when the RIS was advertised in the Government Gazette and in a newspaper. How long was the consultation period? To ensure compliance with S 11 of the Subordinate Legislation Act 1994 the Subcommittee would appreciate clarification of these matters.*

3. Consideration of submissions made in response to the RIS

*Under S 11(3) of the Subordinate Legislation Act 1994 the responsible Minister is required to consider all submissions and comments received on a draft statutory rule where a RIS has been prepared. S 11(3)(b) provides that the responsible Minister must: –*

*“ensure that a copy of all comments and submissions is given to the Scrutiny Committee as soon as practicable after the statutory rule is made.”*

*The Subcommittee notes that the Regulations have changed in form in that the parts which related to the change of status of swords and cross bows from controlled weapons to prohibited weapons and the prescription of inert or imitation explosives as controlled weapons have been abandoned. The Subcommittee notes from correspondence from the Department of Justice dated 21 October 2003 that the Department received over 300 submissions in relation to the RIS and that the bulk of these concerned the proposals in relation to swords, crossbows and imitation and inert explosives. The Subcommittee received 15 submissions which made comment on the proposed fee levels and search powers provisions.*

*The letter from the Department of Justice dated 21 October 2003 states that: –*

*“I trust that the provision of those 15 submissions satisfies the requirement to provide copies of submissions made to the Scrutiny of Acts and Regulations Committee. If you have any further concerns on this matter please contact Mr Chris Shea”.*

*A request was made from the Subcommittee to the relevant officer on 29 October 2003 to provide it with copies of all the submissions. The Subcommittee’s view is that notwithstanding the change in form of the Regulations it is incumbent on it to scrutinise all the submissions to ensure that valid criticisms have been addressed.*

*The Subcommittee notes that in this context, most Departments provide a detailed analysis of the submissions and the Department’s considered response in a table form. Such work demonstrates transparently to the Subcommittee that there has been compliance with s 11(3)(a) of the Subordinate Legislation Act 1994.*

*The Subcommittee would appreciate it if you could forward all the submissions to it, either in their original or copy form. The Subcommittee would of course undertake to return original submissions to the Department. If a table as described above has been prepared, please forward a copy of it to the Subcommittee.*

4. *Undated Certificates*

*The Subcommittee notes that the s 6 Certificate of Consultation, the s 10(4) Certificate of Compliance and the National Competition Policy Certificate of Compliance under s 3.3 are all undated. The Subcommittee would appreciate if this could be rectified.*

*The Subcommittee looks forward to your response.*

Subcommittee's letter<sup>28</sup>

**SR 118 – Firearms (Search Powers) Regulations 2003**

*The Regulation Review Subcommittee met informally on 4 December 2003 and considered the above Regulations. The Regulation Review Subcommittee agreed to write to you regarding the above Regulations.*

1. *Failure to comply with Regulatory Impact Statement (RIS) requirements*

*S 10 of the Subordinate Legislation Act 1994 sets out the requirements in respect of a RIS. The relevant parts are set out. The RIS must include: –*

- (a) a statement of the objectives of the proposed statutory rule;*
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;*
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;*
- (e) the reasons why the other means are not appropriate;*

*These Regulations are accompanied by a RIS. However the RIS cost/benefit analysis and indeed all but two pages of the RIS relate to the Control of Weapons (Amendment) Regulations. More specifically, page 50 of the RIS states "While these provisions have not been subjected to the same cost benefits analysis in this Regulatory Impact Statement as the provisions relating to fees and classification of weapons, the Department of Justice welcomes public comment on these additional provisions of the Regulations."*

*The RIS merely provides some explanation of the provisions. There is no statement of objectives. There is no cost/benefit analysis. There is no statement which addresses other practicable means of obtaining the objectives of the Regulations including other regulatory as well as other non-regulatory options. It seems to the Subcommittee that in respect of the Regulations, the RIS in its current form fails to comply with the requirements of S 10 (a)(c)(d) and (e) of the Subordinate Legislation Act 1994.*

2. *Clarification of advertisement dates*

*It is not clear from the material provided when the RIS was advertised in the Government Gazette and in a newspaper. How long was the consultation period? To ensure compliance with S 11 of the Subordinate Legislation Act 1994 the Subcommittee would appreciate clarification of these matters.*

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<sup>28</sup> Letter dated 16 December 2003 to the Hon. Andre Haermeyer, MP, Minister for Police and Emergency Services from the Regulation Review Subcommittee.

3. *Consideration of submissions made in response to the RIS*

*Under S 11(3) of the Subordinate Legislation Act 1994 the responsible Minister is required to consider all submissions and comments received on a draft statutory rule where a RIS has been prepared. S 11(3)(b) provides that the responsible Minister must: –*

*“ensure that a copy of all comments and submissions is given to the Scrutiny Committee as soon as practicable after the statutory rule is made.”*

*The Subcommittee notes from correspondence from the Department of Justice dated 21 October 2003 that the Department received over 300 submissions in relation to the RIS and that the bulk of these concerned the proposals in relation to swords, crossbows and imitation and inert explosives. The Subcommittee received 15 submissions which made comment on the proposed fee levels and search powers provisions.*

*The letter from the Department of Justice dated 21 October 2003 states that: –*

*“I trust that the provision of those 15 submissions satisfies the requirement to provide copies of submissions made to the Scrutiny of Acts and Regulations Committee. If you have any further concerns on this matter please contact Mr Chris Shea”.*

*A request was made from the Subcommittee to the relevant officer on 29 October 2003 to provide it with copies of all the submissions. The problems arise of course when **one RIS** is used in respect of two different sets of regulations. Nevertheless, the Subcommittee is of the view that it is incumbent on it to scrutinise all the submissions to ensure that valid criticisms have been addressed. The Subcommittee notes that in this context, most Departments provide a detailed analysis of the submissions and the Department’s considered response in a table form. Such work demonstrates transparently to the Subcommittee that there has been compliance s 11(3)(a) of the Subordinate Legislation Act 1994.*

*The Subcommittee would appreciate it if you could forward all the submissions to it, either in their original or copy form. The Subcommittee would of course undertake to return original submissions to the Department. If a table as described above has been prepared, please forward a copy of it to the Subcommittee. The Subcommittee thanks the Minister for the responses by the Department forwarded to it so far.*

4. *National Competition Policy Certificate - Defective*

*The Regulations are accompanied by a Certificate of Compliance under s 3.3 certifying that the Regulations do not restrict competition. The Certificate of Compliance states that the Firearms (Search Powers) Regulations 2003 “have been assessed in accordance with the guidelines and do not restrict competition.”*

*Attachment C of the Premier’s Guidelines sets out the particular form of words required in relation to a Certificate of Compliance for competition policy. The Certificate must state that the statutory rule: –*

*“has been assessed in accordance with the guidelines and the results documented in the attachment to this certificate, and the assessment shows that the proposed subordinate legislation does not restrict competition.”*

*There is no Competition Policy Analysis/Assessment attached to the RIS or the accompanying material. The Certificate is signed by the Minister but not dated. In summary, the Certificate of Compliance is defective in three respects: –*

- 1. The incorrect form of words is used;*
- 2. There is no Competition Policy/Assessment of Analysis attached to the Certificate;*
- 3. The Certificate is undated.*

*The Subcommittee would appreciate it if these matters could be rectified.*

*5. Undated Certificates*

*The Subcommittee notes that the s 6 Certificate of Consultation and the s 10(4) Certificate of Compliance are undated. The Subcommittee would appreciate it if this could be rectified.*

*The Subcommittee looks forward to your response.*

**Minister’s Response**<sup>29</sup>

**SR 117 – Control of Weapons (Amendment) Regulations 2003  
SR 118 – Firearms (Search Powers) Regulations 2003**

*Thank you for your letters of 16 December regarding the Control of Weapons (Search Powers) Regulations 2003 and Firearms (Search Powers) Regulations 2003. These letters are not signed by you but appear under your name.*

*Concerns about Regulatory Impact Statement*

*Your letter raises concerns that a cost benefits analysis was not performed on the Firearms (Search Powers) Regulations in the RIS. My Department advises me, however, that given the nature of these Regulations, a cost-benefits analysis or consideration of alternative means of achieving the goals of the Regulations was not considered necessary or appropriate.*

*As was advised in the RIS, amendments to both the Control of Weapons act 1990 and Firearms Act 1996 were made in 2003 in relation to the power of police members (and in certain cases Authorised Officers of the Department of Sustainability and the environment) to conduct a search without warrant for a weapon or firearm in a public place. Broadly, those amendments:*

- lowered the threshold at which a search is justified (reasonable suspicion rather than reasonable belief); and*

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<sup>29</sup> Letter dated 15 March 2004 to the Regulation Review Subcommittee from the Hon. Andre Haermeyer, MP, Minister for Police and Emergency Services.

- *enhanced the safeguards against the potential overzealous application or abuse of these increased powers.*

*Among such safeguards was the amendment of the regulation making powers in both Acts to enable the prescription of:*

- *the manner in which searches may be conducted; and*
- *the details that must be recorded in a search record that a searching police member (or Authorised Officer) must complete as soon as practicable after conducting a search.*

*Therefore, that the manner in which searches were to be conducted and the particulars to be included in search records, was to be prescribed by regulation had already been determined by Parliament through primary legislation. In the circumstances it was not considered appropriate to perform a cost benefits analysis or examine alternatives in the RIS. The decision on whether to not to prescribe these matters through regulation had already been made by Parliament.*

*Indeed, the Subordinate Legislation Act does allow for Regulations of a declaratory nature to be made without a Regulatory impact Statement (and thus without the resulting public consultation process). It would have been open to the Department to choose to seek to make the Regulations without going through a public consultation process. However, given the important nature of these Regulations (search power provisions require achieving a balance between protecting vital civil liberties and facilitating effective law enforcement), it was considered important to invite and consider public comment on them through an RIS process. The RIS clearly set out the nature of the Regulations and invited public comment on them and facilitated a process whereby the entire Victorian community could consider and comment on these proposals. The Department advises me that it believes that the public consultation which the Subordinate Legislation Act is designed to facilitate, was adequately provided for in this case.*

*I would also draw your attention to the fact that the Office of Regulatory Reform, prior to its release, assessed the RIS and considered it adequate.*

#### *Clarification of advertisement date*

*The proposed Regulations were advertised in the Government Gazette on 7 August 2003 and in The Age on 9 August 2003. The public consultation period closed on 8 September 2003.*

#### *Provision of non-connected submissions*

*My Department advises me that it believes that the requirement to ensure:*

*that a copy of all comments and submissions is given to the Scrutiny Committee as soon as practicable after the statutory rule is made:*

*was satisfied by the provision of the 15 submissions which made comment on the Regulations which were made. The 300 plus submissions which concern the proposals relating to swords, crossbows and inert and imitation explosives do not concern the statutory rule which was made.*

*I am advised that, if no statutory rule were made, following an RIS process, there would be no obligation to provide the submissions to the committee. Therefore, if part of a proposed statutory rule were excised from the rule eventually made (as was the case here), there would appear to be no obligation to provide submissions related to the excised part.*

*I am currently considering options for progressing the objectives sought to be achieved by the excised part of the draft Regulations. If the preferred option is Regulations, the Department will provide copies of the relevant submissions to the Committee following the making of the statutory rule.*

#### *National Competition Policy Certificate*

*Please find attached a revised copy of the National Competition Policy certificate. I trust this revised certificate addresses your concerns.*

#### *Date of Certificates*

*I can advise that the certificates have been dated to reflect the fact that they were signed on 24 September 2003. Please find attached further copies of these certificates for your information.*

*I trust this information is helpful.*

### **Example 2:**

#### **SR 3 – Subordinate Legislation (Court Reporting (Fees) Regulations 1992 – Extension of Operation) Regulations 2003**

These Regulations extended the operation of the *Court Report Fees Regulations* 1992 to 21 January 2004. The Principal Regulations dealt with court reporting and transcript services. On this occasion the Subcommittee was concerned because the Regulations were excepted under section 8(1)(d)(iii) instead of section 8(1)(b). The Regulations were in fact prepared with the wrong certificates. The Subcommittee took the view that the Act and the Premier's Guidelines make it clear that a regulation which extends the life of a sunseting regulation must be excepted from the RIS process under s 8(1)(d)(iii). It must be accompanied by both s 8(1)(d)(iii) and s 5(3) certificates. The Subcommittee approved the Regulations in this instance. However it wrote to the Minister requesting that legislative officers be reminded of the importance of excepting or exempting Regulations from the RIS process under the appropriate sections of the Act.

#### Subcommittee's letter<sup>30</sup>

*At a meeting on 12 May 2003 the Regulation Review Subcommittee examined the above Rules as it is required to do under the Subordinate Legislation Act 1994.*

*The Subordinate Legislation (Court Reporting (Fees) Regulations 1992 – Extension of Operation) Regulations 2003 extend the operation of the Court Report Fees Regulations 1992 (the Principal Regulations) to 31 January 2004. The Principal Regulations deal with court reporting and transcript services.*

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<sup>30</sup> Letter dated 20 May 2003 to the Hon. Rob Hulls, MP, Attorney-General from the Regulation Review Subcommittee.

*These Regulations were accompanied by a certificate of exception under section 8(1)(b) of the Subordinate Legislation Act 1994, excepting them from compliance with the Regulation Impact Statement (RIS) process on the basis they relate solely to the procedure, practice or costs of a court. While the Principal Regulations relate to the procedure, practice or costs of a court, these regulations are designed to extend the life of the Principal Regulations which sunsetted on 1 February 2003. The Regulations are also accompanied by a section 5(3) certificate which requires the responsible Minister to certify that due to the 'special circumstances' there is insufficient time to enable compliance with the requirements of Part 2 of the Subordinate Legislation Act 1994. The section 5(3) certificate indicates that the 'special circumstances' are that there is to be review of the policy and administrative basis for the provision of court recording and transcription services.*

*The Subcommittee wishes to point out that these Regulations should have been excepted under section 8(1)(d)(iii) instead of section 8(1)(b) as these Regulations only concern extending the operation of the Principal Regulations. The Subordinate Legislation Act 1994 and the Premier's Guidelines make clear that a regulation which extends the life of a sunseting regulation must be excepted from the RIS process under section 8(1)(d)(iii) and must be accompanied by both section 8(1)(d)(iii) and section 5(3) certificates.*

*On this occasion the Subcommittee has approved the Regulations but wishes to remind legislative officers of the importance of excepting or exempting Regulations from the RIS process under the appropriate section or sections of the Subordinate Legislation Act 1994.*

*The Subcommittee would appreciate it if these matters could be brought to the attention of legislative officers in your department.*

Response<sup>31</sup>

*I refer to our telephone conversation of today regarding the letter from the Scrutiny of Acts and Regulations Committee of 20 May 2003.*

*The letter related to the Subordinate Legislation (Court Reporting (Fees) Regulations 1992 – Extension of Operation) Regulations 2003.*

*I confirm that the contents of this letter have been noted and that the letter will be placed on the relevant file within Court Services.*

*I understand that in these circumstances a formal reply from the Attorney-General is not required.*

*Thank you for your assistance in this matter.*

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<sup>31</sup> E-mail dated 23 December 2003 to the Regulation Review Subcommittee from the Senior Legal Officer, Court Services.

**Example 3:**

**SR 5 – Subordinate Legislation (Police (Charges) Regulations 1992 – Extension of Operation) Regulations 2003**

The *Subordinate Legislation (Police (Charges) Regulations 1992 – Extension of Operation) Regulations 2003* extended the operation of the *Police Charges Regulations 1992* to 31 January 2004. The Principal Regulations provided for charges to be paid for services provided by the police force particularly in relation to large events. Under s 5(4) of the Act the Governor in Council may make a regulation extending the operation of an existing regulation for a maximum period of 12 months provided the Minister has certified that due to “special circumstances” there is insufficient time to enable compliance with the requirements of Part 2 of the Act. The Subcommittee was not satisfied in this instance that the reasons given constituted “special circumstances”. The Subcommittee ultimately approved the Regulations but wrote to the Minister advising him of its view.

Subcommittee’s letter<sup>32</sup>

*At a meeting on 12 May 2003 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.*

*The Subordinate Legislation (Police (Charges) Regulations 1992 – Extension of Operation) Regulations 2003 extend the operation of the Police Charges Regulations 1992 to 31 January 2004. The Principal Regulations provide for charges to be paid for services provided by the police force particularly in relation to large events.*

*Under section 5(4) of the Subordinate Legislation Act 1994 the Governor-in-Council may make a regulation extending the operation of an existing regulation for a maximum period of 12 months provided that the Minister has certified that due to “special circumstances” there is insufficient time to enable compliance with the requirements of Part 2 of the Subordinate Legislation Act 1994.*

*The Subcommittee notes that the Premier’s Guidelines make clear that extensions under section 5(4) should be granted because of “special circumstances” and not for administrative convenience. Paragraph 12.5 of the Premier’s Guidelines provides –*

*The Act does not provide any definition of “special circumstances”, however the type of circumstances envisaged would be cases where a review of the operation of the whole area of the regulations is proposed or being undertaken or where a national scheme is being negotiated. Administrative oversight should not be considered to be a “special circumstance”.*

*The section 5(3) certificate which accompanied these Regulations indicated that the regulatory impact statement assessment process could not be completed due to the calling of the election and the commencement of the*

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<sup>32</sup> Letter dated 20 May 2003 to the Hon. Andre Haermeyer, MP, Minister for Police and Emergency Services from the Regulation Review Subcommittee.

*caretaker period of Government. The Subcommittee is not satisfied that that these reasons constitute "special circumstances".*

*The Subcommittee considers that it is important for departments and agencies to commence reviews of regulations 18 months to 2 years prior to the expiration of regulations. The Premier's Guidelines make clear that it is the responsibility of departments and agencies to maintain a list of the expiry dates of regulations for which they are responsible. Paragraph 12.1 of the Premier's Guidelines provides –*

*It is the responsibility of the agency to maintain accurate records of the sunset dates for all statutory rules administered by the Ministers to whom the agency reports. It is essential that an agency allow sufficient time for the review of the continuing appropriateness of the regulations and for the completion of the RIS process if they are to be made in whole, part or in a modified form.*

*Departments and agencies are assisted with keeping track of sunseting regulations by the Office of Parliamentary Counsel and by the Office of Regulation Reform. The Office of Parliamentary Counsel sends out reminder letters 12 to 18 months prior to the expiration of regulations and the Office of Regulation Reform produces the Victorian Regulation Alert which provides details of all regulations due to expire over the next 12 months.*

*The Subcommittee would appreciate it if the above matters could be drawn to the attention of legislative officers in your department.*

#### Minister's Response<sup>33</sup>

*Thank you for your letter of 20 May 2003 advising of the Regulation Review Subcommittee's comments in relation to making of the Subordinate Legislation (Police (Charges) Regulations 1992 – Extension of Operation Regulations 2003 on 22 January 2003.*

*I have noted your advice and will ensure it is brought to the attention of the relevant people with the Department of Justice.*

#### **Example 4:**

##### **SR 8 – Magistrates' Court General (PERIN Court) Regulations 2003**

These Regulations prescribed a new venue for the PERIN Court. The Regulations were exempted from the RIS process under s 9(1)(a) of the Act on the basis that they did not impose any appreciable social or economic burden on a sector of the public. The Subcommittee took the view that it was perhaps more appropriate to exempt the regulations from the RIS process under s 9(1)(c) on the basis that they were fundamentally declaratory. The Subcommittee wrote to the Minister seeking his response.

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<sup>33</sup> Letter dated 20 August 2003 to the Regulation Review Subcommittee from the Hon. Andre Haermeyer, MP, Minister for Police and Emergency Services.

Subcommittee's letter<sup>34</sup>

*At a meeting on 12 May 2003 the Regulation Review Subcommittee examined the above Rules as it is required to do under the Subordinate Legislation Act 1994.*

*The Magistrates' Court General (PERIN Court) Regulations 2003 prescribe a new venue for the PERIN Court, namely 436 Lonsdale Street, Melbourne. The Regulations were exempted from the Regulation Impact Statement (RIS) process under section 9(1)(a) of the Subordinate Legislation Act 1994 on the basis that they do not impose any appreciable social or economic burden on a sector of the public. As these Regulations do no more than prescribe a new venue for the PERIN court the Subcommittee wonders whether they should more appropriately have been exempted from the RIS process under section 9(1)(c) on the basis that they are fundamentally declaratory.*

*The Subcommittee looks forward to receiving your response.*

Minister's Response<sup>35</sup>

*I refer to your letter dated 20 May 2003 regarding the regulations prescribing the new venue for the PERIN Court. I apologise for the delay in responding to your letter.*

*The purpose of the Magistrates' Court General (PERIN Court) Regulations 2003 was to prescribe a new venue for the PERIN Court at 436 Lonsdale Street, Melbourne. In accordance with section 7 of the Subordinate Legislation Act 1994 ("the Act"), a Regulatory Impact Statement ("RIS") must be prepared in respect of a proposed statutory rule. Paragraphs 9(1)(a) – (e) of the Act set out the circumstances in which the RIS process is not required in respect of that proposed statutory rule.*

*On initial submission of the regulations, it appeared that an exemption from the RIS process under paragraph 9(1)(a) of the Act was appropriate, that is, that the statutory rule does not "impose any appreciable social or economic burden on a sector of the public". However, in view of the comments in your letter, I agree that the exemption is more appropriately claimed under section 9(1)(c) of the Act as the regulation does no more than declare the new venue of the PERIN Court.*

*Thank you for bringing this to my attention.*

**(B) CONSULTATION**

Section 6 of the Act sets out the requirements for consultation. These requirements apply to regulations made with or without RISs. Responsible Ministers must ensure that there is consultation "where the guidelines<sup>36</sup> require consultation" with any sector of the community on which an appreciable economic or social burden may be

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<sup>34</sup> Letter dated 20 May 2003 to the Hon. Rob Hulls, MP, Attorney-General from the Regulation Review Subcommittee.

<sup>35</sup> Letter dated 23 July 2003 to the Regulation Review Subcommittee from the Hon. Rob Hulls, MP, Attorney-General.

<sup>36</sup> Department of Premier and Cabinet, *Premier's Guidelines*, December 1997.

imposed and other Ministers whose area of responsibility may be affected.<sup>37</sup> The *Premier's Guidelines* provide –<sup>38</sup>

*5.20 If the proposed statutory rule is likely to impose an appreciable burden, cost or disadvantage on any sector of the public, consultation should take place with that sector, eg business groups, community groups, special interest groups. The consultation should include discussion of the need for and method of the proposed regulation.*

The Premier's Guidelines indicate that the "nature and degree of consultation that is appropriate for any particular rule will vary with the nature of that rule".<sup>39</sup> This places the final responsibility on Ministers to ensure that appropriate consultation takes place and includes all those affected by a proposed regulation.

While the *Premier's Guidelines* provide assistance with the consultation process, the Subcommittee acknowledges that some sections are unclear and ambiguous. This makes it difficult for department and agency officers to determine in what circumstances consultation should take place. There is, for example, an inconsistency between the *Act* and the *Premier's Guidelines* as to whether consultation **must**<sup>40</sup> or **should**<sup>41</sup> occur in accordance with the *Premier's Guidelines*. It is the **strong preference** of the Subcommittee that consultation take place with all those affected by a particular regulation and that the current ambiguities be resolved.

The Subcommittee notes that **not all** departments and agencies provide details of who was consulted in consultation certificates for regulations excepted and exempted from the RIS process. The Subcommittee has had to seek additional information concerning consultation. The Subcommittee considers it is important for all consultation certificates to provide details of all those consulted.

Section 11(3) of the *Act* imposes a duty on Ministers "to consider all submissions and comments received on a draft statutory rule where a RIS has been prepared". The Premier's Guidelines also emphasis the need for all comments and submissions to be considered before a regulation is made. The Subcommittee considers that appropriate consultation is essential for the effectiveness of the regulatory system.

## Example 1

### SR 16 – Occupational Health and Safety (Asbestos) Regulations 2003

These Regulations sought to reduce the incidence of asbestos related diseases through exposure to airborne fibres in occupational situations in which a risk to health could arise from exposure to asbestos. They imposed dual duties on occupiers and employers, introduced licensing requirements for asbestos removalists, set out strict requirements for the removal of asbestos and regulated work activities involving material containing asbestos. The Subcommittee received a submission from Mr P S Clark. The Subcommittee was concerned to ensure that all submissions were considered and responses given. The Subcommittee wrote to the Minister.

<sup>37</sup> Subordinate Legislation Act 1994 (Vic), s. 6.

<sup>38</sup> Department of Premier and Cabinet, *Premier's Guidelines*, December 1997, paragraph 5.20.

<sup>39</sup> Department of Premier and Cabinet, *Premier's Guidelines*, December 1997, paragraph 5.17.

<sup>40</sup> *Subordinate Legislation Act 1994* (Vic), s. 6.

<sup>41</sup> Department of Premier and Cabinet, *Premier's Guidelines*, December 1997, paragraph 5.20.

Subcommittee's letter<sup>42</sup>

*At a meeting on 12 May 2003 the Regulation Review Subcommittee examined the above Rules as it is required to do under the Subordinate Legislation Act 1994.*

*The Occupational Health and Safety (Asbestos) Regulations 2003 seek to reduce the incidence of asbestos related diseases through exposure to airborne fibres in occupational situations in which a risk to health could arise from exposure to asbestos. The Regulations impose dual duties on occupiers and employers, introduce licensing requirements for asbestos removalists, set out strict requirements for the removal of asbestos and regulate work activities involving material containing asbestos. The Subcommittee notes that the Regulations were accompanied by a Regulation Impact Statement (RIS) which assesses various alternatives to the Regulations and provides a detailed assessment of the costs and benefits of the Regulations.*

*The Subcommittee has received a submission from Mr. P.S. Clark criticising the RIS which accompanied these Regulations. Mr. Clark makes the following comments –*

- Questions whether the proposed regulations will reduce asbestos-related fatalities by 2,272 and suggests that this figure is the same as that estimated to result from the previous Regulations. Mr. Clark also notes that given asbestos diseases have a slow onset the Regulations will not have a substantial immediate impact.*
- Criticises the use of the Bureau of Transport Economics' \$1.5 million value-of-life estimate on the basis that there is a significant age-at-death difference between road trauma fatalities and slow onset deaths attributable to workplace asbestos exposures.*
- Criticises the use of an 8 per cent discount rate when a 6 per cent discount rate has been used in all similar RIS documents.*
- The RIS does not provide evidence that the Regulations would reduce the predicted number of asbestos-related workplace fatalities below the levels predicted for the previous Regulations and there does not appear to be any significant incremental benefit associated with the proposed Regulations.*
- The RIS does not provide evidence of the major cost impacts of Regulations 801(2)(k) and 803 on the Victorian mining, minerals and exploration industry.*
- The cost per life saved estimates of between \$323,000 and \$478,000 should show an upper estimate of \$795,000 – well above the claim cost estimates quoted.*
- The RIS does not include the number of 'deemed asbestos' sites requiring approved analysis under Regulation 803, instead focussing on 'in-situ asbestos'.*
- The RIS does not consider the wide range of potential alternatives available.*

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<sup>42</sup> Letter dated 20 May 2003 to the Hon. Rob Hulls, MP, Minister for WorkCover from the Regulation Review Subcommittee.

- *The RIS does not adequately analyse the costs and benefits of the alternatives.*

*The Subcommittee seeks your response to the criticisms raised by Mr. Clark.*

*The Subcommittee looks forward to receiving your response.*

#### Minister's Response<sup>43</sup>

*Thank you for your letter dated 20 May 2003, in which you note that the Regulation Review Subcommittee examined the above Regulations 12 May 2003. You also advise that the Subcommittee received a direct submission, from Mr P. S. Clark, criticizing the Regulatory Impact Statement (RIS), accompanying the Regulations. The Committee has requested a response to Mr Clark's concerns.*

*I asked the Victorian WorkCover Authority for assistance in addressing your concerns in this matter.*

*I am advised that Mr Clark made a submission in similar terms to WorkSafe Victoria during the public comment period on the draft regulations and RIS. As required by the Subordinate Legislation Act 1994, a copy of the document that summarized public comment on the RIS and draft Regulations, and set out WorkSafe's responses was contained in the material sent to the Scrutiny of Acts and Regulations Committee (SARC) after the making of the Regulations. A copy of the independent assessors Certificate of Adequacy on the RIS was also provided.*

*I am further advised that Mr Clark's previous comments were considered, along with other public submissions, during the development of the final Regulations. WorkSafe is satisfied that the RIS adequately addresses the likely impact of the regulations. A detailed response from WorkSafe to Mr Clark's criticisms to the Committee is enclosed for your information. However, the relevant comments provided by the VWA are as follows:*

- *Mr Clark is correct to note that the Regulations will have little immediate impact on asbestos related morbidity. However, this is not considered a valid reason for ignoring the long term benefit of making the new Regulations. Additionally, Mr Clark appears to have misunderstood the fatality estimates contained in the RIS;*
- *The RIS did not use any specific value-for-life estimates;*
- *While recent RIS documents have varied between using 6 and 8% discount rates, WorkSafe does not believe, in this case, that the cost estimates are sensitive to variations in the interest rate used;*
- *The new Regulations are designed to build on the benefits accrued from the previous Regulations. If the Regulations had been allowed to lapse then the benefits already gained would have dissipated over time;*
- *Analysis undertaken by WorkSafe and the Department of Primary Industries indicate that regulations 801 and 803 are unlikely to impact on the mining and quarrying industry in Victoria. Regulation 803 may impact*

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<sup>43</sup> Letter dated 21 July 2003 to the Regulation Review Subcommittee from the Hon. Rob Hulls, MP, Minister for WorkCover.

*to a limited extent on the exploration industry, but the impact is not expected to impose an appreciable burden;*

- *The RIS for the Asbestos Regulations was unusual in that the estimated benefits were quite distant relative to the estimated costs. In this case, while the RIS estimates costs over the usual 10 year life span of regulations, the benefits are estimated over 30 years to take into account the long latency period of asbestos related diseases;*
- *The RIS noted that between 10,000 and 20,000 employers would fall within the trade categories where they may encounter asbestos (including about 3,800 employers in the automotive and brake industry). It was not possible to cost the deeming requirement as it could not be known how many employers may be uncertain about the presence of asbestos in any given situation;*
- *The Subordinate Legislation Act 1994 requires that any alternative considered is capable of achieving the regulatory objective; and*
- *The RIS fully considered two alternatives: (i) removal of all asbestos from workplaces; and (ii) licensing employers involved in “removing” asbestos and asbestos-containing materials and products.*

*Thank you for the opportunity to respond to the matters set out in Mr Clark’s submission. I trust the information provided will be of assistance to the Subcommittee. If further information is required please contact Glenn Sargent, Acting Director, Strategy and Programs Division, WorkSafe Victoria on 9641 1619.*

## **Example 2:**

### **SR 63 – Liquor Control Reform (Prohibited Class of Liquor) Regulations 2003**

These Regulations related to the prohibition of the sale of various types of alcoholic beverages including “Moo Joose”. The Subcommittee’s concern was the need for appropriate responses to all those who made submissions in respect of the RIS. The Subcommittee wrote to the Minister.

#### Subcommittee’s letter<sup>44</sup>

*The Regulation Review Subcommittee examined the above Regulations pursuant to S 21 of the Subordinate Legislation Act 1994 (the Act) at a meeting on 29 September 2003. The Subcommittee approved the Regulations.*

*Section 11 of the Act sets out matters relevant to the regulatory impact statement (RIS) process. In particular S 11(3)(a) provides that the responsible Minister must: –*

*“(a) ensure that all comments and submissions are considered before the statutory rule is made;”*

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<sup>44</sup> Letter dated 30 September 2003 to the Hon. John Lenders, MP, Minister for Consumer Affairs from the Regulation Review Subcommittee.

*Paragraph 5.42 of the Premier's Guidelines provide that: –*

*“It should be remembered that Ministers have a duty to consult in appropriate stages at the initial stages and at the RIS stage. Under section 11(3) of the Act the responsible Minister is required to consider all submissions and comments received on a draft statutory rule where a RIS has been prepared. If the agency does not adequately address valid criticisms and suggestions made, this omission may be highlighted later by the Scrutiny of Acts and Regulations Committee which, under section 11(3)(b) of the Act must be provided with a copy of all comments and submissions received in relation to the RIS.”*

*The Subcommittee was provided with all submissions received. Of the six submissions received, four were generally supportive. Two submissions, namely those of Packaged Liquor Stores Association of Victoria and Wicked Holdings Pty Ltd were not.*

*The general experience of the Subcommittee is that the relevant agency responds or attempts to respond to criticisms made in submissions to the RIS either by letter or an explanation accompanying the RIS or occasionally amending the regulations. In this instance there was no response to the submissions. Whilst the Subcommittee appreciates that there may be some disagreement as to what constitutes a “valid criticism” as per paragraph 5.42 of the Premier's Guidelines, it is of the view that transparency in the process is important. The Subcommittee is of the view that in this instance, there ought to have been some response to the submissions, particularly those against the Regulations.*

*The Subcommittee looks forward to your reply.*

#### Minister's Response<sup>45</sup>

*I refer to your letter of 30 September 2003 regarding the making of the Liquor Control Reform (Prohibited Class of Liquor) Regulations.*

*Your subcommittee correctly identifies that the six (6) submissions in response to the invitation for public comment on the related Regulatory Impact Statement did not receive formal responses.*

*Whilst there may well have been an administrative oversight in not acknowledging the submissions, full regard was had to all submissions in my decision to proceed to make the regulations, with the relevant public notice stating that the submissions were considered.*

*Thank you for bringing your subcommittee's views in this matter to my attention.*

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<sup>45</sup> Letter dated 18 November 2003 to the Regulation Review Subcommittee from the Hon. John Lenders, MP, Minister Consumer Affairs.

**Example 3:**

**SR 22 – Fisheries (Fees, Levies and Royalties)  
Regulations 2003**

These Regulations increased various commercial fishing industry fees and levies. In respect of consultation, the Subcommittee's concern in this instance was the inadvertent failure to advertise the RIS in the Government Gazette. The Subcommittee wrote to the Minister.

Subcommittee's letter<sup>46</sup>

*At a meeting on 12 May 2003 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.*

*These Regulations increase various commercial fishing industry fees and levies and are accompanied by a Regulation Impact Statement (RIS) which deals only with the provisions increasing the levy paid to Seafood Industry Victoria (SIV). The component of the levy allocated to SIV has been increased by 30% while other components of the levy have been increased by 3% and thus are excepted from the RIS process under section 8(1)(a) of the Subordinate Legislation Act 1994.*

*The Subcommittee notes that the Regulations themselves do not provide a breakdown of the various components of the levy and this makes it difficult to understand this aspect of the regulations and the impact of any changes. The Subcommittee's legal adviser sought clarification from the relevant policy officer and was provided with details of the various components. In addition it was indicated that a review is currently underway aimed at streamlining the levy process and making the various components of the levy clear both in the Regulations and licences. The Subcommittee seeks your advice as to when this review is expected to be completed.*

*Section 11 of the Subordinate Legislation Act 1994 requires a RIS to be advertised in a newspaper circulating throughout Victoria, the Victorian Government Gazette and any special interest group journals. The Subcommittee acknowledges receipt of a letter dated 11 March 2003 from Mr. Taylor, Director Governance and Executive Services indicating that the Department had, by oversight, not advertised the RIS in the Victorian Government Gazette. The Subcommittee notes that the department has complied with all other requirements of the Subordinate Legislation Act 1994. The Subcommittee wishes to thank Mr. Taylor for his honesty in drawing this matter to its attention.*

*The Subcommittee notes that the RIS for these Regulations was advertised in newspapers circulating throughout Victoria as well as in regional newspapers. These newspapers included - The Age, Herald Sun, Portland Observer, Warrnambool Standard, Geelong Advertiser, Phillip Island and San Remo Advertiser and Lakes Entrance Post. The RIS was also advertised in industry newsletters. The Subcommittee also notes that SIV contacted Victorian Access Licence Holders and Operators and held a series of meeting at major*

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<sup>46</sup> Letter dated 20 May 2003 to the Hon. Bob Cameron, MP, Minister for Agriculture from the Regulation Review Subcommittee.

*fishing ports. A total of nine written public submissions were received and they all supported the Regulations.*

*The Subcommittee considers consultation and the public submission process to be key aspects of the RIS process. In the Subcommittee's view the failure to advertise a RIS in the Victorian Government Gazette constitutes a breach of the Subordinate Legislation Act 1994. The advertising requirements are designed to ensure that RIS are seen by a broad cross section of the community and to enable interested parties to comment on regulatory proposals. The Subcommittee considers that community wide consultation is crucial to the effectiveness of the regulatory system. The Subcommittee notes that in relation to these Regulations while the Department has omitted to advertise the RIS in the Victorian Government Gazette, the RIS has been advertised extensively in newspapers circulating throughout Victoria, in regional newspapers and in special interest group newsletters and that meetings have also been held with interested parties. It would appear to the Subcommittee that all those interested in and affected by the Regulations have had an opportunity to comment.*

*On this occasion the Subcommittee has approved the Regulations but it seeks to emphasise the importance of complying with all aspects of the Subordinate Legislation Act 1994. The Subcommittee would be pleased if these matters could be drawn to the attention of legislative officers in your department.*

#### Minister's Response<sup>47</sup>

*Thank you for your letter of the 20 May 2003 outlining the approval by the Regulation review Subcommittee of the Fisheries (Fees and Levies) Regulations 2003.*

*The Fisheries Division of the Department of Primary Industries, known as Fisheries Victoria, has a strong commitment to the principles of appropriate consultation in the development of legislation, and is familiar with the procedures contained in the Subordinate Legislation Act 1994 ('the Subordinate Legislation Act'). Underpinning this regime, Fisheries Victoria has a strong record of positive engagement with the Regulatory Impact Statement ('RIS') process and appreciates the enhancement to decision-making that the RIS process offers. However, in rare circumstances, administrative errors may result in less than total compliance with the requirements of the Subordinate Legislation Act. This was the case in the development of the Fisheries (Fees and Levies) Regulations 2003, where notification of the development of the RIS to be published in the Victorian Government Gazette as required in section 11(1)(a) of the Subordinate Legislation Act, was not met due to an administrative oversight. This omission, while not merely technical, has been found by the Committee to have not been fatal to the subordinate legislation, due to the substantive level of consultation which otherwise occurred. The positive approach taken by the Subcommittee of the Scrutiny of Acts and Regulations Committee in reaching this decision is appreciated. The omission has been treated seriously by staff and the cause of the omission, has been corrected by revised procedures. Staff of Fisheries Victoria are appreciative of the need for full compliance with*

<sup>47</sup> Letter dated 19 June 2003 to the Regulation Review Subcommittee from the Hon. Bob Cameron, MP, Minister for Agriculture.

*the requirements of the Subordinate Legislation Act and I am confident that full compliance can be expected in the future.*

*As you noted, a review of section 151 of the Fisheries Act 1995 has been completed and will be tabled in both houses of Parliament following approval by the Economic Development and Infrastructure Delivery Committee of Cabinet in early July 2003. This review analyses the effectiveness of the administration of fees and levies under the Fisheries Act 1995 and recommends legislative and regulatory changes that ensures that the collection of fees and levies are more transparent to industry and the public. Following the tabling of the review, an RIS will be prepared to outline the necessary regulatory changes required to implement the recommendations.*

*Thank you for your assistance in ensuring that due regulatory process is adhered to and for your Subcommittee's approval of the above Regulations.*

**(C) TECHNICAL MATTERS – INCOMPLETE CERTIFICATES – DATES OF PUBLICATION IN THE GOVERNMENT GAZETTE AND NEWSPAPER**

The Subcommittee is concerned to ensure technical compliance with the Act. Pursuant to s 11(a) and (b) of the Act, the RIS must be published in the Government Gazette and a daily newspaper circulating generally throughout Victoria. All relevant certificates should accompany the regulations and be signed and dated. Failure to do so will ensure a letter from the Subcommittee requesting rectification of these matters.

**Example 1:**

**SR 154 – Firearms (Handguns) Regulations 2003**

Subcommittee's letter<sup>48</sup>

*The Regulation Review Subcommittee held a meeting on 15 March 2004 to consider the above regulations.*

*(1) RIS not advertised in the Government Gazette*

*It appears from preliminary discussions with the relevant legal officer in your Department that the Regulatory Impact Statement was not advertised in the Government Gazette. It appears that this was an oversight. The Regulation Review Subcommittee wishes to remind the relevant officers in the Department of the particular requirements in respect of publication set out in section 11 of the Subordinate Legislation Act 1994.*

*(2) Certificates*

*The Certificate of Consultation is signed but undated. The section 10(4) Certificate of Compliance is also undated. The Regulation Review Subcommittee would appreciate rectification of these matters.*

*(3) Detailed responses to submissions made in respect of the Regulatory Impact Statement*

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<sup>48</sup> Letter dated 16 March 2004 to the Hon. Andre Haermeyer, MP, Minister for Police and Emergency Services from the Regulation Review Subcommittee.

*The Regulation Review Subcommittee notes there were approximately 45 submissions made in response to the Regulatory Impact Statement. The Subcommittee wishes to commend the legal officer who prepared the detailed responses sent to all those who sent in submissions. The responses were extremely thorough and detailed.*

*The Regulation Review Subcommittee looks forward to your response.*

Minister's Response<sup>49</sup>

*Thank you for your letter of 16 March 2004 in relation to the above matter.*

*Advice from the Department of Justice received by me has confirmed that the failure to advertise the Regulatory Impact Statement in the Government Gazette pursuant to section 11 of the Subordinate Legislation Act 1994 was an oversight. The Department regrets this error and will use its best endeavours to ensure that it does not happen again.*

*I now enclose a copy of the signed and dated Certificate of Consultation and Certificate of Compliance under section 10(4) of the Subordinate Legislation Act 1994.*

**Example 2:**

**SR 80 – Land Tax (Amendment) Regulations 2003**

These Regulations increased the general fee for issuing a land tax certificate and prescribed a lower fee for the issuing of an application for a certificate. The Subcommittee wrote to the Minister in respect of two technical matters; namely the failure to provide certificates and the provision of advertising information.

Subcommittee's letter<sup>50</sup>

*The Regulation Review Subcommittee examined the above Regulations pursuant to S 21 of the Subordinate Legislation Act 1994 (the Act) at a meeting on 29 September 2003. The Subcommittee approved the Regulations.*

*The Regulations amend the Land Tax Regulations 1998 to: –*

- *Increase the general fee for issuing a certificate showing if there is any land tax due under the Land Tax Act 1958; and*
- *Prescribe a lower fee for issuing such a certificate where the application is made in a specified manner.*

*The Subcommittee considered two matters.*

*(1) Certificates*

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<sup>49</sup> Letter dated 13 April 2004 to the Regulation Review Subcommittee from the Hon. Andre Haermeyer, MP, Minister for Police and Emergency Services.

<sup>50</sup> Letter dated 30 September 2003 to the Hon. John Brumby, MP, Treasurer from the Regulation Review Subcommittee.

*The Regulations are accompanied by an Explanatory Memorandum, a S 10(4) Certificate of Compliance, a S 10(13) letter of independent assessment from the Office of Regulation Reform and the Competition Policy Analysis. The Regulations are not accompanied by a Competition Policy Certificate as set out in Part 14 of the Premier's Guidelines. There also appears to be no S 6 Certificate of Consultation.*

*The Subcommittee would appreciate it if you could forward the appropriate certificates to it.*

*(2) Consultation*

*Pursuant to Ss 11(1)(a) and (b) of the Act the RIS must be published in the Government Gazette and a daily newspaper circulating generally throughout Victoria. The Explanatory Memorandum and accompanying material does not make it clear when the requirements of Ss 11(1)(a) and (b) were met. The Explanatory Memorandum advises that the RIS was available for comment from 8 May until 5 June 2003. From a scrutiny perspective the Subcommittee is concerned to ensure there has been compliance with Ss 11(1)(a) and (b). The Subcommittee would appreciate your advice as to: –*

- *When the appropriate notice was published in the Government Gazette; and*
- *When the appropriate notice was published in a daily newspaper circulating throughout Victoria.*

*The Subcommittee is of the view that it is a simple matter to include the relevant information in the Explanatory Memorandum. The Subcommittee would appreciate it if the above matter could be drawn to the attention of the legislative officers in your department.*

*The Subcommittee looks forward to your response to the matters raised.*

**Minister's Response**<sup>51</sup>

*I refer to your letter dated 30 September 2003 concerning these Regulations. In that letter you have advised that the Regulation Review Subcommittee has approved these Regulations but considered two matters. A response to each of those matters follows.*

*1. Certificates*

*A Certificate of Consultation and a Competition Policy Certificate are attached as requested.*

*2. Consultation*

*As you are aware, public consultation took place via the Regulatory Impact Statement (RIS) process. Notice of the RIS was published in the Age newspaper and in the Government Gazette on 8 May 2003. Copies of each advertisement are attached. The State Revenue Office has*

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<sup>51</sup> Letter dated 27 October 2003 to the Regulation Review Subcommittee from the Hon. John Brumby, MP, Treasurer.

*advised that the date these notices are published will be included in the Explanatory Memorandum accompanying any future Regulations.*

*I trust this information is sufficient and thank the Subcommittee for its comments regarding these Regulations.*

**Example 3:**

- SR 90 – Co-Operatives (Fees) Regulations 2003**
- SR 91 – Partnerships (Limited Partnerships) Regulations 2003**
- SR 92 – Business Names Regulations 2003**
- SR 93 – Associations Incorporation (Fees) Regulations 2003**

Subcommittee's letter<sup>52</sup>

*The Regulation Review Subcommittee examined the above Regulations pursuant to S 21 of the Subordinate Legislation Act 1994 (the Act) at a meeting on 29 September 2003. The Subcommittee approved the Regulations.*

*The Subcommittee notes that all four sets of Regulations are the result of a joint review of the fee structure for the four associated registration systems. One Regulatory Impact Statement (RIS) was used in support of the Regulations. The Subcommittee notes that no submissions were received in respect of the Regulations.*

*Pursuant to Ss 11(1)(a) and (b) of the Act the RIS must be published in the Government Gazette and a daily newspaper circulating generally throughout Victoria. All the Regulations were accompanied by a Certificate of Consultation (S 6 of the Act) and a Certificate of Compliance (S 10(4) of the Act). The Explanatory Memorandum and accompanying material does not make it clear when the requirements of Ss 11(1)(a) and (b) were met.*

*From a scrutiny perspective the Subcommittee is concerned to ensure there has been compliance with Ss 11(1)(a) and (b). The Subcommittee would appreciate your advice as to: -*

- *When the appropriate notice was published in the Government Gazette; and*
- *When the appropriate notice was published in a daily newspaper circulating throughout Victoria.*

*The Subcommittee is of the view that it is a simple matter to include the relevant information in the Explanatory Memorandum. The Subcommittee would appreciate it if the above matter could be drawn to the attention of the legislative officers in your department. The Subcommittee looks forward to your response.*

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<sup>52</sup> Letter dated 30 September 2003 to the Hon. John Lenders, MP, Minister for Consumer Affairs from the Regulation Review Subcommittee.

Minister's Response<sup>53</sup>

*Thank you for your letter dated 30 September 2003.*

*The notices under sections 11(1)(a) and 11(1)(b) were published in the Victoria Government Gazette G17 on 24 April 2003 at page 836, and in the public notices in The Age on 24 April 2003.*

*In relation to your concerns that the Explanatory Memorandum include information on compliance with the requirements in relation to regulatory impact statements under the Subordinate Legislation Act 1994, I suggest that that matter be considered in the broader context of the functions of the Explanatory Memorandum and the section 10 certificate.*

*The contact officer for this matter in the Department is Ms Anne Cadogan who can be contacted on 9627 6378.*

**(D) SIGHTING OF MATERIAL INCORPORATED BY REFERENCE**

Regulations often include a table of applied, adopted or incorporated matter in accordance with the requirements of regulation 6 of the *Subordinate Legislation Regulations* 1994. Such a table lists all the material applied, adopted or incorporated by reference in the regulations. Often the Subcommittee is placed in the position where it has to consider and or approve regulations without sighting the material which is incorporated into them. Where the Subcommittee does not sight the material it cannot form a view as to whether it conforms with the requirements of the Act.

The Premier's Guidelines provide some assistance.<sup>54</sup>

*7.3 Section 32 of the Interpretation of Legislation Act 1984 prescribes the procedural requirements which must be fulfilled whenever a statutory rule applies, adopts or incorporates material by reference. Section 32(5) of the Interpretation of Legislation Act provides that a failure to comply with the tabling requirements does not affect the validity, operation or effect of a statutory rule but agencies should nevertheless ensure compliance with the requirements of section 32 as amended by the Subordinate Legislation Act 1994.*

*7.4 When considering whether to incorporate a particular document in a statutory rule it should be remembered:*

- That the provisions of the rule will only refer to the incorporated material and members of the public affected by the rule must see the incorporated document before they can understand the contents and effect of the rule;*
- That the incorporated material may not be readily available at a reasonable cost;*
- That the procedures set out in section 32 are designed to facilitate Parliamentary oversight of incorporation of material and to ensure that such material is publicly available so that members of the public affected by the rule can have access to the rules with which they must comply.*

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<sup>53</sup> Letter dated 3 November 2003 to the Regulation Review Subcommittee from the Hon. John Lenders, MP, Minister for Consumer Affairs.

<sup>54</sup> The Premier's Guidelines – Part 7, p 24.

7.5 It needs to be remembered that the incorporated material may not be a single document. The problem is exacerbated by the drafting style adopted by the Standards Association of Australia as these standards are frequently not self contained but adopt the provisions of other standards. This can create a chain of material incorporated by reference leading to the possibility that the need to table a particular document will be overlooked.

7.6 Consideration should also be given in drafting statutory rules as to whether the reference to an Australian Standard should be to a specific standard (eg AS 1234) or to a specific version of a standard by reference to its date (eg AS 1234, 1997). The latter approach means that if a later amended version of a standard is to be adopted it will require the amendment of the statutory rule and the undertaking of the RIS process. The former approach may result in significant changes to the effect of the statutory rule with no automatic mechanism to review the changes to the costs and benefits of the statutory rule.

7.8 In deciding whether to incorporate material by reference, agencies need to take care to balance the drafting convenience with ease of access to the incorporated material and understanding of it by those affected by it or required to comply with it. Agencies should reserve the use of incorporated detailed and extensive technical material to regulations concerning industries familiar with and using material. In such cases agencies should also consider whether performance standards are the more appropriate means of regulation.

The issue of approving material incorporated by reference and not sighted is an ongoing one for the Subcommittee from a general scrutiny perspective.

#### **Example 1:**

##### **SR 98 – Electricity Safety (Equipment Efficiency)(Amendment) Regulations 2003**

These Regulations prescribed minimum standards of energy efficiency and performance of registrable ballasts. They also provided for the registration and labelling of the ballasts. The issue of the scrutiny of material incorporated by reference rose squarely for the Subcommittee. The Subcommittee raised the matter with the Minister.

#### Subcommittee's letter<sup>55</sup>

*The Regulation Review Subcommittee examined the above Regulations pursuant to S 21 of the Subordinate Legislation Act 1994 (the Act) at a meeting on 29 September 2003. The Subcommittee approved the Regulations.*

*The Regulations: –*

- *Prescribe minimum standards of energy efficiency and performance of registrable ballasts;*
- *Provide for the registration and labelling of those ballasts; and*

<sup>55</sup> Letter dated 30 September 2003 to the Hon. Theo Theophanus, MP, Minister for Energy Industries from the Regulation Review Subcommittee.

- *Make miscellaneous amendments.*

*The Regulations are exempted from the requirement to prepare a Regulatory Impact Statement (RIS) as they form part of a national uniform legislation scheme.*

*The Regulations include a table of applied, adopted or incorporated matter in accordance with the requirements of regulation 6 of the Subordinate Legislation Regulations 1994. It lists all the material applied, adopted or incorporated by reference in the Regulations. The Subcommittee notes that much of the material referred to appears to relate to various standards for energy labelling and minimum energy performance for registrable ballasts.*

*The Subcommittee has not sighted that material and so cannot form a view as to whether it conforms with the requirements of the Act. Presumably, as these Regulations form part of a National Scheme of Legislation such material is appropriate. However, the issue of approving material incorporated by reference and not sighted is ongoing for the Subcommittee from a general scrutiny perspective. The Subcommittee seeks your advice as to whether such material has been scrutinised at some level, either by another parliament or another Scrutiny Committee. The Subcommittee also notes in conclusion that the S 13 Certificate from the Office of Chief Parliamentary Counsel approving the Regulations specifically excludes the material incorporated by reference.*

*The Subcommittee looks forward to your response.*

#### Minister's Response<sup>56</sup>

*Thank you for letter of 30 September 2003, seeking my advice regarding whether material applied, adopted or incorporated by reference in the Electricity Safety (Equipment Efficiency)(Amendment) Regulations 2003 (the Regulations), has been scrutinised at some level, either by another parliament or another Scrutiny Committee.*

*As outlined in your letter, the Regulations provide that registrable fluorescent lamp ballasts must comply with the performance criteria and minimum energy performance standards set out in the Australian/New Zealand Standards, "Performance of electricity lighting equipment – Ballasts for fluorescent lamps," Parts 1 and 2 (AS/NZS 478.1:2001 and AS/NZS 4783.2:2002).*

*These minimum energy performance standards (MEPS) for fluorescent lamp ballasts have been introduced by the Victorian Government as part of the National Appliance and Equipment Energy Efficiency Program (NAEEEP). This program aims at developing a nationally consistent framework to improve energy efficiency and reduce greenhouse emissions from household appliances and equipment, and commercial and industrial equipment, through mandatory MEPS and energy efficiency labelling.*

*The program is led by the Ministerial Council on Energy and is managed by the National Appliance and Equipment Energy Efficiency Committee (NAEEEC), chaired by the Commonwealth with representation from electrical*

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<sup>56</sup> Letter dated 30 December 2003 to the Regulation Review Subcommittee from the Hon. Theo Theophanous, MP, Minister for Energy Industries and Resources.

appliance regulators and energy agency officials in all States and Territories and New Zealand.

NAEEC works closely with Standards Australia (the body responsible for the development of Australian Standards) to develop appropriate MEPS, including AS/NZS 4783.1:2001 and AS/NZS 4783.2:2002.

The primary role of Standards Australia (an independent, non-government body) is to prepare technical and business standards in relation to a broad range of topics. Generally, where the need for a standard has been identified, the standard itself is developed by a technical committee and published for public comment, before final approval. I understand this process was followed in respect of the development of AS/NZS 4783.1:2001 and AS/NZS 4783.2:2002.

In addition, before MEPS are adopted by State Governments, NAEEEC is required to undertake a Regulatory Impact Statement (RIS), in accordance with COAG's "Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies" to demonstrate the net benefit of implementing new regulation. A further consultation process is required on the RIS before final Ministerial approval. Again, this RIS process was undertaken in respect of AS/NZS 4783.1:2001 and AS/NZS 4783.2:2002.

If the regulations are made this year in all jurisdictions, the Australian community is expected to save almost \$270 million by 2010 (net present value) through the greater efficiency standards required of lighting ballasts. By 2010, the annual abatement of greenhouse gases under the model is expected to be in the order of 0.35Mt.

If you have any questions, or require further information, in relation to the bodies and processes described above, please contact Neil Jenkins, Senior Policy Analyst, Energy & Security Division (9655 6592).

## Example 2:

### SR 72 – Electricity Safety (Bushfire Mitigation) Regulations 2003

#### Subcommittee's letter<sup>57</sup>

The Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee considered the above Regulations at a meeting on 27 October 2003. The Subcommittee approved the rules.

#### Advertisement of the Regulatory Impact Statement

The Explanatory memorandum advises that the Regulatory Impact Statement was advertised in accordance with s 11(2) of the Subordinate Legislation Act 1994. The Subcommittee would appreciate your advice as to when it was advertised and when it was gazetted.

<sup>57</sup> Letter dated 29 October 2003 to the Hon. Theo Theophanus, MP, Minister for Energy Industries from the Regulation Review Subcommittee.

Scrutiny of Incorporated Material

*Regulations 8(1)(h) and (i) incorporate by reference the clearance requirements set out in Table 3.8 of the Australian/New Zealand Wiring Rules ASNZS:2000 as published on 15 September 1999. The material is set out in the Table of Applied, Adopted or Incorporated Matter at the end of the Regulation.*

*The Subcommittee has not sighted that material and so cannot form a view as to whether it conforms with the requirements of the Act. However, the issue of approving material incorporated by reference and not sighted is ongoing for the Subcommittee from a general scrutiny perspective. The Subcommittee seeks your advice as to whether such material has been scrutinised at some other level.*

*The Subcommittee looks forward to your response in due course.*

Minister's Response<sup>58</sup>

*Thank you for your letter dated 29 October 2003 seeking information relating to the above Regulations which have now been approved by your Subcommittee. I apologise for the delay in responding.*

*With respect to your question on when the Regulatory Impact Statement was advertised, I am able to advise you that the RIS was advertised in the Gazette (G50 – pages 3231-3232) on 12 December 2002 and in the Herald Sun on 13 December 2002.*

*With respect to your question on whether the Australian/New Zealand Wiring Rules ASNZS:2000 have been scrutinized at some level, in my letter to you on the Electricity Safety (Equipment Efficiency) Amendment Regulations 2003, I provided information regarding the general development of Australian/New Zealand standards.*

*In relation to Wiring Rules, the advice I have received from the Office of the chief Electrical Inspector is that the incorporated matter was scrutinized by Parliamentary Council in providing the section 13 certificate. The Wiring Rules were lodged with the Clerk of the Parliaments on 11 August 2003 with other material incorporated in the Regulations Tabling requirements were also complied with.*

*I hope that this information is of assistance.*

**(E) SECTION 9(1)(A) – IS THERE ANY APPRECIABLE ECONOMIC OR SOCIAL BURDEN ON ANY SECTOR OF THE PUBLIC?**

Many regulations are accompanied by a section 9(1)(a) certificate of exemption which states that they do not impose an appreciable economic or social burden on any sector of the public. Paragraph 5.31 of the Premier's Guidelines set out the particular requirements in respect of the exemption certificates.<sup>59</sup>

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<sup>58</sup> Letter dated 15 February 2004 to the Regulation Review Subcommittee from the Hon. Theo Theophanous, MP, Minister for Energy Industries and Resources.

<sup>59</sup> Paragraph 5.31, Premier's Guidelines

*In this context it is important to remember that the Minister not only has to provide the Scrutiny Committee with a certificate of consultation under section 6(c), but is required to give reasons as to why he or she is of the opinion that the proposed rule does not impose an appreciable economic or social burden on a sector of the public under section 9(2).*

The Subcommittee takes the view that it is not sufficient to simply assert that there is no appreciable economic or social burden on a sector of the public in the exemption certificate. The Subcommittee expects that detailed reasons will be given as to **why** there is no appreciable economic or social burden on a sector of the public. This matter was raised squarely in respect of the *SR 157 Occupational Health and Safety (Asbestos)(Amendment) Regulations 2003*.

### **Example 1:**

#### **SR 157 – Occupational Health and Safety (Asbestos)(Amendment) Regulations 2003**

##### Subcommittee's letter<sup>60</sup>

*The Regulation Review Subcommittee (the Subcommittee) met to consider the above Regulations at a meeting on 16 February 2004.*

*The Subcommittee has deferred consideration of the Regulations.*

##### Consultation

*The Regulations are accompanied by s 6 Certificate of Consultation which states that there has been consultation with industry groups. The Subcommittee seeks your advice as to the particular consultation which has taken place with groups in the industry. What was the level of consultation and with whom?*

##### Regulatory Impact Statement and s 9(1) Certificate of Exemption

*The Regulations are accompanied by a s 9(1)(a) Certificate of Exemption which states that they would not impose an appreciable economic or social burden on any sector of the public. However the Subcommittee seeks your advice as to the particular reasons why it is considered there is no appreciable burden or economic burden on a sector of the public.*

*The Subcommittee appreciates that the Regulations were developed through a tripartite process convened by the National Occupational Health and Safety Commission. However the Subcommittee also seeks your advice as to why it was considered that the regulatory impact statement process was thought not to be appropriate in this instance.*

##### Safety of Asbestos

*The incorporation of the national list of exemptions will allow limited uses of chrysotile asbestos to continue. The Subcommittee seeks your advice as to whether the use of this asbestos is safe. It also seeks further clarification of*

<sup>60</sup> Letter dated 16 February 2004 to the Hon. Rob Hulls, MP, Minister for WorkCover from the Regulation Review Subcommittee.

*the operation of the exclusion from the prohibitions for soils for which a visual inspection indicates that asbestos containing material has been removed.*

*The Subcommittee would appreciate your response to the above matters.*

#### Minister's Response<sup>61</sup>

*Thank you for your letter dated 16 February 2004, regarding clarification of a number of matters relating to the Occupational Health and Safety (Asbestos) (Amendment) Regulations 2003.*

*Specifically, you have requested details of the:*

- *Consultation that was undertaken during development of the Occupational Health and Safety (Asbestos) (Amendment) Regulations 2003;*
- *Reasons why the Amendment Regulations were not considered to confer an appreciable burden on any sector of the public and why it was not considered necessary to prepare a regulatory impact statement;*
- *Means by which the safe use of certain items excluded from the prohibitions will be ensured.*

#### Consultation

*A detailed history of the consultation undertaken in relation to the development of the Amendment Regulations appears in Attachment A.*

#### Regulatory Impact Statement

*In October 2003, WorkSafe sought advice from RIS expert, Dr David Wilkinson, regarding whether incorporation of the National List of Exemptions would impose an appreciable burden on any sector of the community and the need to prepare an RIS. Dr Wilkinson's advice states that "exemptions from a regulatory requirements, by their very nature, cannot be construed as imposing an appreciable burden as defined" in the Subordinate Legislation Act 1994: Guidelines Under Section 26.*

*In other words, the Amendment Regulations provide for exemptions from the prohibitions on asbestos and therefore permit the continued use of specified asbestos-containing materials under certain circumstances and thereby alleviate a portion of the burden imposed by prohibition of their use.*

*Some changes were made to the draft amending proposal following Dr Wilkinson's advice. New provisions relating to exclusions from the prohibitions for: soil from which asbestos-containing material has been removed; and recycled construction material that contain less than a prescribed percentage of asbestos-containing material, were added after receipt of his advice. However, given that these changes were of a similar nature to the other provisions on which Dr Wilkinson had previously commented, it was considered that Dr Wilkinson's advice adequately covered the matter at hand. Following receipt of the Subcommittee's letter, WorkSafe Victoria sought and obtained confirmation of this assessment from Dr Wilkinson.*

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<sup>61</sup> Letter dated 11 May 2004 to the Regulation Review Subcommittee from the Hon. Rob Hulls, MP, Minister for WorkCover.

### National List of Exemptions

*The Subcommittee notes that the National List of Exemptions (refer Schedule 1A, Amendment Regulations) will permit the limited use of chrysotile asbestos-containing material to continue and seeks advice as to whether the use of this material is safe.*

*A rigorous process was used by the National Occupational Health and Safety Commission to determine whether any exemptions from the prohibitions on the continued use of chrysotile asbestos-containing materials would be necessary. The criteria was premised on there being no technically available; and/or the use of an alternative item posed greater risk to health and safety than would the use of the asbestos-containing item.*

*NOHSC released a draft list of exemptions for a period of public comment and sought input in relation to whether any additional items should be exempt, according to the above criteria. Applications for exemptions were considered by a tripartite working group and the final list was approved by representatives from all Australian jurisdictions, the ACCI and the ACTU.*

*It must be noted that there are only four exempt categories of chrysotile asbestos-containing material and these expire on or before 1 January 2008. It is intended that the expiry date provides the impetus to find technically feasible alternatives to the use of these materials.*

*In addition, intent to use an item on the National List is subject to the requirement that WorkSafe is notified, thereby enabling WorkSafe to undertake targeted enforcement activities. The use of exempt items is also regulated under Part 8 of the Asbestos Regulations if the task is likely to create airborne asbestos fibres in excess of one half of the exposure standard (see regulation 801(2)(k)).*

### Safe use of asbestos-containing materials

*The Subcommittee seeks further clarification of the operation of the exclusion, from the prohibitions, for soils for which a visual inspection indicates that asbestos-containing material has been removed.*

*The circumstances that most often attract this exemption occur infrequently in the construction industry. Excavations of construction sites occasionally uncover waste asbestos-containing materials that have been buried to dispose of it or haphazard and incomplete asbestos removal work has left asbestos-containing material in the soil. The prohibitions in Part 3 of the Asbestos Regulations apply to materials (including soil) that contain any amount of asbestos.*

*The practical effect of the exclusion is to deem soil to be free of asbestos if a visual inspection (by a competent Person) determines that no asbestos-containing material is present. This type of visual assessment is consistent with custom and practice in the asbestos-removal industry. Visual inspections are required, as per Part 7 of the Asbestos Regulations, to obtain a clearance certificate at the end of removal work where more than a specified quantity of asbestos-containing material is to be removed.*

*This exclusion was supported by industry and unions in consultations on the proposed Amendment Regulations.*

*Thank you for the opportunity to respond to the matters that you have raised. I trust that the information provided will be of assistance to the Subcommittee.*

*Attachment A — History of Consultation: Occupation Health and Safety (Asbestos) (Amendment) Regulations 2003*

*Background*

- 1. Subsequent to the making of the Occupational Health and Safety (Asbestos) Regulations 2003 (the Asbestos Regulations), a National List of Exemptions from the prohibition on use of chrysotile asbestos was finalised through a tripartite process, convened by the National Occupational Health and Safety Commission (NOHSC).*
- 2. The list of exemptions was initially based on the list of derogations from the UK prohibition on use of chrysotile asbestos and was reviewed, through the tripartite Chrysotile Implementation Working Group (the CIWG), for relevance in Australia. WorkSafe is represented on the CIWG.*
- 3. The draft List of Exemptions was then released nationally for a period of consultation, from 2 July till 13 September 2002. A total of 15 submissions were received (including from organisations and individuals based in Victoria eg. Esso Australia Pty Ltd and the AMWU) and these were reviewed by the CIWG prior to settling a final National List of Exemptions. The List has been endorsed by the Workplace Relations Ministers' Council.*
- 4. An amendment to the Asbestos Regulations to accommodate the National List was foreshadowed with stakeholders during development of the Asbestos Regulations. This issue was also discussed in WorkSafe's document; Summary of Public Comment on the proposed Occupation Health and Safety (Asbestos) Regulations 2003 and accompanying Regulatory Impact Statement, together with WorkSafe Victoria's Responses, which was distributed to all individuals and organisations (approximately 40) who submitted comment on the draft Asbestos Regulations and/or on the accompanying RIS.*
- 5. The Occupational Health and Safety (Asbestos) (Amendment) Regulations 2003 (the Amendment Regulations) also provide for an exclusion from the prohibitions for soils from which asbestos-containing material (present as a contaminant) has been removed. A further exclusion is provided for recycled construction materials that are intended to be re-used.*

Consultation in respect of the Amendment Regulations

6. WorkSafe commenced consultation in respect of the Amendment Regulations in October 2003. Letters seeking comment on the draft amending Regulation were sent to:
  - members of the Health and Safety Working Group (see Attachment B); and
  - members of the Manufacturing Industry Task Force (see Attachment C).
7. Written comment in relation to the draft Amendment Regulations was received from the following 8 parties.
  - AMWU;
  - VTHC (copied to the AMWU, the ETU and the CFMEU);
  - EPA;
  - MBAV'
  - Civil Contractor's Federation;
  - Demolition Contractor's Association (through the MBAV);
  - The Alex Fraser Group; and
  - FMP Pty Ltd.
8. Only the AMWU, VTHC and FMP Pty Ltd commented on the amendment that will incorporate the National List of Exemptions. Both the AMWU and VTHC supported the amendment, FMP Pty Ltd simply sought assurance that the exemptions would be limited to the items in the National List and that this did not extend to brake friction materials.
9. Additionally, WorkSafe conducted discussions with the above stakeholders during November and early December 2003. During these discussions, the issue of recycled construction materials contaminated with asbestos-containing materials and intended for re-use emerged as a distinct issue.
10. In respect of recycled construction materials, the Alex Fraser Group (Victoria's largest recycler of these materials) advised WorkSafe that contamination, with asbestos, of materials intended for re-use can be limited to concentrations of less than 0.001% w/w. This company has developed and implemented methodology that achieves this standard.
11. However, despite a preference (expressed by the CFMEU and VTHC) that the permissible percentage of contamination with asbestos (in respect of recycled construction materials) be written into the amending Regulation, the draft amendment enables the Authority to determine the percentage contamination and the analytical method, in the Government Gazette. This provided additional time for consultation with the industry in order to gain an understanding of whether the analytical method, developed by the Alex Fraser Group, could be implemented by all members of the industry, thus ensuring that the amendment did not create an effective monopoly.

12. In subsequent discussions with the CFMEU and VTHC, these parties accepted the need for further consultation with industry on the matters to be determined. The primary concern of all parties being that the permissible percentage of contamination with asbestos be as low as possible, whilst enabling the industry that recycles construction materials to continue operating.

Attachment B — Health and Safety Working Group

This group is chaired by the Chair of the Victorian WorkCover Authority and is the primary means by which unions and employer organisations scrutinise the Authority's policy agenda and operational activities.

Name	Position	Organisation
Cathy Butcher	OHS Officer	Victorian Trades Hall Council
David Gregory	Group General Manager, Workplace Relations	Victorian Employers' Chamber of Commerce and Industry
Gayle Burmeister	H & S Organiser	National Union of Workers
Dean Bingham	OHS Field Officer	Master Builders Association of Victoria
Sue Kay	Manager, OH & S	Victorian Automobile Chamber of Commerce
Pat Preston	Manager, Environmental H & S	Construction, Forestry, Mining and Energy Union
Sarah Ross	OHS Officer	Australian manufacturing Worker's Union
Tracey Browne	Principle Advisor	Australian Industry Group
Karen Batt	Victorian Branch Secretary	CPSU (SPSF Group)

Attachment C — Manufacturing Industry Task Force

The terms of reference of this group include reducing workplace death and injury rates in the manufacturing industry.

Name	Organisation
Cathy Butcher	Victorian Trades Hall Council
Renata Musolino	Victorian Trades Hall Council
Garry Thompson	Victorian Employers' Chamber of Commerce and Industry
Gayle Burmeister	National Union of Workers
Clayton Larkin	National Union of Workers
Denise Campbell-Burns	Construction, Forestry, Mining and Energy Union
Sarah Ross	Australian Manufacturing Workers' Union
Alex Buckle	Australian Manufacturing Workers' Union
Tracey Browne	Australian Industry Group
Gwynneth Evans	Australasian Meat Industry Employees Union

Name	Organisation
Allan Mulvena	Electrical Trades Union of Australia/CEPU Electrical Trades Division
George Perkolarakis	LHMU
Mara Ray	Printing Association of Australia

## (F) OTHER MATTERS – GENERAL CLARIFICATION

Often the Subcommittee considers the overall operation of a regulation. It may consider just how the regulation works in practice. The Subcommittee sometimes writes to a Minister seeking general clarification of various matters.

### Example 1:

#### SR 29 – Zoological Parks and Gardens Regulations 2003

These Regulations set out the maximum and minimum fees for entry to the Melbourne Zoo, Healesville Sanctuary and Werribee Zoo. The Subcommittee wrote to the Minister seeking his advice in respect of a number of matters.

#### Subcommittee's letter<sup>62</sup>

*At a meeting on 26 May 2003 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.*

*The Zoological Parks and Gardens Regulations 2003 set maximum and minimum fees for entry to the Melbourne Zoo, Healesville Sanctuary and Werribee Zoo. The Regulations also contain provisions for the care and management of these zoological parks. Under the Regulations responsibility for setting actual fees has been given to the Zoological Board. The Board has also been given power to determine concessional charges and the Regulations require these charges to be between 50% and 100% of the maximum fee.*

*The RIS accompanying these Regulations indicates that the new fee structure provides flexibility enabling the Board to charge lower fees and to reflect market and seasonal considerations and, for example, to offer discounts during traditionally quiet periods to encourage additional visitors. The Subcommittee notes that there is no requirement for the Board to offer these discounts and therefore seeks your advice as to how these seasonal price variations will work in practice.*

*The RIS includes a table showing the percentage change from the previous entry fees to the new minimum and maximum fees. The Subcommittee notes that the percentage increase for most of these fees is well above the current rate of 3% set by the Treasurer. The Subcommittee understands that as these Regulations have been prepared with a RIS there is no requirement to comply with the rate set by the Treasurer. The Subcommittee notes that the percentage increase for some of the fees is quite large and it wonders what impact this will have on visitor numbers and accessibility by disadvantaged*

<sup>62</sup> Letter dated 17 June 2003 to the Hon. John Thwaites, MP, Minister for Environment from the Regulation Review Subcommittee.

*groups in the community. The RIS does not clearly explain this impact. The Subcommittee therefore seeks your advice as to the impact of this new fee structure on visitor numbers and accessibility by disadvantaged groups in the community.*

*The Subcommittee also notes the change in the definition of 'family' from two adults and up to four children to a group of four persons including up to two adults. The RIS indicates that this change has been made to accommodate families consisting of one adult and three children and reflects the changing composition of families. There was some criticism of this change to the definition of 'family' by those who made submissions. In response the Department indicated that price for a 'family' does represent a saving and additional children will be charged at 50% of the full paying child. It appears to the Subcommittee that the change to the definition of 'family' may disadvantage those with large families and it therefore seeks your advice on the anticipated impact on large families and whether the 50% discount for additional children is a requirement of the Regulations or rests with the discretion of the Board.*

*The Subcommittee looks forward to receiving your response.*

#### Minister's Response<sup>63</sup>

*Thank you for your letter dated 17 June 2003 regarding the Scrutiny of Acts and Regulations Committee (SARC) Regulation Review Sub-Committee's examination of the Zoological Parks and Gardens Regulations 2003.*

*You have asked for further advice in relation to three matters.*

#### Seasonal pricing

*You have asked how seasonal price variations will work in practice, for example the offer of discounts during traditionally quiet periods. It is the intention of the Marketing Director to look at varying admission prices to encourage visitation at various times. For example at peak times (public holidays and weekends) a higher price could be considered and lower prices could apply in winter months to encourage visitation.*

#### Impact of fee structure on visitation and accessibility by disadvantaged groups

*You have noted the percentage increase from the previous entry fees to the new maximum and minimum fees and have asked for further advice on the impact of this new fee structure on visitor numbers and accessibility by disadvantaged groups in the community.*

*As noted in the Regulatory Impact Statement, in generating sufficient revenue to recover an appropriate proportion of essential costs, the fee structure must balance any likely impact of a fee increase on visitation. The regulatory prices are based on recovering appropriately the costs of operating the three zoos (Melbourne Zoo, Healesville Sanctuary and Werribee Zoo). These are the maximum fees the Zoological Parks and Gardens Board (the Board) can charge. However the Board will take into account the market environment and*

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<sup>63</sup> Letter dated 18 September 2003 to the Regulation Review Subcommittee from the Hon. John Thwaites, MP, Minister for Environment.

its operating requirements in setting prices. The actual entry fees set by the Board are set out below.

Category	Regulated Maximum Price	Price set by the Board
Adult	\$22.00	\$17.50
Child	\$11.00	\$ 8.50
Family	\$50.00	\$43.50
Student/Pensioner	\$17.00	\$13.00

It is acknowledged that the prices could be considered high especially in view of the current reduction and free entries to the Museum of Victoria. However the Board is still providing free entry to various groups such as carers of a disabled person, accompanying adults (carrying with type and size of group) for school outings, and reduced entry fees to children with a physical or intellectual disability, full-time students and pensioners and Health Care Card holders. In addition, the new Regulations authorise the Board to exempt persons from payment of entry fees and to discount fees for particular classes of persons, and will be working with the Department of Community services to identify other disadvantaged groups for whom concessional prices would be appropriate.

#### Family prices

In relation to the change in definition of 'family', you have sought further advice on the impact of the change on large families and, in particular, whether the 50% discount for additional children is a requirement of the Regulations or rests with the discretion of the Board.

The definition of family as "two adults and up to four children" was changed to a "group of four persons including up to two adults". At the Werribee Zoo the definition of family has always been "a group of four persons including up to two adults". The definition of family is now consistent across the three zoo properties, and is similar to the definition of family used by many other comparable recreational attractions.

With the previous definition of family as two adults and four children, the price charged for a family ticket was calculated as 75% of the price of two adults and four children. However the Board's records indicate that only 17% of families fell into this category, while 50% were two adults and two children. If the price of the new family ticket was calculated in the same way as for the previous definition of family the price would be \$51.75, rather than the \$43.50 actually set by the Board. It is considered that, while this would be a minor benefit for families with four children, this larger group is a small proportion of the total family groups, and the change in the composition of the Family Ticket reflected a more equitable pricing for the average family.

The Board has decided that the charge for an additional child to a family ticket (up to a maximum of three additional children) will be approximately 50 percent of the full paying child's entry fee to accommodate the larger family groups. This is a substantial offset for any impacts of the change in the

*definition of 'family' for the entry to the Royal Melbourne Zoological Gardens and the Healesville Sanctuary. The approach taken in this regard is consistent with other zoos and recreational establishments. The 50% discount for up to three additional children is not specifically provided for in the Regulations but the Regulations provide that the Board may determine concessional charges for entry.*

*The Board's recurrent revenue is primarily admissions-based, and is characterised by high fixed costs related to the care of animals. I am confident that the new regulatory framework will provide the Board with the flexibility to respond to visitation patterns and visitor needs, and contribute to the achievement of zoo conservation, environmental and other community objectives, and to visitor enjoyment.*

## **Example 2:**

### **SR 79 – Building (Application of Siting Requirements) Regulations 2003**

These Regulations extended the period of exemption from the overshadowing and overlooking provisions for six municipalities. In this instance the Subcommittee was concerned that the s 9(1)(a) certificate did not provide any clear reasons in support of the proposition that the Regulations did not impose an appreciable burden on any sector of the community. The Minister's response further explained the reason for the exemption.

#### Subcommittee's letter<sup>64</sup>

*At a meeting on 21 July 2003 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.*

*The Building (Application of Siting Requirements) Regulations 2003 extend the period of exemption from the overshadowing and overlooking provisions for six municipalities – Cardinia, Casey, Hume, Melton, Whittlesea and Wyndham. The period of exemption has been extended for a further six months from 1 July 2003 to 1 January 2004.*

*The section 9(1)(a) certificate states that the Regulations do not impose an appreciable burden on any sector of the community but does not provide any clear reasons in support. The Explanatory Memorandum notes that the building industry has requested an extension to the exemption period. However the Subcommittee remains uncertain as to why the extension has been granted.*

*The Subcommittee draws attention to section 9(2) of the Subordinate Legislation Act 1994 which requires a certificate of exemption to specify the reasons for granting an exemption from the RIS process. Parts 5 and 6 of the Premier's Guidelines reinforce the need for an explanation to be provided. Paragraph 6.10 of the Premier's Guidelines provides –*

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<sup>64</sup> Letter dated 11 August 2003 to the Hon. Mary Delahunty, MP, Minister for Planning from the Regulation Review Subcommittee.

*If the conclusion is reached that there is no appreciable burden imposed, there is no need to prepare an RIS but under section 9 of the Act the Minister must certify with reasons that this is the case.*

*The Subcommittee therefore seeks clarification as to the reasons for providing the extension. The Subcommittee also seeks details on what consultation took place and in particular whether there was any consultation with councils.*

*The Subcommittee looks forward to receiving your advice.*

#### Minister's Response<sup>65</sup>

*I refer to your recent letter seeking clarification of the reasons for extending an exemption from the requirements for building work to comply with the overshadowing and overlooking provisions of the Building Regulations and asking what consultation was undertaken with the relevant councils.*

*Part 4 (Siting) of the Building Regulations 1994 was amended in August 2001 to incorporate the provisions of ResCode. At that time the exemption from the requirement to comply with the overshadowing and overlooking provisions in the six outer Melbourne municipalities was included in recognition that it would take time for industry to redesign and market project homes which would meet the ResCode provisions.*

*The exemption was included in the regulation in consideration of the transitional issues facing housing consumers, the housing industry and councils.*

*For consumers, the exemption was intended to reduce the need for costly redesign of the homes they intended to build on their land. For the industry, it provided a lead time to enable the building industry to redesign their stock homes to comply with the provisions.*

*The affected councils agreed with the exemption. Their view was that it would assist existing landowners intending to build in the near future and would help reduce the number of applications to council to consent to a variation of the new Building Regulations so that existing home designs could be built.*

*The exemption was limited to the six outer Melbourne municipalities. This was because they cover the urban growth areas where the majority of new project homes are located. It was anticipated that standard project homes would require the most adjustment to comply with the new site-specific overlooking and overshadowing provisions.*

*The exemption formed part of the regulatory changes that were the subject of an RIS in September-October 2001. The RIS did not specifically address the exemption, as it was an exemption from increased regulation.*

*Likewise the current extension to the exemption is effectively a six-month stay in the application of the higher level of regulations which has applied elsewhere in Victoria since 2001. It therefore cannot be seen as increasing the regulatory burden on industry.*

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<sup>65</sup> Letter dated 14 October 2003 to the Regulation Review Subcommittee from the Hon. Mary Delahunty, MP, Minister for Planning.

*Early in 2003 the key bodies representing the housing and development industries, the Housing Industry Association and the Urban Development Institute of Australia, sought the extension of the exemption for twelve months, to July 2004.*

*These industry bodies sought a twelve-month extension on the basis that many outer urban land buyers are still in the process of obtaining building permits for lots and housing designs created prior to ResCode coming into force. Without the extension, these consumers would be facing increased housing costs as a result of having to redraw their current plans and achieve compliance.*

*The need for existing designs to comply would in turn generate a significant increase in applications to the outer urban councils to approve a variation to the Building Regulations to allow these already-designed houses to be built.*

*Because of the anticipated cost to land consumers, councils and builders of taking existing outer urban housing projects to full ResCode compliance at this stage, the Government agreed to a six-month extension of the exemption, until 31 December 2003.*

*The six outer urban councils were each consulted about the proposed extension to the exemption before the above regulations were made. There was general support for an extension of six months.*

*Save Our Suburbs (SOS) was also consulted, as SOS is a key group representing the interests of residents. SOS indicated its support in view of the ongoing work being undertaken to develop building envelopes for use in outer urban areas to address ResCode objectives.*

*I trust that this addresses the issues raised by your Committee. If you require further information, please contact my Ministerial Advisor, Ms Rebecca Falkingham on 9637 8855.*

### **Example 3:**

#### **SR 89 – Fair Trading (Safety Standard)(Bunk Beds)(Amendment) Regulations 2003**

These Regulations amended the *Fair Trading (Safety Standard)(Bunk Beds) Regulations 2002* to exempt certain classes of bunk beds from the prescribed safety standard for bunk beds. The Subcommittee noticed the width of the exemption. The Subcommittee wrote to the Minister seeking clarification of the operation of the Regulations.

#### Subcommittee's letter<sup>66</sup>

*The Regulation Review Subcommittee examined the above Regulations pursuant to S 21 of the Subordinate Legislation Act 1994 (the Act) at a meeting on 29 September 2003. The Subcommittee approved the Regulations. The Subcommittee draws your attention to two issues.*

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<sup>66</sup> Letter dated 30 September 2003 to the Hon. John Lenders, MP, Minister for Consumer Affairs from the Regulation Review Subcommittee.

(1) *Width of Exemption*

*By way of background the Subcommittee notes that the original Fair Trading (Safety Standard)(Bunk Beds) Regulations 2002 form part of a national scheme to prescribe safety standards in relation to bunk beds. The 2002 Regulations adopt and vary the standard for bunk beds approved by Standards Australia. The prescribed standards according to the explanation were not intended to catch bunk beds in caravans. The above Regulations remove that doubt. The Regulations amend the Fair Trading (Safety Standard)(Bunk Beds) Regulations 2002 to exempt certain classes of bunk beds from the prescribed safety standard for bunk beds. More particularly they exempt portable bunk beds designed for camping and bunk beds that are built-in, fitments in caravans, camper trailers, tent trailers, camper vans, motor homes, trains, ships, aircraft and other types of conveyances.*

*The Subcommittee noticed the width of the exemption. It extends beyond bunk beds to built in fitments in caravans, camper trailers, tent trailers, camper vans, motor homes, trains, ships, aircraft and other types of conveyances. Are the other things exempted governed by national standards? The Subcommittee seeks your explanation as to how the exemption and regulations will work in practice.*

(2) *Sighting of material incorporated by reference*

*The Subcommittee also noticed that the Regulations incorporate by reference a table of applied or adopted matter in accordance with regulation 6 of the Subordinate Legislation Regulations 1994. That material relates to the Australian/New Zealand Standards published by Standards Australia in 1994. The Subcommittee has not sighted that material and so cannot form a view as to whether it conforms with the requirements of the Act. Presumably, as these Regulations form part of a National Scheme of Legislation such material is appropriate. However, the issue of approving material incorporated by reference and not sighted is ongoing for the Subcommittee from a general scrutiny perspective.*

*The Subcommittee seeks your advice as to whether such material has been scrutinised at some level, either by another parliament or another Scrutiny Committee. The Subcommittee notes that the S 13 Certificate from the Office of Chief Parliamentary Counsel approving the Regulations also specifically excludes the material incorporated by reference.*

*The Subcommittee looks forward to your response to the above matters.*

Minister's Response<sup>67</sup>

*Thank you for your letter of 30 September 2003. The Fair Trading (Safety Standard)(Bunk Beds) Regulations 2002 were intended to apply to bunk beds in houses which are stand alone items of furniture only and not to bunk beds in any of the conveyances set out in the exemption, which are built into and part of the conveyances. The 2003 Regulations do not apply to built in bunk beds because they are not subject to the same level of risk as stand alone*

<sup>67</sup> Letter dated 11 November 2003 to the Regulation Review Subcommittee from the Hon. John Lenders, MP, Minister for Consumer Affairs.

*bunk beds. For this reason, they are not covered by national safety standards.*

*I am advised that the Scrutiny of Acts and Regulations Committee was sent a copy of the incorporated standard together with the other required documentation to assist the Committee in considering the above Regulations under cover of a letter dated 8 August 2003 (copy attached). However, I enclose another copy of the standard for your scrutiny. I am unable to advise whether the incorporated material has been scrutinised by another parliament or another scrutiny committee.*

*I cannot comment on the content of the section 13 certificate issued by the Office of the Chief Parliamentary Counsel. If you wish to discuss the contents of the certificate, may I suggest you contact the Office of the Chief Parliamentary Counsel.*

*I hope that this information is of assistance.*

#### **Example 4:**

##### **SR 74 – National Parks (Park) Regulations 2003**

These Regulations set out matters relating to the behaviour of people in National Parks. The Subcommittee wrote to the Minister requesting clarification of operation of the Regulations.

#### Subcommittee's letter<sup>68</sup>

*The Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee considered the above Regulations at a meeting on 27 October 2003. The Subcommittee approved the Regulations.*

#### Clause 17

*Clause 17 governs the digging or removal of material including the digging or removal of shell. The exceptions are set out in sub-regulation (2)(c). Sub-regulation (2) provides that: -*

- (2) Subregulation (1)(a) does not apply to a person who-*
- (c) collects shells in a park that is not a marine national park or a marine sanctuary if the person-*
- (i) collects the shells in an area that is set aside by the Secretary as an area in which shells may be collected; and*
  - (ii) acts in accordance with the determination of the Secretary as an area in which shells may be collected.*

*The Subcommittee seeks your advice as to how the operation works in practice. Does this have any impact on a child who collects shells in a bucket? Is an area where the collection of shells is permissible to be appropriately signed? Or is a sign to be erected only where the collection of shells is not permissible?*

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<sup>68</sup> Letter dated 29 October 2003 to the Hon. John Thwaites, MP, Minister for Environment from the Regulation Review Subcommittee.

*If a family driving on the Great Ocean Road stops at a beach to collect shells – is this allowed? How would a person know what is permissible? The Subcommittee would appreciate clarification of these matters.*

*Inadvertent omission to advertise in the Government Gazette*

*The Subcommittee notes that the inadvertent omission to advertise the Regulatory Impact Statement (RIS) in the Government Gazette. The Subcommittee also notes that the RIS process itself was comprehensive and robust.*

*The Subcommittee looks forward to your response in due course.*

Minister's Response<sup>69</sup>

*Thank you for your letter of 29 October 2003 in relation to the National parks (Park) Regulations 2003.*

*I note that the Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee approved the regulations at a meeting on 27 October 2003.*

*In response to your request for clarification of the sub-regulation governing shell collecting I provide the following information:*

- The National Parks (Park) Regulations 2003 provide that areas may be set aside in parks that are not marine national parks to enable the collection of shells according to terms and conditions. Non-commercial shell collection is a traditional beach activity that has been enjoyed by many people including families and children for generations. These regulations provide the public with the ability to collect shells legally in areas that have been especially set aside to allow this use.*
- Shell collecting areas in parks will need to be formalised by a determination of the Secretary to the Department of Sustainability and Environment. Regulation 50 of the National Parks (Park) Regulations 2003 enables the Secretary to specify conditions in relation to a determination made under the Regulations.*
- The Regulation also indicates the circumstances under which signs and notices must be erected to inform persons of a determination and the conditions associated with a determination. It is expected that so far as parks are concerned, any shell collecting areas would be signposted. The focus for achieving compliance with the regulation governing shell collection in parks is on information and education. Note that many of the beaches adjacent to the Great Ocean Road are in coastal reserves and not subject to these regulations.*

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<sup>69</sup> Letter dated 31 December 2003 to the Regulation Review Subcommittee from the Hon. John Thwaites, MP, Minister for Environment.

**Example 5:**

**SR 84 – Firearms (Handgun Control) Regulations 2003**

Subcommittee's letter<sup>70</sup>

*The Regulation Review Subcommittee examined the above Regulations pursuant to S 21 of the Subordinate Legislation Act 1994 (the Act) at a meeting on 29 September 2003. The Subcommittee approved the Regulations.*

*By way of background the Subcommittee notes that the Firearms (Trafficking and Handgun Control) Act 2003 commenced operation on 1 July 2003. It amends the Firearms Act 1986 to give effect to the Australasian Police Minister's Council Firearms Trafficking Policy and the Council of Australasian Government's Handgun Control Agreement. The Regulations are made for a period of six months in accordance with the exemption certificate signed by the Premier.*

Increase in fees

*The Subcommittee notes that Regulation 5 of the Regulations amends regulation 11 of the Firearms Regulations 1997 to increase the fee payable for the issue of a duplicate licence from \$15.00 to \$16.00. The annual rate approved by the Treasurer for the purposes of the Act is 3.0%. The increase in the fee above is in the order of almost 9%. Similarly, Regulation 6 of the Regulations amends regulation 13 of the Firearms Regulations 1997 to increase the fee for a permit to acquire a firearm from \$8.00 to \$9.00. This increase is in the order of over 10%. The Regulations do not therefore fall within the exceptions to the RIS process under S 8 of the Act.*

*Whilst the Subcommittee realises that these Regulations have been made with a Premier's Certificate for a limited period, it considers them unusual. In the ordinary course of events Regulations with such fees increases would be accompanied by a Regulatory Impact Statement unless excepted under S 8 of the Act. The Subcommittee also realises that final Regulations will be made during the second half of 2003. However in one sense the fee increases set out in these Regulations pre-empt the RIS process. The Subcommittee would appreciate your response.*

Commencement

*A related matter is that of the commencement provisions. Pursuant to Regulation 3(1) the fee increases set out in Regulations 5 and 6 commenced operation on 1 July 2003. However the Subcommittee notes that Regulations 14 and 15 appear to reverse the fee increase to the original figures of \$15.00 and \$8.00 respectively. Pursuant to Regulation 3(2), Regulations 14 and 15 are expressed to come into operation on 30 December 2003. It would appear that the fee increase is therefore for a limited period.*

*The Subcommittee would appreciate your advice and clarification of the operation of the Regulations in respect of the matters outlined above.*

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<sup>70</sup> Letter dated 30 September 2003 to the Hon. Andre Haermeyer, MP, Minister for Police and Emergency Services from the Regulation Review Subcommittee.

Minister's Response<sup>71</sup>

*Thank you for your letter of 30 September 2003 regarding the interim Firearms (Handgun Control) Regulations 2003 ("Interim Regulations") made on 1 July 2003, I note that the Regulation Review Subcommittee has approved these regulations.*

*I note also the matters raised in your letter in respect of the Interim Regulations and respond as set out below.*

*Increase in fees*

*The increase in the fees for a permit to acquire a firearm and for the issue of a duplicate licence made by regulations 6 & 5 of the Interim Regulations respectively did exceed the annual rate approved by the Treasurer for the purposes of section 8(1)(a) of the Subordinate Legislation Act 1994 ("Act"). As you are aware, the Interim Regulations were made exempt from the requirements of section 7 of the Act by the issue of a Premier's Certificate under section 9(3) of the Act.*

*A 3% increase, which would have avoided the necessity for the preparation of a Regulatory Impact Statement, was considered appropriate but, in the case of each fee increased, the actual amount payable was 'rounded up' to the nearest dollar in the interests of ease of administration and practicality. This resulted in a number of fees, such as those to which you refer in your letter, increasing by more than 3%.*

*In respect of your comment that the Interim Regulations are 'unusual', I offer the following by way of background:*

- *The National Handgun Control Agreement ("NHCA") entered into by the Commonwealth and all States and Territories through the Australasian Police Ministers' Conference and the Council of Australian Governments in November 2002 required that all jurisdictions implement by legislation the measures agreed upon in the NHCA. These measures were intended to restrict the availability and use of certain types of handguns in the aftermath of the shootings at Monash University in October 2002;*
- *As you are aware, the Firearms (Trafficking and Handgun Control) Act 2003 ("Handgun Control Act") implemented the NHCA in Victoria by amending the Firearms Act 1996 ("Firearms Act"). The Handgun Control Act received royal Assent on 20 May 2003. Parts of that Act commenced on 1 July 2003. The remaining sections commenced on 1 January 2004;*
- *A central component of the NHCA was the carrying out of a handgun buyback in all jurisdictions in respect of those handguns prohibited by the amendments to the Firearms Act made by the Handgun Control Act;*
- *The new regulatory regime introduced by the Handgun Control Act and the administration of the handgun buyback could not function in practice without supporting regulations. These regulations were necessary to prescribe, among other things:*
  - *Approved handgun target shooting matches; and*

<sup>71</sup> Letter dated 23 January 2004 to the Regulation Review Subcommittee from the Hon. Andre Haermeyer, MP, Minister for Police and Emergency Services.

- *Fees for the issue and renewal of licences, permits and approvals;*
- *In this context, it was essential to introduce interim regulations prescribing those matters requiring to be prescribed under the Firearms Act, as amended by the Handgun Control Act, without delay. There was insufficient time to prepare and release a Regulatory Impact Statement in respect of those regulations before the nationally agreed commencement of the handgun buyback on 1 July 2003. For this reason, the Interim regulations, as you are aware, were made on an interim basis only, commencing on 1 July 2003 and expiring on 31 December 2003;*
- *'final' regulations in respect of those matters requiring to be prescribed under the Firearms Act, in the form of the Firearms (Handguns) Regulations 2003 ("Final Regulations") were made on 16 December 2003. These regulations were subject to a Regulatory Impact Statement in accordance with section 7 of the Act;*
- *As stated in the Regulatory Impact Statement relating to the Final Regulations, the new regulatory regime now in place in respect of handguns will result in increased administrative costs to the Government. The partial cost recovery structure of the existing fee system has been maintained. New fees have been set on a full cost recovery basis, in line with Government policy, and the partial cost recovery model in respect of existing fees has been maintained. Again, as is stated in the Regulatory Impact Statement on the Final Regulations, the direct costs of administering the new firearms licensing and registration system, based on the proposed fee structure, will be \$9.4 million. The projected revenue from existing and new fees is \$6.2 million;*
- *The interim increases in the pre-1 July 2003 fees, such as those referred to in your letter, are the result of the implementation of the Government's policy, announced in the 2003-04 budget, for the ongoing indexation of fees and charges set by regulation and one-off increases to fees and fines that have not increased for a number of years;*
- *Increasing fees in the Interim Regulations was also intended to ensure that firearms owners were not able to seek to avoid the fee increases introduced by the Final Regulations prior to their introduction.*

#### *Commencement*

*Your analysis of the commencement provisions of the Interim Regulations in respect of the fee increases is correct. Regulations 14 & 15 of the Interim regulations were intended to reverse the fee increases made by regulations 5 & 6. As a consequence, the fee increases set in the Interim Regulations did not "pre-empt the RIS process", as suggested in your letter but, rather (and as the title of the regulations suggest), made 'interim' arrangements for fees and other matters relating to the amendments to the Firearms Act pending the outcome of the RIS process.*

*As stated above, the Final Regulations were made on 16 December 2003. Regulation 6 of these regulations increases the fee for the issue of a duplicate licence from \$16 to \$18, whilst regulation 7 preserves the existing fee of \$9 for a permit to acquire a firearm in respect of longarms, whilst introducing a new fee of \$35 for a permit to acquire a handgun.*

**(G) STATE ENVIRONMENT PROTECTION POLICY – TABLING REQUIREMENTS**

This year the Subcommittee considered only one State Environment Protection Policy. The Subcommittee's jurisdiction to scrutinize State Environment Protection Policies only arises once it has been tabled in both Houses of Parliament. This year the Subcommittee's concern was not in respect of the State Environment Protection Policy itself but rather, whether it was tabled. The Subcommittee wrote to the Chairman of the Environment Protection Authority. The Chairman's response indicated an oversight in the Procedures Office meant that the State Environment Protection Policy had not been tabled. This was rectified.

**Example:**

**State Environment Protection Policy (Waters of Victoria)**

Subcommittee's letter<sup>72</sup>

*The Regulation Review Subcommittee of the Scrutiny of Acts and Regulations Committee held a meeting on 27 October 2003.*

*The Subcommittee understands that enquiries are being made as to when the State Environment Protection Policy (Waters of Victoria) was tabled in both Houses of Parliament.*

*The Subcommittee would be grateful for your advice as to when those events occurred.*

EPA Victoria's Response<sup>73</sup>

*Thank you for your letter of 29 October regarding the State environment protection policy (Waters of Victoria).*

*As you are aware, EPA Victoria wrote to the Clerk of the Parliaments in August 2003 requesting that the abovementioned policy be laid before both Houses on or before the sixth sitting day after June 4, 2003. Unfortunately an oversight in the Procedures Office meant that the Policy was not tabled as requested.*

*The Manager of the Procedures Office has addressed the situation and I can now advise the Committee that the State environment protection policy (Waters of Victoria) was tabled in the Lower House on Tuesday 28 October, 2003, and the Upper House on Thursday 6 November, 2003.*

*Please do not hesitate to contact us if we can be of any more assistance.*

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<sup>72</sup> Letter dated 29 October 2003 to Mr Mick Bourke, Chairman, EPA Victoria from the Regulation Review Subcommittee.

<sup>73</sup> Letter dated 27 November 2003 to the Regulation Review Subcommittee from Mr Mick Bourke, Chairman, EPA Victoria.



# APPENDIX 1 – REGULATIONS 2003<sup>74</sup>

## REGULATION IMPACT STATEMENTS

SR No. 6	Police Regulations 2003
SR No. 10	Environment Protection (Vehicle Emissions) Regulations 2003
SR No. 11	Land Conservation (Vehicle Control) Regulations 2003
SR No. 16	Occupational Health and Safety (Asbestos) Regulations 2003
SR No. 22	Fisheries (Fees, Levies and Royalties) Regulations 2003
SR No. 25	Fisheries (Commercial Abalone) Regulations 2003
SR No. 27	Private Agents Regulations 2003
SR No. 29	Zoological Parks and Gardens Regulations 2003
SR No. 30	Retail Leases Regulations 2003
SR No. 33	Agricultural and Veterinary Chemicals (Infringement Notices)(Amendment) Regulations 2003
SR No. 34	Agricultural and Veterinary Chemicals (Control of Use)(Amendment) Regulations 2003
SR No. 37	Livestock Disease Control (Amendment) Regulations 2003
SR No. 38	Fisheries (Compensation and Procedures) Regulations 2003
SR No. 39	Domestic (Feral and Nuisance) Animals (Amendment) Regulations 2003
SR No. 42	Forests (You Yangs Regional Park) Regulations 2003
SR No. 48	Water (Lake Eildon Recreational Area) (Houseboats) Regulations 2003
SR No. 63	Liquor Control Reform (Prohibited Class of Liquor) Regulations 2003
SR No. 72	Electricity Safety (Bushfire Mitigation) Regulations 2003
SR No. 74	National Parks (Park) Regulations 2003
SR No. 80	Land Tax (Amendment) Regulations 2003
SR No. 90	Co-Operatives (Fees) Regulations 2003
SR No. 91	Partnership (Limited Partnerships) Regulations 2003
SR No. 92	Business Names Regulations 2003
SR No. 93	Associations Incorporation (Fees) Regulations 2003
SR No. 99	Surveyors (Fees) Regulations 2003
SR No. 100	Gaming No. 2 (Bingo) (Amendment) Regulations 2003
SR No. 117	Control of Weapons (Amendment) Regulations 2003
SR No. 118	Firearms (Search Powers) Regulations 2003

<sup>74</sup> This Appendix lists all regulations made during 2003. The Appendix categorises regulations according to whether they were made with a Regulation Impact Statement or whether they were exempted or excepted from those requirements. The Committee did not move for disallowance of any of the regulations made in 2003, however the Regulation Review Subcommittee did correspond with responsible Ministers concerning some regulations.

SR No. 121	Occupational Health and Safety (Prevention of Falls) Regulations 2003
SR No. 133	Fisheries (Amendment) Regulations 2003
SR No. 135	Road Safety (Vehicles)(Registration Fees No.2) Regulations 2003
SR No. 141	Public Records Regulations 2003
SR No. 154	Firearms (Handguns) Regulations 2003

**EXCEPTIONS UNDER SECTION 8**

**S. 8(1)(a) — Fee Increases**

SR No. 7	Road Safety (Vehicles)(Fees) Regulations 2003
SR No. 45	Road Safety (Drivers)(Fees) Regulations 2003
SR No. 52	Supreme Court (Fees)(Amendment) Regulations 2003
SR No. 53	County Court (Court Fees)(Amendment) Order 2003
SR No. 54	Magistrates' Court (Fees, Costs and Charges)(Amendment) Regulations 2003
SR No. 56	Victorian Civil and Administrative Tribunal (Fees)(Amendment) Regulations 2003
SR No. 57	Juries (Fees, Remuneration and Allowances)(Amendment) Regulations 2003
SR No. 58	Administration and Probate (Deposit of Wills)(Fees)(Amendment) Regulations 2003
SR No. 60	Liquor Control Reform (Fees)(Amendment) Regulations 2003
SR No. 64	Health (Pest Control)(Fees) Regulations 2003
SR No. 65	Health (Radiation Safety)(Fees) Regulations 2003
SR No. 66	Health (Medical Radiation Technologists)(Fees) Regulations 2003
SR No. 67	Drugs, Poisons and Controlled Substances (Fees) Regulations 2003
SR No. 68	Health Services (Supported Residential Services)(Fees) Regulations 2003
SR No. 69	Supreme Court (Sheriff's Fees)(Amendment) Regulations 2003
SR No. 70	County Court (Bailiff's Fees)(Amendment) Order 2003
SR No. 71	Magistrates' Court (Civil Jurisdiction)(Sheriff's Fees)(Amendment) Regulations 2003
SR No. 75	Environment Protection (Fees)(Amendment) Regulations 2003
SR No. 111	Mental Health (Fees) Regulations 2003
SR No. 120	Pharmacists (Interim)(Fees) Regulations 2003
SR No. 129	Metropolitan Fire Brigades (General)(Fees And Charges) Regulations 2003
SR No. 130	Country Fire Authority (Charges) Regulations 2003
SR No. 139	Police (Charges)(Amendment) Regulations 2003
SR No. 140	Plumbing (Fees Amendment) Regulations 2003
SR No. 143	Marine (Fees) Regulations 2003
SR No. 150	National Parks (Fees and Charges)(Amendment) Regulations 2003
SR No. 152	Land Act (Fees) Regulations 2003

**S. 8(1)(b) — Court Rules**

SR No. 1	Bail Regulations 2003
SR No. 2	Crimes (Alibi Evidence) Regulations 2003
SR No. 61	Magistrates' Court (Arbitration)(Professional Costs) Regulations 2003
SR No. 81	Victorian Civil and Administrative Tribunal (Amendment No. 11) Rules 2003
SR No. 95	Supreme Court (Chapter I Amendment No. 23) Rules 2003
SR No. 96	Supreme Court (Chapter I Amendment No. 5) Rules 2003
SR No. 102	Supreme Court (Chapter I Amendment No. 24) Rules 2003
SR No. 107	Supreme Court (Corporations) Rules 2003
SR No. 108	Supreme Court (Chapter VI Amendment No. 4) Rules 2003
SR No. 109	County Court (Chapter 1 Amendment No. 11) Rules 2003
SR No. 110	Victorian Civil and Administrative Tribunal (Amendment No. 12) Rules 2003
SR No. 138	County Court (Chapter 1 Amendment No. 12) Rules 2003
SR No. 142	Supreme Court (Chapter 1 Amendment No. 25) Rules 2003
SR No. 144	Magistrates' Court Civil Procedure (Amendment No. 10) Rules 2003
SR No. 147	Victims of Crime Assistance (Delegation) Regulations 2003

**S. 8(1)(d)(iii) — Extension by 12 Months**

SR No. 3	Subordinate Legislation (Court Reporting (Fees) Regulations 1992 – Extension of Operation) Regulations 2003
SR No. 5	Subordinate Legislation (Police (Charges) Regulations 1992 – Extension of Operation) Regulations 2003
SR No. 15	Subordinate Legislation (Occupational Health and Safety (Noise) Regulations 1992 – Extension of Operation) Regulations 2003
SR No. 40	Subordinate Legislation (Architects Regulations 1993 - Extension of Operation) Regulations 2003
SR No. 62	Subordinate Legislation (Freedom of Information) (Access Charges) Regulations 1993 – Extension of Operation) Regulations 2003
SR No. 112	Subordinate Legislation (Transfer of Land (Fees) Regulations 1993 – Extension of Operation) Regulations 2003
SR No. 113	Subordinate Legislation (Subdivision (Registrar's Fees) Regulations 1993 – Extension of Operation) Regulations 2003
SR No. 114	Subordinate Legislation (Property Law (Fees) Regulations 1993 – Extension of Operation) Regulations 2003
SR No. 115	Subordinate Legislation (Instruments (Fees) Regulations 1993 – Extension of Operation) Regulations 2003
SR No. 116	Subordinate Legislation (Transfer of Land (Safe Custody Fee) Regulations 1993 – Extension of Operation) Regulations 2003
SR No. 137	Subordinate Legislation (Transport (Roads and Property) Regulations 1993 – Extension of Operation) Regulations 2003
SR No. 151	Subordinate Legislation (Royal Botanic Gardens Regulations 1993 – Extension of Operation) Regulations 2003

## EXEMPTIONS UNDER SECTION 9

### S. 9(1)(a) — No Economic Burden

SR No. 8	Magistrates' Court General (PERIN Court) Regulations 2003
SR No. 9	Magistrates' Court General (Miscellaneous Amendments) Regulations 2003
SR No. 12	Parliamentary Allowances Regulations 2003
SR No. 13	Parliamentary Committees Regulations 2003
SR No. 14	Members of Parliament (Register of Interests) Regulations 2003
SR No. 17	Conservation, Forests and Lands (Infringement Notice)(Waterways) Regulations 2003
SR No. 18	Meat Industry (Amendment) Regulations 2003
SR No. 20	Legal Practice (Admission) (Amendment) Regulations 2003
SR No. 26	Fair Trading (Product Information Standards) (Petrol) Regulations 2003
SR No. 50	Building and Construction Industry Security of Payment Regulations 2003
SR No. 73	Electricity Industry (Prohibited Interest) Regulations 2003
SR No. 85	Emergency Management Regulations 2003
SR No. 89	Fair Trading (Safety Standard) (Bunk Beds)(Amendment) Regulations 2003
SR No. 101	Fisheries (Recreational Fishery Licence Exemption) Regulations 2003
SR No. 122	Conservation, Forests and Lands (Infringement Notice)(Amendment) Regulations 2003
SR No. 123	Outworkers (Improved Protection) Regulations 2003
SR No. 145	Fisheries (Recreational Fees and Levies) Regulations 2003
SR No. 155	Police (Amendment) Regulations 2003

### S. 9(1)(b) — Uniform Legislation

SR No. 98	Electricity Safety (Equipment Efficiency)(Amendment) Regulations 2003
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### S. 9(1)(c) — Fundamentally Declaratory

SR No. 19	Public Authorities (Dividends) Regulations 2003
SR No. 28	Goods (Recreational Services) Regulations 2003
SR No. 35	Liquor Control Reform (Amendment) Regulations 2003
SR No. 41	Surveyors (Registration) Regulations 2003
SR No. 59	Residential Tenancies (Amendment) Regulations 2003
SR No. 76	Gaming Machine Control (Loyalty Schemes) Regulations 2003
SR No. 77	Pathology Services (Exempted Tests)(Amendment) Regulations 2003
SR No. 78	Pathology Services Accreditation (General)(Amendment) Regulations 2003
SR No. 86	Major Events (Crowd Management) Regulations 2003
SR No. 87	Road Safety (General) (Speed Measuring Devices) Regulations 2003
SR No. 94	Health Services (Community Health Centre Elections)(Amendment) Regulations 2003
SR No. 124	Travel Agents (Amendment) Regulations 2003

SR No. 125	Motor Car Traders (Amendment) Regulations 2003
SR No. 126	Estate Agents (General, Accounts and Audit)(Amendment) Regulations 2003
SR No. 127	Business Names (Amendment) Regulations 2003
SR No. 128	Associations Incorporation (Amendment) Regulations 2003

**S. 9(3) — Premier’s Certificate**

SR No. 36	Road Safety (Vehicles)(Registration Fees) Regulations 2003
SR No. 51	Road Safety (Vehicles)(Transfer of Registration Fees) Regulations 2003
SR No. 82	Health (Infectious Diseases)(SARS) Regulations 2003
SR No. 84	Firearms (Handgun Control) Regulations 2003
SR No. 97	Pharmacists (Interim) Regulations 2003
SR No. 106	Tobacco (Grand Prix Events) Regulations 2003

**EXCEPTIONS AND EXEMPTIONS UNDER COMBINED SECTIONS**

**S. 8(1)(a) — Fee Increases and S. 9(1)(a) — No Economic Burden**

SR No. 44	Road Safety (Vehicles)(Miscellaneous Fees) Regulations 2003
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**S. 8(1)(a) — Fee Increases and S. 9(1)(c) — Fundamentally Declaratory**

SR No. 46	Chattel Securities (Fees) Regulations 2003
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**S. 9(1)(a) — No Economic Burden and S. 9(1)(c) — Fundamentally Declaratory**

SR No. 4	Health (Seizure) Regulations 2003
SR No. 21	Water Industry (Prescribed Persons) Regulations 2003
SR No. 23	Agricultural Industry Development (Polls)(Amendment) Regulations 2003
SR No. 24	Fisheries (Recreational and Miscellaneous) Regulations 2003
SR No. 31	Transport Accident (Amendment) Regulations 2003
SR No. 32	Tobacco (Amendment) Regulations 2003
SR No. 43	Building (Amendment) Regulations 2003
SR No. 47	Treasury Corporation of Victoria (Prescribed Agencies)(Amendment) Regulations 2003
SR No. 49	Archaeological and Aboriginal Relics Preservation Regulations 2003
SR No. 55	Bail (Amendment) Regulations 2003
SR No. 83	Cancer (BreastScreen Victoria Registry) Regulations 2003
SR No. 88	Tobacco (Victorian Health Promotion Foundation) Regulations 2003
SR No. 103	Gaming No. 2 (General)(Amendment) Regulations 2003
SR No. 104	Gaming Machine Control (Miscellaneous (Amendment) Regulations 2003
SR No. 105	Casino Control (Prescribed Authorities and Persons)(Amendment) Regulations 2003
SR No. 119	Fair Trading (Amendment) Regulations 2003
SR No. 131	Evidence (Affidavits and Statutory Declarations)(Amendment) Regulations 2003

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SR No. 132	Magistrates' Court General (Amendment) Regulations 2003
SR No. 134	Cemeteries (Incorporation of Trusts)(Amendment) Regulations 2003
SR No. 136	Road Safety (Drivers)(Demerit Points) Regulations 2003
SR No. 146	Electricity Safety (Equipment)(Amendment) Regulations 2003
SR No. 148	Estate Agents (Contracts)(Amendment) Regulations 2003
SR No. 149	Electricity Safety (Management)(Amendment) Regulations 2003
SR No. 153	Valuation of Land (General Valuation) Regulations 2003
SR No. 156	Transport Accident (Prescribed Severe Injury) Regulations 2003
SR No. 157	Occupational Health and Safety (Asbestos)(Amendment) Regulations 2003

### OTHER ENACTMENTS

#### State Environment Protection Policies

August 2003	State Environment Protection Policy (Waters of Victoria)
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## APPENDIX 2

### MINISTERIAL CORRESPONDENCE

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This Appendix contains a list of correspondence sent to responsible Ministers by the Subcommittee regarding regulations made in 2003. The Appendix categorises correspondence in accordance with the nature of the issue raised by the Subcommittee

Regulation	Minister	Issue
SR 3 – Subordinate Legislation (Court Reporting (Fees) Regulations 1992 – Extension of Operation) Regulations 2003	Attorney-General	<b>Extension of Operation – section 8(1)(d)(iii)</b> – Regulations excepted under wrong certificate – should have been section 8(1)(d)(iii) not 8(1)(b)
SR 5 – Subordinate Legislation (Police (Charges) Regulations 1992 – Extension of Operation) Regulations 2003	Minister for Police and Emergency Services	<b>Extension of Operation – section 8(1)(d)(iii)</b> – “Special circumstances” – Administrative convenience not sufficient reason
SR 8 – Magistrates’ Court General (PERIN Court) Regulations 2003	Attorney-General	<b>Incorrect use of section 9(1)(a) exemption</b> – If regulations are fundamentally declaratory then 9 (1)(c) is more appropriate exemption
SR 15 – Subordinate Legislation (Occupational Health and Safety (Noise) Regulations 1992 – Extension of Operation) Regulations 2003	Minister for WorkCover	<b>Extension of Operation – section 8(1)(d)(iii)</b> – “Special circumstances” – Administrative convenience not sufficient reason
SR 16 – Occupational Health and Safety (Asbestos) Regulations 2003	Minister for WorkCover	<b>Consultation</b> – Need to give proper consideration to issues raised by submissions and give appropriate response
SR 22 – Fisheries (Fees, Levies and Royalties) Regulations 2003	Minister for Agriculture	<b>Failure to advertise RIS in Government Gazette</b> – Inadvertent failure – Importance of compliance with the Act

Regulation	Minister	Issue
SR 25 – Fisheries (Commercial Abalone) Regulations 2003	Minister for Agriculture	<b>Consultation</b> – Criticism of RIS – need to give proper consideration to issues raised by submissions and give appropriate response
SR 29 – Zoological Parks and Gardens Regulations 2003	Minister for Environment	<b>Fee increases – RIS</b> – Clarification of fee structure – Impact on some groups in community
SR 63 – Liquor Control Reform (Prohibited Class of Liquor) Regulations 2003	Minister for Consumer Affairs	<b>Section 11(3) – Requirement to consider all submissions</b> – Failure to respond to submissions
SR 72 – Electricity Safety (Bushfire Mitigation) Regulations 2003	Minister for Energy Industries	<b>Sighting of material incorporated by reference</b> – Has such material been scrutinised?
SR 74 – National Parks (Park) Regulations 2003	Minister for Environment	<b>Clarification of operation of provision</b> – How does provision work in practice? – <b>Failure to advertise RIS in Government Gazette</b> – Inadvertent failure – Importance of compliance with the Act
SR 79 – Building (Application of Siting Requirements) Regulations 2003	Minister for Planning	<b>Section 9(1)(a) – Appreciable burden</b> – Clarification as to reasons for exemption from RIS process – details required of consultation
SR 80 – Land Tax (Amendment) Regulations 2003	The Treasurer	<b>Sections 11(1)(a) and (b) – Compliance with consultation and advertising requirements</b> – When are notices published? (also failure to send s 6 certificate of consultation)
SR 84 – Firearms (Handgun Control) Regulations 2003	Minister for Police and Emergency Services	<b>Increase in fees above 3%</b> – Administrative ease and convenience not sufficient – Pre-empt RIS process or “interim arrangements”

Regulation	Minister	Issue
SR 89 – Fair Trading (Safety Standard)(Bunk Beds)(Amendment) Regulations 2003	Minister for Consumer Affairs	<b>General inquiry</b> – width of exemption contained in regulations – <b>Sighting of material incorporated by reference</b> – Has such material been scrutinised?
SR 98 – Electricity Safety (Equipment Efficiency)(Amendment) Regulations 2003	Minister for Energy Industries	<b>Sighting of material incorporated by reference</b> – Has such material been scrutinised?
SR 90 – Co-operatives (Fees) Regulations	Minister for Consumer Affairs	<b>Sections 11(1)(a) and (b) – Compliance with consultation and advertising requirements</b> – When were they advertised?
SR 91– Partnerships (Limited Partnerships) Regulations 2003	Minister for Consumer Affairs	<b>Sections 11(1)(a) and (b) – Compliance with consultation and advertising requirements</b> – When were they advertised?
SR 92 – Business Names Regulations 2003	Minister for Consumer Affairs	<b>Sections 11(1)(a) and (b) – Compliance with consultation and advertising requirements</b> – When were they advertised?
SR 93 – Associations Incorporation (Fees) Regulations	Minister for Consumer Affairs	<b>Sections 11(1)(a) and (b) – Compliance with consultation and advertising requirements</b> – When were they advertised?
State Environment Protection Policy (Waters of Victoria)	Chairman – Environment Protection Authority	<b>When was the SEPP tabled?</b> Review is dependent upon tabling of document
SR 117 – Control of Weapons (Amendment) Regulations	Minister for Police and Emergency Services	<b>Substantial failure to comply with RIS processes</b> – No cost/benefit analysis, undated certificates, consideration of submissions made in response to RIS, when was it advertised?

Regulation	Minister	Issue
SR 118 – Firearms (Search Powers) Regulations 2003	Minister for Police and Emergency Services	<b>Substantial failure to comply with RIS processes</b> – No cost/benefit analysis, consideration of submissions made in response to RIS, when was it advertised?
SR 121 – Occupational Health and Safety (Prevention of Falls) Regulations 2003	Minister for WorkCover	<b>Sighting of material incorporated by reference</b> – Has such material been scrutinised? – undated certificates
SR 135 – Road Safety (Vehicles)(Registration Fees No 2) Regulations 2003	Minister for Transport	<b>Failure to forward Competition Policy Analysis/Assessment</b>
SR 154 – Firearms (Handguns) Regulations 2003	Minister for Police and Emergency Services	<b>RIS not advertised in Govt Gazette</b> – Certificate signed but undated
SR 157 – Occupational Health and Safety (Asbestos)(Amendment) Regulations 2003	Minister for WorkCover	<b>Section 9(1)(a) exemption certificate</b> – request for particular reasons why no appreciable burden, <b>Consultation</b> – what was level of consultation and with whom?

# **APPENDIX 3**

## **COMMITTEE PRACTICE NOTES**

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### **Competition Policy Certificates and Assessments**

The Subcommittee expects competition policy certificates and competition policy assessments to be in the form contained in the *Premier's Guidelines*. The Subcommittee also requires all competition policy assessments and certificates to be forwarded to it.

Part 14 of the Premier's Guidelines sets out the requirements for competition policy assessments and certificates. A competition policy assessment needs to be done where a regulation imposes a restriction on competition. The assessment needs to show that the benefits of the restriction to the community outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition.

Sometimes the Subcommittee is presented with inadequate competition policy assessments such as those which simply repeat the contents of Regulation Impact Statements. This is not acceptable to the Subcommittee. An assessment of competition policy principles requires a different analysis from that performed for a Regulation Impact Statement. The form of this assessment must be as set out in Attachment B to Part 14 of the Premier's Guidelines.

The Subcommittee has also been presented with inadequate competition policy certificates which, for example, fail to contain relevant information. The Subcommittee requires certificates to be in the form set out in Attachment C to Part 14 of the Premier's Guidelines. In order to assist department and agency officers the Subcommittee repeats the required form for competition policy certificates –

***Certificate of Compliance – Subordinate Legislation that does not restrict competition***

*I [Minister's name], Minister for [portfolio], and Minister responsible for administering the [title of authorising Act for the subordinate legislation] certify that the proposed [title of regulation] –*

*Has been assessed in accordance with the guidelines and the results documented in the attachment to this certificate, and*

*The assessment shows that the proposed subordinate legislation does not restrict competition.*

**DATED:**  
**[Minister]**  
**[Title]**

***Certificate of Compliance – Subordinate Legislation that restricts competition***

*I [Minister's Name], Minister for [portfolio], and Minister responsible for administering the [title of authorising Act for the subordinate legislation] certify that the proposed [title of regulation] –*

*Has been assessed in accordance with the guidelines and the results of the assessment are documented in the attachment to this certificate, and*

*Restricts competition; and*

*Each restriction on competition has been assessed in accordance with the guidelines with the result that –*

*The objectives of the legislation can only be achieved by restricting competition, and*

*The benefits of the restriction to the community as a whole outweigh the costs.*

**DATED:**  
*[Minister]*  
*[Title]*

**Exemptions and Exceptions**

- **Dating Certificates.** The Subcommittee has been presented with a number of undated exemption and exception certificates. The *Premier's Guidelines* make clear that all certificates including certificates of exemption and exception must be dated by the Minister at the time of signing. See sample certificates attached to the *Premier's Guidelines*. The Subcommittee continues to expect all certificates to be dated.
- **Reasons for Exemption.** The Subcommittee has received regulations exempted under section 9 with certificates of exemption which fail to adequately explain the reasons for granting the exemption or with reasons for granting the exemption contained in the Explanatory Memorandum. It should be noted that it is a requirement of section 9(2) of the Subordinate Legislation Act 1994 (Vic) that certificates of exemption 'specify the reasons for the exemption'. The Subcommittee expects all exemption certificates to contain adequate explanations of the reasons for granting the exemptions.
- **Extension of Regulations for Periods up to 12 months.** Regulations expire 10 years after they have been made. The Subcommittee has been presented with a number of regulations made under sections 8(1)(iii) and 5(3) extending regulations due to expire for periods up to 12 months. Before an extension of time can be granted, the Minister must certify that due to 'special circumstances' there is insufficient time available to comply with the formal regulation-making requirements of the Subordinate Legislation Act 1994. The Premier's Guidelines indicate that 'special circumstances' include cases where a review of the whole area is underway but incomplete or where national scheme legislation is being negotiated. 'Special circumstances' do not include administrative oversight and the Subcommittee will not approve regulations made for these reasons. The Regulation Review Subcommittee expects details of the 'special circumstances' to be contained in the section 5(3) certificate itself as required by the Subordinate Legislation Act 1994.

- **Appreciable Economic and Social Burden and Consultation.** Section 9(1)(a) exempts regulations from the Regulation Impact Statement process where no appreciable economic or social burden is imposed. There has been confusion as to the level of consultation required and over the need to provide certificates of consultation to the Subcommittee. Some departments and agencies do not provide certificates of consultation for regulations made under this exemption. It is the opinion of the Subcommittee that paragraphs 5.30 and 5.31 of the Premier's Guidelines indicate that consultation should take place to determine whether or not a regulation imposes an appreciable economic or social burden and that the Subcommittee should be provided with a certificate of consultation. Legal opinion from the Department of Premier and Cabinet indicates that the Subcommittee's interpretation of the Premier's Guidelines is valid. The Subcommittee continues to prefer consultation to be undertaken to determine whether a regulation imposes an appreciable economic or social burden and to receive certificates of consultation evidencing that consultation.
- **Using Appropriate Exemption and Exception Categories.** Department and agency officers need to be careful when determining which category to use when exempting and excepting regulations from the Regulation Impact Statement process. The Subcommittee has received regulations which are incorrectly exempted and excepted.
- **Typographical Errors.** Department and agency officers need to be careful when preparing certificates to ensure that they do not contain typographical errors.

### **Explanatory Memoranda**

The Subcommittee expects an Explanatory Memorandum to comply with the requirements contained in the Premier's Guidelines. An Explanatory Memorandum must contain –

- A brief outline of each provision.
- An explanation of the changes brought about by each provision.
- A statement of the reasons for making the regulation.
- A statement as to whether consultation has taken place and if no consultation has taken place a statement as to why a decision was made not to consult.
- A statement as to the reasons for not making a Regulation Impact Statement where none was prepared.

It is a requirement that all Explanatory Memoranda be forwarded to the Scrutiny of Acts and Regulations Committee.

### **Fee Increases: 8(1)(a) and 8(2)**

Regulations increasing fees made under section 8(1)(a) of the Subordinate Legislation Act 1994 (Vic) must not increase fees by more than the percentage set by the Treasurer. For each financial year a percentage increase is set by the Treasurer in a document entitled Guidelines for Setting Fees and Charges Imposed by Departments and Budget Sector Agencies.

A regulation may increase a number of fees, with some individual fee increases falling outside the rate set by the Treasurer. However when the total average of fee increases for that regulation is calculated, it falls within the rate fixed by the

Treasurer. This practice is referred to as the 'basket approach'. The Subcommittee does not support this practice.

Section 8(2) of the Subordinate Legislation Act 1994 (Vic) validates the rounding up of fee increases to the nearest whole dollar. Sometimes the total average increase may be greater than that set by the Treasurer but may be validated on the basis that there has been rounding up to the nearest whole dollar. The Subcommittee may only approve such increases where the extra amount can be considered trifling when compared to the whole fee. Where the amount is significant in proportion to the whole fee, the Subcommittee may request the Minister to reconsider the increase.

The preparation of a table showing new and old fees and including an indication of the percentage increase or decrease is of great assistance to the Subcommittee. The Subcommittee provides the following as an example:

<i>Description</i>	<i>Current Fee</i>	<i>Proposed Fee</i>	<i>% Increase</i>
Application for .....	\$100.00	\$105.00	5.0
Application for ...	\$320.00	\$325.00	1.6

### **Independent Advice Certificates: 10(3)**

Under section 10(3) of the Subordinate Legislation Act 1994 (Vic) a Minister must ensure that independent advice as to the adequacy of a Regulation Impact Statement and of the assessment included in the Regulation Impact Statement is obtained. The provision of that independent advice assists the Subcommittee in its review of the regulations.

### **Legislative Instruments outside the Subordinate Legislation Act 1994**

The Subcommittee plays a vital role in ensuring that rights are adequately protected. It cannot do this if provisions are incorporated in legislative instruments outside its scrutiny. The Subcommittee prefers department and agency officers not to use Guidelines and Codes of Practice. Where Guidelines and Codes of Practice are used the Subcommittee would like those Guidelines and Codes of Practice to be published and available to the public at the same time as the regulation commences operation.

### **Provision of Documentation to Regulation Review Subcommittee**

The Subcommittee needs to receive Explanatory Memoranda, all certificates, competition policy assessments and certificates, Regulation Impact Statements and comments and submissions made in relation to Regulation Impact Statements within 7 days after a regulation has been made. The Subcommittee has a limited time within which to review regulations. If the Committee wants to move for disallowance of a regulation it must do so within 18 sitting days of that regulation being tabled in Parliament. Prior to the Committee moving a motion for disallowance the Subcommittee corresponds and negotiates with the particular Minister. The Subcommittee needs sufficient time for this process to take place.

The Subcommittee therefore expects to receive all paperwork promptly. Part 14 of the Notes for the Guidance of Legislation Officers issued by the Office of the Chief Parliamentary Counsel Victoria, on 1 March 1999 provides details of the paperwork which should be received by the Subcommittee –

*Within 7 days after a statutory rule is made, the Department or Board, Committee or body responsible for the rule must send to the Secretary of the Scrutiny of Acts and Regulations Committee –*

*7 copies of the explanatory memoranda as required to be sent to the Clerk of the Executive Council; and*

*a copy of the section 13 certificate of the Chief Parliamentary Counsel under section 13 of the Act; and*

*if the guidelines require consultation, a certificate under section 6(c) of the Act certifying that there has been consultation in accordance with the guidelines; and*

*if a regulatory impact statement was prepared, a copy of the compliance certificate, copies of all comments and submissions received in connection with it, and the response of the Department, Board, Committee or body to those comments and submissions; and*

*if a regulatory impact statement was not required, a copy of the exception certificate under section 8 or the exemption certificate under section 9.*

## **Recommendations**

The Subcommittee notes that some regulations are made on the recommendation of a Minister or some other authorised body. If the Subcommittee is provided with a copy of the recommendation, it can certify that the regulations have been validly made in accordance with that recommendation. Where the Subcommittee is not provided with a copy of that recommendation, it cannot certify that the regulations have been validly made. The Subcommittee would appreciate receiving copies of all recommendations.