

# **No. 1 of 2014**

**Tuesday, 4 February 2014**

**On the following Bills**

Assisted Reproductive Treatment  
Further Amendment Bill 2013  
Children, Youth and Families  
Amendment (Security Measures)  
Bill 2013

Corrections Legislation Amendment  
Bill 2013

Crimes Amendment (Grooming)  
Bill 2013

Drugs, Poisons and Controlled  
Substances (Poppy Cultivation and  
Processing) Amendment Bill 2013

Fences Amendment Bill 2013

Game Management Authority Bill 2013

Jury Directions Amendment Bill 2013

Legal Profession Uniform Law  
Application Bill 2013

Parliamentary Budget Officer Bill 2013

Small Business Commissioner  
Amendment Bill 2013

Summary Offences and Sentencing  
Amendment Bill 2013

# Table of Contents

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	<b>Page Nos.</b>
<b>Alert Digest No. 1 of 2014</b>	
Assisted Reproductive Treatment Further Amendment Bill 2013	1
Children, Youth and Families Amendment (Security Measures) Bill 2013	3
Corrections Legislation Amendment Bill 2013	5
Crimes Amendment (Grooming) Bill 2013	7
Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013	8
Game Management Authority Bill 2013	12
Fences Amendment Bill 2013	13
Jury Directions Amendment Bill 2013	15
Legal Profession Uniform Law Application Bill 2013	16
Parliamentary Budget Officer Bill 2013	21
Small Business Commissioner Amendment Bill 2013	23
Summary Offences and Sentencing Amendment Bill 2013	24
<b>Extract from the Proceedings</b>	27
<b>Appendices</b>	
1 – Index of Bills in 2014	29
2 – Committee Comments classified by Terms of Reference	31
3 – Ministerial Correspondence 2014	33

# Useful information

## Role of the Committee

The Scrutiny of Acts and Regulations Committee is an all-party Joint House Committee, which examines all Bills and subordinate legislation (regulations) introduced or tabled in the Parliament. The Committee does not make any comments on the policy merits of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of non-partisan legislative scrutiny. These traditions have been developed since the first Australian scrutiny of Bills committee of the Australian Senate commenced scrutiny of Bills in 1982. They are precedents and traditions followed by all Australian scrutiny committees. Non-policy scrutiny within its terms of reference allows the Committee to alert the Parliament to the use of certain legislative practices and allows the Parliament to consider whether these practices are necessary, appropriate or desirable in all the circumstances.

The *Charter of Human Rights and Responsibilities Act 2006* provides that the Committee must consider any Bill introduced into Parliament and report to the Parliament whether the Bill is incompatible with human rights.

## Interpretive use of Parliamentary Committee reports

Section 35 (b)(iv) of the *Interpretation of Legislation Act 1984* provides –

In the interpretation of a provision of an Act or subordinate instrument consideration may be given to any matter or document that is relevant including, but not limited to, reports of Parliamentary Committees.

## When may human rights be limited

Section 7 of the *Charter* provides –

Human rights – what they are and when they may be limited –

- (2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—
  - (a) the nature of the right; and
  - (b) the importance of the purpose of the limitation; and
  - (c) the nature and extent of the limitation; and
  - (d) the relationship between the limitation and its purpose; and
  - (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

## Glossary and Symbols

'Assembly' refers to the Legislative Assembly of the Victorian Parliament

'Charter' refers to the Victorian *Charter of Human Rights and Responsibilities Act 2006*

'Council' refers to the Legislative Council of the Victorian Parliament

'DPP' refers to the Director of Public Prosecutions for the State of Victoria

'human rights' refers to the rights set out in Part 2 of the Charter

'IBAC' refers to the Independent Broad-based Anti-corruption Commission

'penalty units' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act 2004* and published in the government gazette (as from 1 July 2013 one penalty unit equals \$144.36 )

'Statement of Compatibility' refers to a statement made by a member introducing a Bill in either the Council or the Assembly as to whether the provisions in a Bill are compatible with Charter rights

'VCAT' refers to the Victorian Civil and Administrative Tribunal

[ ] denotes clause numbers in a Bill

# Alert Digest No. 1 of 2014

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## Assisted Reproductive Treatment Further Amendment Bill 2013

<b>Introduced</b>	10 December 2013
<b>Second Reading Speech</b>	11 December 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Mary Wooldridge MLA
<b>Portfolio responsibility</b>	Minister for Health

### Purpose

The Bill amends the:

- *Assisted Reproductive Treatment Act 2008*:
  - a) in relation to access to information relating to donor treatment procedures using gametes donated prior to 1988 to be included in the register on which post-1988 information is recorded, and to enable persons born from donations prior to 1 July 1988 to be able to access information from that register with the consent of the donor
  - b) to provide for the exchange of information concerning hereditary or genetic diseases affecting a donor or the donor's offspring.
- *Human Tissue Act 1982* to extend the functions of the Victorian Assisted Reproductive Treatment Authority (VARTA) to provide counselling and donor-linking intermediary services to persons seeking information and those responding to requests to information.

Extracts from the second reading speech:

Currently, people who were born from gametes donated after 1998 are entitled under the Act to obtain identifying information about their donors when they reach adulthood. People conceived from gametes donated between 1988 and 1997 can access identifying information about their donors with the donor's consent. However, people conceived from gametes donated prior to 1988 have no legislated right to obtain identifying information. Prior to 1988 donors' anonymity was a requirement of the consent to donation process.

... The Bill gives effect to the government's response, balancing the rights of all donor conception stakeholders whilst establishing a legal right of access to information for those conceived from gametes donated prior to 1988 where none existed before.

The mechanism for disclosure of identifying information provided in this Bill is predicated on the consent of the donor in the same way as this occurs for persons conceived from gametes donated between 1 July 1988 and 31 December 1997.

...

Access to information for persons born from donations made prior to 1988

The Bill will allow for persons born from gametes donated prior to 1 July 1988 to be able to request and receive identifying information about their donor, where it is available and where their donor consents to its release, through the Central Register.

... The disclosure of non-identifying information will apply upon receipt of an application by a person under section 56 of the Act irrespective of whether consent is obtained.

...

Access to information about siblings

This Bill will allow for a donor-conceived person or a parent of a donor-conceived person to request information about that person's genetic siblings from the Central Register.

... The Bill will provide for all donors, regardless of when they made donations, to be able to request non-identifying information about their donor offspring.

...

Exchange of information about significant hereditary or genetic conditions

... This Bill will introduce a provision that enables health information about genetic or hereditary conditions, diseases or illness to be disclosed and exchanged between donors and their offspring and between donor-conceived siblings.

...

Securing access to and preserving donor treatment records

... In the Act, the destruction of records is an offence; this Bill will extend this provision to records relating to donor treatment procedures involving the use of gametes donated prior to 1 July 1988. In addition, the bill will stipulate that all health records relating to donor treatment procedures must be retained for a period of 99 years.

... Where records are available, ART providers and BDM will create retrospective entries to be placed on the Central Register.

...

Counselling, support and donor-linking services

... The Bill will also provide for increased counselling services and donor-linking.

... In addition, VARTA will provide a voluntary donor-linking service, acting as an intermediary in the exchange of information and contact between donor-conception stakeholders. Encompassed in this service will be a letterbox facility which will enable correspondence between parties who wish to participate in the exchange of information confidentially and progressively.

## Charter report

The Committee notes that aspects of the international law of human rights relevant to the ability of donor-conceived children to discover their identity were deliberately omitted from the Charter by its drafters so as not to pre-empt a then ongoing inquiry into assisted reproduction by the Victorian Law Reform Commission.<sup>1</sup>

The Assisted Reproductive Treatment Further Amendment Bill 2013 is, therefore, compatible with the rights set out in the Charter of Human Rights and Responsibilities.

### The Committee makes no further comment

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<sup>1</sup> Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, 2006, [2.4.6]. See also SARC, *Alert Digest No 14 of 2008* (reporting on the Assisted Reproductive Treatment Bill 2008), noting deliberate limitations on the Charter's rights to equality, families and children to conform to existing laws or to not pre-empt further inquiries.

# Children, Youth and Families Amendment (Security Measures) Bill 2013

<b>Introduced</b>	10 December 2013
<b>Second Reading Speech</b>	11 December 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Mary Wooldridge MLA
<b>Portfolio responsibility</b>	Minister for Community Services

## Purpose

The Bill amends the *Children, Youth and Families Act 2005* ('the Act') to:

- insert a new Division 8 to Part 3.3 to provide a legislative framework for security arrangements for secure welfare services. The provisions deal with screening searches of visitors, child residents or any other person on entry or leaving a secure welfare service; unclothed or frisk searches of child residents; seizure of money, articles or things and, the seclusion of child residents in a secure welfare service **[5, 7]**
- insert a new Part 3.7 in the Act to prohibit certain actions in relation to children placed in an out of home care service, including a secure welfare service, or in the care of an out of home carer.

The prohibited actions are –

- a) the use of physical force, unless it is reasonable and necessary or authorised by an Act or at common law
  - b) the administering of corporal punishment
  - c) the use of any form of psychological pressure intended to intimidate or humiliate
  - d) the use of any form of physical or emotional abuse **[8]**
- make amendments in relation to the types of searches permitted in youth justice facilities **[9 to 13]**
  - make other miscellaneous amendments. **[4, 6]**

Extracts from the second reading speech:

This Bill will provide a legislative framework for the conduct of three types of searches to be conducted in respect to either children or visitors to secure welfare services.

A 'screening' search conducted by an electronic or mechanical device on all children and visitors to secure welfare to ensure items such as drugs, cigarettes, weapons or other items which may be used to self-harm are not brought into the facility.

'Frisk' or 'unclothed' searches of children are also permitted upon admission or when there is reasonable belief they are concealing prohibited items. The search is conducted in a manner that supports the child's decency and privacy and does not involve examination of cavity search.

The Bill will also provide for seizure of prohibited items which will be either returned upon the child's release or when a visitor leaves the facility or disposed of subject to proposed legislative provisions.

... the use of seclusion in secure welfare services may be required. This might involve shepherding a child to a place of safety or time out for a period of seclusion for the child to gain control over his or her escalated emotional state. Seclusion may only be administered if all other reasonable steps have been taken to prevent the child from harming himself or

herself or any other person or from damaging property and the child's behaviour presents an immediate threat to his or her safety, the safety of another person or to property. Seclusion must be closely monitored at intervals no longer than 15 minutes and all seclusions must be recorded in a register to enable monitoring of such practices.

The Bill will provide that physical force by carers including corporal punishment or intimidation is prohibited in secure welfare services and more broadly in out-of-home care.

However, it will enable, in limited circumstances, the use of reasonable force when it is necessary to prevent children from harming themselves or others or damaging property and necessary for the security of the secure welfare service or place where the child is cared for.

While legislation exists for the conduct of searches, restraint and seclusion in youth justice facilities the Bill clarifies the definition of the searches to distinguish searches that involve contact with the body from those that do not and provides consistent definitions for youth justice facilities and secure welfare services.

### **Submission received**

The Committee has received and considered a submission from the *Victorian Human Rights and Equal Opportunity Commission*. The submission will be posted on the Committee's website.

**The Committee refers to the Parliament for its consideration the alternative arrangements for unclothed searches, use of force and seclusion in the *Children and Young Persons Act 2008 (ACT)* and the *Disability Act 2006 (Vic)* referred to in the submission from the Victorian Equal Opportunity and Human Rights Commission.**

### **Charter report**

The Children, Youth and Families Amendment (Security Measures) Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Corrections Legislation Amendment Bill 2013

<b>Introduced</b>	10 December 2013
<b>Second Reading Speech</b>	11 December 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Kim Wells MLA
<b>Portfolio responsibility</b>	Minister for Corrections

### Purpose

The Bill amends the *Corrections Act 1986* ('the Act') to:

- permit letters between prisoners or between prisoners and ex-prisoners to be stopped or censored by the Governor of the prison, upon forming a reasonable belief that the sending or receiving of the letter may be a threat to the management, good order or security of a prison. **[6]**
- move the current legal authority for the use and discharge of firearms by escort officers from the Corrections Regulations 2009 to the Act. **[8]**
- broaden the circumstances where an escort officer is authorised to discharge a non-lethal firearm to include to prevent, control or stop a riot in a prison or to prevent a serious threat to security or good order of a prison. The type of non-lethal firearms that may be used by officers are to be prescribed in the regulations. **[8, 18, 19]**
- give a stand-alone power for the Minister for Corrections to enter into a lease or licence for up to 99 years over land reserved for prison purposes, upon which a prison is or is to be situated. **[5]**
- provide that an application for a police custody transfer order authorising the temporary absence from a prison of a prisoner who wishes to voluntarily provide information to the police, is to be in writing and supported by an affidavit sworn by the member applying for the order. **[9]**
- authorise the use or disclosure of certain confidential information held by the adult parole board to the coroner, or use or disclosure is authorised by the Minister. **[16]**
- expressly allow the testing of prisoners on parole for alcohol, drug or poison use where the adult parole board has imposed terms or conditions on the parole order that relate to alcohol or drug treatment or testing or alcohol abstinence. **[15]**
- replicate existing provisions that currently apply to electronic monitoring of offenders subject to a community correction order, by creating terms or conditions that attach to a requirement imposed by the adult parole board that a prisoner on parole be electronically monitored for compliance with another term or condition of parole, and create an offence of failing to comply with such terms or conditions. **[14, 20]**
- provide that a member of the police force, the Director of Public Prosecutions or the Secretary to the Department of Justice may take proceedings for offences against the Act. **[17]**
- provide for the appointment of more than one member of the adult parole board to be a Deputy Chairperson and establish a process for determining which Deputy Chairperson is to act as Chairperson in the Chairperson's absence. **[7, 10 to 13]**

The Bill amends the *Serious Sex Offenders (Detention and Supervision) Act 2009* ('the Act') to:

- give the court, upon determining an application to renew or extend an order under the Act, the power to also vary or revoke the order. **[28, 29]**

- permit the Adult Parole Board to direct an offender to be electronically monitored when residing at a residential facility under the Act, if such a direction is authorised by a condition on an order under the Act. **[27]**
- clarify the provisions relating to timing of an application to review an order under the Act if the offender is in prison. **[31, 32]**
- remedy a procedural deficiency related to transfer of breach proceedings from the Magistrates Court to the higher court that made the order under the Act. **[35]**

The Bill amends the *Prisoners (Interstate Transfer) Act 1983* ('the Act') which is part of a national scheme for the interstate transfer of prisoners underpinned by model legislation. The Act is amended in line with the model Bill, to permit the physical handover of prisoners subject to an order under the Act at places other than a prison. **[22 to 25]**

### **Charter report**

The Corrections Legislation Amendment Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Crimes Amendment (Grooming) Bill 2013

<b>Introduced</b>	11 December 2013
<b>Second Reading Speech</b>	12 December 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Robert Clark MLA
<b>Portfolio responsibility</b>	Attorney-General

### Purpose

The Bill amends the *Crimes Act 1958* ('the Act') to insert a new section 49B to provide for the offence of grooming for sexual conduct with a child under the age of 16 years.

The new section provides:

- that a person of or over the age of 18 must not communicate by words or conduct with a child under the age of 16, or a person under whose care, supervision or authority the child is, with the intention of facilitating the child's engagement or involvement in a sexual offence with that person or another adult. For the offence to be made out it is not necessary that the child respond to the communication
- a non-exhaustive list of the persons who may have a child under his or her care, supervision or authority
- various situations in which some element or elements of the offence occur outside of Victoria, and provide that the offence will still be committed so long as some other element of the offence occurred in Victoria. [3]

The Bill makes consequential amendments to the *Sex Offenders Registration Act 2004* and the *Sentencing Act 1991* to recognise the addition of the new grooming offence in section 49B of the Act. and the *Victims' Charter Act 2006* to expressly recognise that both a child and a family member of that child are victims of a grooming offence and they are each entitled to provide a victim impact statement to a court. [5]

Extracts from the second reading speech:

Under the Bill, a person will commit the offence of grooming if they are 18 years of age or older and communicate with a child under 16, or with a person having care, supervision or authority in respect of the child, with the intention of facilitating the child's engagement or involvement in a sexual offence with themselves or another adult.

... The Bill will not require proof that any sexual offence was actually committed with the child, nor that there was any specific conduct involved in the grooming, such as exposing the child to indecent material or seeking to persuade the child to take part in sexual activity. Rather, the grooming offence is cast broadly so as to apply to any communication with either a child or their parent or carer, where that communication occurs with the intention of making it easier to engage or involve the child in a sexual offence.

... Whether or not in any particular case conduct was undertaken with such an intention will be a question of fact that would need to be proved.

### Charter report

The Crimes Amendment (Grooming) Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013

<b>Introduced</b>	10 December 2013
<b>Second Reading Speech</b>	11 December 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Peter Walsh MLA
<b>Portfolio responsibility</b>	Minister for Agriculture and Food Security

### Purpose

The Bill amends the *Drugs, Poisons and Controlled Substances Act 1981* ('the Act') to:

- allow for the commercial scale cultivation of alkaloid poppies in Victoria for therapeutic and research purposes
- insert a new Part IVB in the Act (new sections 69N to 69V) to provide for non-transferable licensing schemes for the cultivation of alkaloid poppies and licensees for poppy processing. The scheme is to be administered and enforced by the Department of Environment and Primary Industries
- provide for enforcement and inspection powers under the relevant licensing schemes
- provide a special procedure where protected information is involved in a review of a refusal to grant a licence
- provide offences under the licensing schemes
- provide for a Alkaloid Poppy Register
- provide for review by the VCAT of certain decisions under the schemes
- make other minor consequential amendments to the Act.

Extracts from the second reading speech:

In this Bill the term 'processing' excludes any extraction of opiates other than for the purposes of chemical assay. Victoria has an existing regulatory framework under the Drugs, Poisons and Controlled Substances Act 1981, for the manufacture and extraction of opiates and this framework will continue to be administered and enforced by the Department of Health.

... The Bill makes provision for the Chief Commissioner of Police to oppose issuing the licence, including on the basis that the applicant is the subject of criminal intelligence such that he or she is not a fit and proper person to hold a licence.

... Provision is made for appeal to the Victorian Civil and Administrative Tribunal (VCAT) for a review of a decision of the secretary to refuse to issue, renew, suspend, cancel or amend a licence; refuse to register a contract on the alkaloid poppy register; issue a direction to harvest and dispose of poppy material.

Provision is also made for appeal to VCAT for a review of a refusal of a licence on the grounds of protected information. This part of the Bill seeks to prevent the release of criminal intelligence on which a decision was based, while at the same time allowing an unsuccessful applicant the right to bring review proceedings in VCAT.

## Content

***Rights or freedoms – Fair hearing – Review by VCAT – Protected information unavailable to applicant – Special counsel process – Right to know facts relevant to decision to refuse application – Public interest in protecting law enforcement information***

Division 8 (new section 69U to 69UF) of the proposed new Part IVB deal with VCAT reviews of certain licensing decisions.

Under new section 69UA, a person who has been refused a licence or the renewal of a licence, or whose licence has been suspended, cancelled or amended, may apply to VCAT for a review of the Secretary's decision.

Where the decision was based on protected information (defined in new section 69N to include, for example, information that may identify an investigating police member or information that may reveal police investigative techniques), a special counsel procedure is provided in new sections 69UC to 69UF.

The procedure requires VCAT to appoint a special counsel to represent the interests of the person seeking the review.

VCAT must also determine whether or not the information is protected information, and may decide to hold part or all of this hearing in private.

If VCAT determines that the information is not protected information, the person seeking review must be admitted to the remainder of the proceeding. VCAT may publish reasons for its decision to the extent that those reasons do not relate to information it has determined to be protected information.

The statement of compatibility remarks that:

... although these provisions of the Bill prevent a party to a hearing from accessing certain information, the Bill nevertheless ensures that the person seeking review is afforded natural justice. The interests of the person seeking review are represented by an appropriately qualified special counsel appointed by VCAT. The special counsel may be provided with a confidential affidavit relating to the proceeding, may attend the hearing, and may make submissions to VCAT on matters including the grounds for the secretary's decision and the character of the person seeking review. A person seeking review may provide information or instructions to the special counsel before the special counsel attends the hearing or obtains any confidential affidavit.

Special counsel may also seek further instructions following VCAT's determination that evidence is protected information by submitting written questions for the approval of VCAT.

... Finally, the purpose of restricting the disclosure of protected information is to protect police investigative techniques, avoid compromising an ongoing police investigation, and to ensure the safety of investigating officers and informants.

**The Committee draws attention to the special procedure scheme provided in the Bill and observes that similar special counsel procedures are provided in other legislation where, on public interest grounds, sensitive criminal intelligence and law enforcement information is not made available to applicants on review or renewal of a licence application.**

## Charter report

### ***Arbitrary interference in family – Secretary must refuse to issue or renew a licence to immediate family members of some criminals***

Summary: The Committee refers to Parliament for its consideration the question of whether or not clause 4, by requiring immediate family members of people who have committed various indictable offences to apply to VCAT if they wish to begin or continue to cultivate or process poppies, is compatible with the Charter's right against arbitrary interference in family.

The Committee notes that clause 4, inserting a new section 69NB, bars the Secretary from issuing or renewing a poppy cultivation or processing licence unless he or she is satisfied that every associate of the applicant or licence holder 'has not been found guilty of a serious offence' in the last 10 years (for applications) or 3 years (for renewals). New section 69NA defines an 'associate' of an applicant or licence holder to include a spouse, domestic partner, parent, sibling or child<sup>2</sup> and 'serious offence' to include 'an indictable offence involving dishonesty, fraud or assault', 'an indictable offence involving possession, or cultivation of, or trafficking in, a drug of dependence' and equivalent offences in other jurisdictions. New section 69UA provides that VCAT may review a decision to refuse to issue or renew a licence.

The Committee observes that the effect of clause 4 is to require the immediate family of some criminals to apply to VCAT if they wish to begin or continue to cultivate or process poppies, even if the family member's crime has no connection to the applicant or licence-holder's fitness to cultivate or harvest poppies (e.g. a crime of domestic violence perpetrated by a parent, spouse or child of the applicant or licence-holder against another family member.) The Committee considers that clause 4 may engage the Charter's right against arbitrary interference with family.<sup>3</sup>

The Statement of Compatibility remarks:

[T]he provisions concerning the associates of the applicant or licence-holder are necessary to identify any risk of alkaloid poppies and poppy straws being accessed for criminal purposes, including in circumstances where the applicant or licence-holder is not a party to any potential criminal activity. As persons who seek to establish or continue a business within a regulated scheme, applicants and licence-holders will be aware that the consideration of the criminal records and characters of their associates constitutes a condition of approval. Furthermore, a person may also apply to the Victorian Civil and Administration [sic] Tribunal (VCAT) for review of a decision of the secretary to refuse to issue or renew a licence on the basis of the person's associates.

The Committee notes that new sections 69NA and 69NB are similar to existing ss. 61 and 64, which similarly require the Secretary to refuse to issue authorities to cultivate, process, supply or sell low-THC cannabis to people with an immediate family member who was found guilty of a serious offence in the past ten years. However, the definition of 'serious offence' in s. 61 does not include offences involving assault or possession of drugs.<sup>4</sup> The Committee observes that no other Australian statutory scheme for licensing dealings with low-THC cannabis automatically bars grants of licences to family members of criminals.<sup>5</sup>

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<sup>2</sup> The definition includes step-parents, step-siblings, step-children and adopted children.

<sup>3</sup> Charter s. 13(a). See also Charter s. 17(1), which provides that families are entitled to be protected by society and the State.

<sup>4</sup> Section 61(1). The definition also does include offences with a maximum penalty of three months' imprisonment or less or similar offences in other jurisdictions.

<sup>5</sup> See *Hemp Fibre Industry Facilitation Act 2004* (ACT), ss. 8, 17(b); *Hemp Industry Act 2008* (NSW), ss. 4, 9; *Drugs Misuse Act 1986* (Qld), s. 60(b); *Industrial Hemp Act 2004* (WA), s. 8(3)(b)(ii).

The Committee refers to Parliament for its consideration the question of whether or not clause 4, by requiring immediate family members of people who have committed various indictable offences (including offences involving assault) to apply to VCAT if they wish to begin or continue to cultivate or process alkaloid poppies, is compatible with the Charter's right against arbitrary interference with family.

The Committee makes no further comment

## Game Management Authority Bill 2013

<b>Introduced</b>	11 December 2013
<b>Second Reading Speech</b>	12 December 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Peter Walsh MLA
<b>Portfolio responsibility</b>	Minister for Agriculture and Food Security

### Purpose

The Bill establishes the Game Management Authority ('GMA') and makes amendments to the *Wildlife Act 1975* to enable the GMA to perform or exercise regulatory functions or powers under that Act. The GMA will incorporate the functions currently undertaken by Game Victoria in the Department of Environment and Primary Industries.

The Bill also makes consequential and miscellaneous amendments to the *Conservation, Forests and Lands Act 1987*, the *Wildlife Act 1975* and other Acts.

Extracts from the second reading speech –

... The GMA will be first – and foremost – a regulator. It will perform all the compliance, investigative and disciplinary functions related to game hunting in Victoria.

... The Bill establishes a skills-based board to oversee the strategic direction of the Authority. Membership of the Board will consist of no less than five and no more than nine members, including a Chairperson and Deputy Chairperson.

... The Bill also contains enforcement provisions which allow the GMA to appoint authorised officers to exercise powers and perform functions and duties for relevant laws.

### Charter report

The Game Management Authority Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Fences Amendment Bill 2013

<b>Introduced</b>	10 December 2013
<b>Second Reading Speech</b>	12 December 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Robert Clark MLA
<b>Portfolio responsibility</b>	Attorney-General

### Purpose

The Bill amends the *Fences Act 1968* to:

- provide a procedure for the sharing of costs between neighbours for the construction and repair of dividing fences
- provide a mechanism for the resolution of disputes about dividing fences
- provide for other matters relating to dividing fences
- repeal the redundant provisions in Part III of the Act dealing with vermin-proof fencing.

The Bill makes consequential amendments to the:

- *Crown Land (Reserves) Act 1978*
- *Emerald Tourist Railway Act 1978*
- *Land Act 1958*
- *Zoological Parks And Gardens Act 1995*.

Extracts from the second reading speech:

Contributing to a sufficient dividing fence

The Bill shifts liability to contribute to dividing fences from occupiers of land to owners of land

... The Bill provides guidance about what constitutes a 'sufficient dividing fence' and establishes the general principle that adjoining owners must contribute in equal proportions to a sufficient dividing fence for their adjoining lands.

... Initiating fencing works

The current Fences Act does not contain any guidance on the process for commencing fencing works. The Bill addresses this gap by providing that an owner who proposes to undertake fencing works in respect of a dividing fence must generally either reach agreement with or give notice to an adjoining owner, even if no contribution towards the fencing works is being sought. Such notice must be in writing and contain particular information about the proposed fencing works.

However, the Bill allows fencing works to proceed if an owner cannot be located for the purposes of giving notice, or if fencing works need to be undertaken urgently. Fencing works may also be undertaken without the agreement of an adjoining owner if they are given notice but do not respond within 30 days. If fencing works are undertaken in circumstances where an adjoining owner could not be located or did not respond to the fencing notice, the owner who undertook the fencing works may recover contributions from the adjoining owner who could not be located or did not respond by filing a complaint and seeking an order in the Magistrates Court.

... Facilitating agreement between the parties

The recipient of a fencing notice may either agree to the proposal in the fencing notice or object to any aspect of the proposed works. If 30 days have passed and the owners still do not agree about any aspect of the proposed fencing works, either owner may commence proceedings in the Magistrates Court seeking orders about the fencing works.

... If neighbours are unable to agree about any aspect of their fencing works, the Bill clarifies the power of the Magistrates Court to hear and determine the dispute and make orders.

... The Bill also clarifies the jurisdiction of the Magistrates Court to hear and determine claims in adverse possession that may arise in the context of a fencing dispute.

## **Charter report**

The Fences Amendment Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Jury Directions Amendment Bill 2013

<b>Introduced</b>	10 December 2013
<b>Second Reading Speech</b>	12 December 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Robert Clark MLA
<b>Portfolio responsibility</b>	Attorney-General

### Purpose

The Bill amends the *Jury Directions Act 2013* to simplify and clarify a number of problematic directions on:

- proof beyond reasonable doubt other misconduct evidence
- unreliable evidence
- identification evidence
- delay and forensic disadvantage
- delay and credibility in sexual offence cases
- a failure to call a witness or give evidence.

The Bill also amends the *Evidence Act 2008* to abolish corroboration directions except in case of perjury or a similar offence and also makes other consequential amendments to that Act.

The Bill makes consequential amendments to section 61 of the *Crimes Act 1958*.

### Charter report

The Jury Directions Amendment Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Legal Profession Uniform Law Application Bill 2013

Introduced	10 December 2013
Second Reading Speech	12 December 2013
House	Legislative Assembly
Member introducing Bill	Hon Robert Clark MLA
Portfolio responsibility	Attorney-General

### Purpose

The purpose of the Bill ('the Application Bill') is to enact an applied law scheme to uniformly regulate the legal profession throughout participating jurisdictions in Australia. Schedule 1 of the Application Bill contains the Legal Profession Uniform Law ('the Uniform Law'), which will be enacted in Victoria as the host jurisdiction. Initially the Uniform Law will be applied in Victoria and New South Wales. Jurisdictions wishing to participate will pass an applying Act to apply the Uniform Law as a law of that jurisdiction. The Application Bill also provides for certain local matters to complement the Uniform Law, such as the establishment of local regulatory authorities and the fidelity fund. **[19 to 182]**

The Application Bill repeals the *Legal Profession Act 2004* **[157]** and makes the transitional arrangements and consequential amendments to 114 other Acts in Schedule 2 necessary to facilitate the new scheme. **[Part 12 and Schedule 2]**

The Bill provides a modified scheme for the scrutiny of and disallowance of regulations made under the Uniform Law. **[7]** (*Refer to Charter report below*)

The Bill provides that certain Victorian legislation does not apply to the Uniform Law. **[5]** However, the *Interpretation of Legislation Act 1984 (Vic)* applies to the Uniform Law. **[158, 159 and clause 7 of Schedule 1]**

Extract from the second reading speech:

#### Oversight of the scheme

As is common for applied law schemes, the Bill excludes a number of Victorian oversight Acts, such as the Freedom of Information Act 1982 and the Ombudsman Act 1973, from applying to the new inter-jurisdictional authorities.

As the new authorities will be based in NSW, NSW oversight legislation will be directly applied to them, and the uniform law itself sets out requirements in other areas covered by some of the excluded Acts (for example, in respect of reporting).

Victorian regulatory authorities performing functions under the scheme will still be required to comply with Victorian oversight legislation.

The Bill also includes a formal override of the Charter of Human Rights and Responsibilities Act 2006 to ensure uniformity in interpretation and application of the scheme across participating jurisdictions.

Victorian regulatory authorities will still be subject to the Charter Act in respect of any functions they perform under the Victorian-specific provisions of the Bill, or under any other Victorian legislation.

## Override declaration

The Committee notes that Victoria is the host jurisdiction for the proposed Uniform Law and observes that the Bill provides that the Charter does not apply to the Uniform Law. [6(1)] For the avoidance of and doubt the Bill specifically provides that section 31(7) of the Charter (re-enactment of the override after 5 years) does not apply to the Uniform Law [6(2)], and declares that a body performing functions under the Uniform Law is not a public authority within the meaning of the Charter. [6(3)]

Pursuant to section 31(3) and 31(5)<sup>6</sup> of the *Charter of Human Rights and Responsibilities Act 2006* the Attorney-General is required to make an Override Statement either during the second reading speech or before the Bill is read a third time. The Committee notes that the Override Statement was not made during the second reading speech. (*Refer also to the Charter report below*)

## Submissions received

The Committee has received and considered a submission from the *Victorian Equal Opportunity and Human Rights Commission*. The submission will be posted on the Committee website.

## Content

### ***Delegation of legislative power – Commencement by proclamation – Whether appropriate provision***

The Bill provides that the Act will come into force on a day or days to be proclaimed. The explanatory memorandum remarks:

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#### 6 Section 31 Override by Parliament

- (1) Parliament may expressly declare in an Act that that Act or a provision of that Act or another Act or a provision of another Act has effect despite being incompatible with one or more of the human rights or despite anything else set out in this Charter.
- (2) If an override declaration is made in respect of an Act or a provision of an Act that declaration must be taken to extend to any subordinate instrument made under or for the purpose of that Act or provision.
- (3) A member of Parliament who introduces a Bill containing an override declaration, or another member acting on his or her behalf, must make a statement to the Legislative Council or the Legislative Assembly, as the case requires, explaining the exceptional circumstances that justify the inclusion of the override declaration.
- (4) It is the intention of Parliament that an override declaration will only be made in exceptional circumstances.
- (5) A statement under subsection (3) must be made—
  - (a) during the second reading speech for the Bill that contains the override declaration; or
  - (b) after not less than 24 hours' notice is given of the intention to make the statement but before the third reading of the Bill; or
  - (c) with the leave of the Legislative Council or the Legislative Assembly, as the case requires, at any time before the third reading of the Bill.
- (6) If an override declaration is made in respect of a statutory provision, then to the extent of the declaration this Charter has no application to that provision.

#### Note

As the Charter has no application to a statutory provision for which an override declaration has been made, the Supreme Court cannot make a declaration of inconsistent interpretation in respect of that statutory provision. Also, the requirement under section 32 to interpret that provision in a way that is compatible with human rights does not apply.

- (7) A provision of an Act containing an override declaration expires on the 5th anniversary of the day on which that provision comes into operation or on such earlier date as may be specified in that Act.
- (8) Parliament may, at any time, re-enact an override declaration, and the provisions of this section apply to any re-enacted declaration.
- (9) A failure to comply with subsection (3) or (5) in relation to any Bill that becomes an Act does not affect the validity, operation or enforcement of that Act or of any other statutory provision.

It does not identify a default commencement date as the commencement of the Legal Profession Uniform Law is to be co-ordinated nationally. As an inter-jurisdictional scheme, the Legal Profession Uniform Law relies on each participating jurisdiction passing its application laws before the agreed commencement date. To allow for any contingencies that may occur in other jurisdictions passing their application laws, no default commencement date is set. It is planned to commence the Legal Profession Uniform Law in Victoria on a common agreed date.

***The Committee considers that commencement on proclamation is justified in the circumstances.***

## Charter report

### ***Provision that the Charter does not apply – Whether override declaration***

Summary: Clause 6(1) provides that the Charter ‘has no application to’ the Legal Profession Uniform Law. The Committee will write to the Attorney-General seeking further information as to whether or not clause 6(1) is made under the Charter’s provision for override declarations in Charter s. 31.

### **The Committee notes that clause 6(1) provides that the Charter ‘has no application to’ the Legal Profession Uniform Law.**

The Statement of Compatibility remarks:

Section 31 of the Charter Act empowers Parliament to override the Charter in this manner. Pursuant to subsection 31(6), the effect of clause 6 is that the Charter Act has no application to the uniform law.

The Committee observes that Charter s. 31 provides one way that Parliament may bar the application of the Charter to a statutory provision. The process set out in Charter s. 31 is as follows:

- ‘Parliament may expressly declare in an Act that that Act or a provision of that Act or another Act or a provision of another Act has effect despite being incompatible with one or more of the human rights or despite anything else set out in this Charter’: Charter s. 31(1). The Committee notes that clause 6(1) is not expressed in this way.
- ‘A member of Parliament who introduces a Bill containing an override declaration, or another member acting on his or her behalf, must make a statement to the Legislative Council or the Legislative Assembly, as the case requires, explaining the exceptional circumstances that justify the inclusion of the override declaration.’: Charter s. 31(2). The Committee notes that the Second Reading speech simply states that ‘[t]he bill includes a formal override of the Charter... to ensure uniformity in interpretation and application of the scheme across participating jurisdictions’.<sup>7</sup>
- ‘A provision of an Act containing an override declaration expires on the 5th anniversary of the day on which that provision comes into operation or on such earlier date as may be specified in that Act.’: Charter s. 31(7). The Committee notes that clause 6(2) provides that Charter s. 31(7) does not apply to clause 6.

The Committee considers that clause 6(1) may not be an override declaration made under Charter s. 31.

The Committee notes that clause 6(1) will be effective to prevent the application of the Charter to the Legal Profession Uniform Law regardless of whether or not it is an override declaration made

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<sup>7</sup> Charter s. 31(5)(a) provides for the Charter s. 31(3) statement to be made ‘during the Second Reading Speech’. Alternatively, Charter s. 31(5)(b) and (c) provide for the making of a statement after the Second Reading speech, either with 24 hours’ notice or with leave of the relevant chamber of the Parliament.

under Charter s. 31.<sup>8</sup> However, if clause 6(1) is not an override declaration made under Charter s. 31, then clause 6(1) may not be effective to prevent the application of the Charter to the uniform regulations and rules made under Parts 9.1 and 9.2 of the uniform law.<sup>9</sup>

**The Committee will write to the Attorney-General seeking further information as to whether or not clause 6(1) is made under the Charter's provision for override declarations in Charter s. 31. Pending the Attorney-General's response, the Committee draws attention to clause 6(1).**

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***Charter does not apply to Legal Profession Uniform Law (Victoria) – SARC's Charter reporting function does not apply to Legal Profession Uniform Regulations***

Summary: The Committee refers to Parliament for its consideration the questions of whether or not:

- clauses 6(1)(b) and 6(3), by excluding various aspects of the Charter from the Victorian version of the Legal Profession Uniform Law; and
- clause 7, by barring this Committee from reporting to a House of Parliament whether or not the Legal Profession Uniform Regulations are incompatible with a human right;

are reasonable limits on human rights to achieve the purpose of preventing inconsistencies in the interpretation and implementation of the Legal Profession Uniform Law between Victoria and other participating states and territories.

The Committee notes that clause 6(1)(b) provides that the Charter does not apply to the Legal Profession Uniform Law (Victoria). Clause 6(3) provides that the Charter's provisions for obligations of public authorities and for relief or remedies for actions that are unlawful under the Charter do not apply to functions performed or powers exercised under the Legal Profession Uniform Law (Victoria). Clause 7 provides that this Committee's function of reporting to a House of Parliament whether or not regulations that may be disallowed by Parliament are incompatible with the human rights set out in the Charter does not apply to regulations made under Part 9.1 of the uniform law.<sup>10</sup>

The Statement of Compatibility remarks:

The purpose of clause 6 is to guarantee uniformity in interpretation and application of the scheme across the participating jurisdictions. It is being implemented to avoid any risk of non-uniform application through other jurisdictions being required to interpret the uniform law consistently with the charter act. Its purpose is also to avoid the inconsistency that may arise if inter-jurisdictional bodies in other participating states or territories performing uniform law functions are required to act compatibly with the charter act despite having no experience with its requirements. If the charter act were only partly excluded, so that it continued to apply in the Victorian context, there is a further risk that inconsistencies could arise in the interpretation and implementation of the uniform law between Victoria and other participating states and territories.

The Statement does not address clause 7's partial removal of this Committee's scrutiny function.

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<sup>8</sup> See *Constitution Act 1975*, s. 16 and Charter s. 31(9).

<sup>9</sup> In contrast to clause 5 (which expressly extends to 'instruments made under' the Legal Profession Uniform Law (Victoria)), clause 6(1) is not expressed to apply to subordinate instruments made under or for the purpose of the Legal Profession Uniform Law. Charter s. 31(2), which provides that '[i]f an override declaration is made in respect of an Act or a provision of an Act that declaration must be taken to extend to any subordinate instrument made under or for the purpose of that Act or provision.', only applies if clause 6(1) is an override declaration made under Charter s. 31.

<sup>10</sup> Clause 5 disapplies the *Subordinate Legislation Act 1994* from the Legal Profession Uniform Law, subject to clause 7. Clause 7 applies the Act's provisions for SARC scrutiny and parliamentary disallowance of statutory rules to the Legal Profession Uniform Law, but it expressly excludes s. 21(1)(ha) of that Act. Section 21(1)(ha) sets out SARC's function of reporting to a House of the Parliament on the incompatibility of a statutory rule with the human rights set out in the Charter.

The Committee notes that this is the second occasion since the Charter's enactment that Victoria has hosted a national or uniform law.<sup>11</sup> The Committee observes that clause 6(1)(a), which provides that the Charter does not apply to Schedule 1 of the Bill (containing the text of the Legal Profession Uniform Law), puts a Victorian-hosted national or uniform law on the same footing as a national or uniform law hosted in another jurisdiction.<sup>12</sup>

However, the Committee notes that clauses 6(1)(b), 6(3) and 7 prevent various aspects of the Charter from applying to the Victorian version of that law. The Committee observes that this generally differs from other uniform laws recently applied in Victoria. In particular:

- Clause 6(1)(b) differs from four of the five other national uniform schemes applied in Victoria this year, as well as the previous national uniform law hosted by Victoria, where the Charter continues to apply to the Victorian version of those laws.<sup>13</sup>
- Clause 6(3) differs from all five other national uniform schemes applied in Victoria last year, as well as the previous national uniform law hosted by Victoria, where the Charter's obligations and remedies provisions continue to apply to public authorities acting under the Victorian version of those laws.<sup>14</sup>
- Clause 7 differs from all three other provisions enacted this year for Victorian parliamentary scrutiny and disallowance of national regulations, as well as the previous national uniform law hosted by Victoria, which each preserve this Committee's function of reporting to Parliament on whether or not national regulations are incompatible with the human rights set out in the Charter.<sup>15</sup>

**The Committee refers to Parliament for its consideration the question of whether or not**

- **clauses 6(1)(b) and 6(3), by excluding various aspects of the Charter from the Victorian version of the Legal Profession Uniform Law; and**
- **clause 7, by barring this Committee from reporting to a House of Parliament whether or not the Legal Profession Uniform Regulations are incompatible with a human right;**

**are reasonable limits on human rights to achieve the purpose of preventing inconsistencies in the interpretation and implementation of the Legal Profession Uniform Law between Victoria and other participating states and territories.**

**The Committee makes no further comment**

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<sup>11</sup> The previous occasion was the Education and Care Services National Law, a schedule to the *Education and Care Services National Law Act 2010* (Vic).

<sup>12</sup> The Charter automatically does not apply to a law hosted in another jurisdiction as the Charter's operative provisions are limited to Victorian legislation and Victorian public authorities.

<sup>13</sup> *Co-operatives National Law Application Act 2013*, s. 4(1)(c); *Electronic Conveyancing (Adoption of National Law) Act 2013*, s. 4(c); *Heavy Vehicle National Law Application Act 2013*, s. 4(c); *Rail Safety National Law Application Act 2013*, s. 6(c); *Education and Care Services National Law Act 2010*, s. 5(2). The exception is the *Marine (Domestic Commercial Vessel National Law Application) Act 2013*, where the host jurisdiction is the Commonwealth parliament.

<sup>14</sup> The *Marine (Domestic Commercial Vessel National Law Application) Act 2013*, s. 17 expressly provides that Victorian (but not federal) bodies and officials delegated or appointed under the national law are public authorities under the Charter. Under the remaining laws, the Charter's provision for obligations of public authorities automatically applies to national and Victorian bodies acting under the Victorian of the uniform law: see, e.g. Statement of Compatibility, *Education and Care Services National Law Bill 2010*, stating: "when exercising jurisdiction in Victoria, both the regulatory authority and the national authority are public authorities for the purposes of section 38 of the charter. When seeking information under the bill, the authorities and their officers will therefore be required to act in accordance with human rights."; SARC, *Alert Digest No. 7 of 2013*, p. 26 (ministerial correspondence on the Heavy Vehicle National Law Application Bill).

<sup>15</sup> *Co-operatives National Law Application Act 2013*, s. 8; *Heavy Vehicle National Law Application Act 2013*, s. 6(1); *Rail Safety National Law Application Act 2013*, s. 12(1); *Education and Care Services National Law Act 2010*, Schedule, Clause 303(2). The Electronic Conveyancing National Law has no provision for national regulations and there is no provision for Victorian scrutiny or disallowance of federal regulations made under the Domestic Commercial Vessel National Law.

## Parliamentary Budget Officer Bill 2013

<b>Introduced</b>	11 December 2013
<b>Second Reading Speech</b>	12 December 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Robert Clark MLA
<b>Portfolio responsibility</b>	Attorney-General

### Purpose

This Bill is to establish the Parliamentary Budget Officer ('the PBO') as an independent Officer of the Parliament, with the responsibility to undertake and publish costings of election policies announced by parliamentary party leaders and independent members.

The Bill provides that:

- a Parliamentary Budget Officer is to be appointed by the Governor in Council on 1 May in each election year in which an election is scheduled to be held under section 38A(1)(a)<sup>16</sup> of the *Constitution Act 1975*
- the appointment of the PBO is to be made by the Governor in Council on the recommendation of the Public Accounts and Estimates Committee of Parliament.<sup>17</sup> This is the same as the process required for the appointment of the Auditor-General
- the PBO is to be an independent officer of the Parliament
- the PBO's term is of limited duration, starting between 1 May and 1 July of the year they are appointed, and ending on 31 December of that year
- a person who has previously been Parliamentary Budget Officer may be appointed again
- a parliamentary leader may request the PBO to cost an election policy
- the PBO must prepare a budget impact statement in respect of each political party or person who has requested election policy costings, listing those policies with their separate costings and with their aggregate impact on the most-recently released budget forward estimates and key financial indicators for the State. The budget impact statement must be released by no later than 5 p.m. on the Thursday preceding the election
- the PBO is not to question the merits of policies that he or she is costing. This provision is modelled on the requirement under the *Audit Act 1994* that the Auditor-General does not question the merits of Government policy.

The Bill also amend the:

- *Constitution Act 1975* to correct an anomaly whereby a Presiding Officer retains his or her administrative responsibilities after early dissolution of the Parliament pending an election until his or her successor is chosen by the respective newly-elected House. The current provisions only provide for the retention of those responsibilities after expiry of the Parliament at the end of a normal fixed 4-year term pursuant to section 38A(1)(a)
- *Ombudsman Act 1973* to provide that the Ombudsman does not have jurisdiction with respect to the Parliamentary Budget Officer

<sup>16</sup> Section 38A(1)(a) of the Constitution provides for an election to be held on the last Saturday in November that is closest to the fourth anniversary of the previous election.

<sup>17</sup> The Bill also provides that the Parliamentary Committee is not empowered to direct the PBO in the performance of his or her functions.

- *Parliamentary Committees Act 2003* to provide that the Public Accounts and Estimates Committee has responsibilities under the new provisions in this Bill in respect to the PBO.

Extract from the second reading speech:

This Bill will establish an independent Parliamentary Budget Officer to undertake costings of election policies put before Victorian voters by parliamentary party leaders and Independent MPs.

... The Parliamentary Budget Officer, like the Auditor-General and the Ombudsman, will be an independent officer of the Parliament.

The PBO will be appointed from 1 May in each election year until after the election, and will be subject to review and report to Parliament by the Auditor-General.

The PBO will cost proposed election policies on request from parliamentary parties and Independent MPs, and will make each costing public following official announcement of the policy by the party or Independent MP.

The PBO will also publish a budget impact statement for each parliamentary party and Independent MP, assessing the overall budget implications of their costed and announced election policies.

... The Bill provides for the Parliamentary Budget Officer to be appointed by the Governor in Council on the recommendation of the Public Accounts and Estimates Committee.

... The Bill provides that a parliamentary party leader or their nominee, and any Independent member of Parliament seeking election in the next Parliament, may request the PBO to cost an election policy on or after 1 September in the election year.

...

The Bill also corrects an anomaly in the Constitution Act 1975. ... The Bill therefore amends the Constitution Act to provide that the Presiding Officers administrative responsibilities continue after expiry, as well as dissolution, of the Parliament, until their successors are chosen. This will include the responsibilities vested in the presiding officers under the Bill.

## **Charter report**

The Parliamentary Budget Officer Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

## **The Committee makes no further comment**

## Small Business Commissioner Amendment Bill 2013

<b>Introduced</b>	10 December 2013
<b>Second Reading Speech</b>	11 December 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Louise Asher MLA
<b>Portfolio responsibility</b>	Minister for Innovation, Services and Small Business

### Purpose

The Bill amends the *Small Business Commissioner Act 2003* ('the Act') to:

- amend the functions and powers of the Small Business Commissioner ('the Commissioner') in order to promote the efficient resolution of commercial disputes involving small businesses
- improve alternative dispute resolution services for small businesses
- allow the Commissioner to issue certificates to verify that alternative dispute resolution has taken place
- confer powers on the Commissioner to publish information in the Annual Report relating to businesses and government agencies that have failed to make reasonable endeavours to participate in alternative dispute resolution
- provide that the Commissioner may seek an advisory opinion from the VCAT
- provide for Commissioner and mediators with statutory immunity from liability for legislative functions performed by them reasonable and in good faith
- make other amendments to improve the operation of the Act.

### Charter report

The Small Business Commissioner Amendment Bill 2013 is compatible with the rights set out in the Charter of Human Rights and Responsibilities.

**The Committee makes no further comment**

## Summary Offences and Sentencing Amendment Bill 2013

<b>Introduced</b>	11 December 2013
<b>Second Reading Speech</b>	12 December 2013
<b>House</b>	Legislative Assembly
<b>Member introducing Bill</b>	Hon Robert Clark MLA
<b>Portfolio responsibility</b>	Attorney-General

### Purpose

The Bill amends the *Summary Offences Act 1966* ('the Act') to provide for additional circumstances in which police members and protective services officers ('PSO's') may direct a person to move on from a public place and clarifies the operation of those powers.

The new grounds in section 6(1)<sup>18</sup> of the Act are where police members or PSO's suspect on reasonable grounds that the person –

- a. has committed an offence in the place within the last 12 hours
- b. by their conduct is causing a reasonable apprehension of violence to another person
- c. is causing, or is likely to cause, an undue obstruction to others in the place
- d. is present for the purpose of procuring or supplying drugs
- e. is impeding, or attempting to impede, another person from lawfully entering or leaving premises or part of premises.

Related to the move-on power the Bill creates an exclusion order scheme within the Act to permit police members to apply to a court for an exclusion order in circumstances where a person has repeatedly been directed to move on from a particular public place. The order would have the effect of banning that person from the specified public place for up to 12 months.

Extracts from the second reading speech:

Clearer and more effective move-on powers

... Move-on powers may be applied in relation to one person or many.

... the Bill provides that move-on powers may be used in respect of people engaged in picket lines, protests and other demonstrations.

... the Bill expressly provides that police and PSOs may arrest a person who contravenes a move-on direction. The bill also assists the detection of such contraventions by providing that police may require a person being directed to move on to provide their name and address.

...

Move-on-related exclusion orders

Move-on powers can keep a person away from a public place for up to 24 hours, but no more. Consequently, a person may return to the place and engage in the same conduct the

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<sup>18</sup> 6(1) A member of the police force, or a protective services officer on duty at a designated place, may give a direction to a person or persons in a public place to leave the public place, or part of the public place, if the member or officer suspects on reasonable grounds that—

- (a) the person is or persons are breaching, or likely to breach, the peace; or
- (b) the person is or persons are endangering, or likely to endanger, the safety of any other person; or
- (c) the behaviour of the person or persons is likely to cause injury to a person or damage to property or is otherwise a risk to public safety.

very next day. This can be a particular issue where police know that people are returning to a certain area repeatedly, such as for the purpose of buying or selling drugs.

The Bill addresses these situations by enabling police to apply to the Magistrates Court for an exclusion order against an individual.

The making of an exclusion order will be discretionary, and the court may only make an order if it is satisfied that:

- a person has been repeatedly directed to move on from the same public place or part of a public place; and
- an exclusion order would be a reasonable means of preventing that person from continuing to behave in a manner that would be the basis for another move-on direction.

If a court decides to make an exclusion order, it can specify a duration of up to 12 months. ... Once an exclusion order is in place, it will be an offence to contravene that order. The offence will carry a maximum penalty of two years imprisonment.

The Bill amends the *Sentencing Act 1991* to insert a new Division 4 of Part 4 to create an alcohol exclusion order scheme within that Act. Under the scheme, a court must make an alcohol exclusion order from licensed premises for two years, where a person has been convicted of a relevant indictable offence, and the court is satisfied that the person was intoxicated at the time, and that the person's intoxication significantly contributed to the offending.

#### Alcohol exclusion orders

... Under the requirements, a court must make an alcohol exclusion order where it is satisfied that:

- a person has been convicted of a relevant offence;
- the person was intoxicated at the time of the assault; and
- the person's intoxication significantly contributed to the commission of the offence.

These orders will apply to most indictable offences against the person, ranging from homicides to intentionally causing injury, as well as sexual assaults such as rape or indecent assault, and to offences such as threats to kill and assaulting police.

Alcohol exclusion orders will prohibit the offender from entering specified licensed premises or consuming liquor in any licensed premises anywhere in Victoria for a period of two years.

... A court may also allow a person to enter licensed premises for a specified purpose if there is a good reason and the court considers it appropriate.

... Contravention of an alcohol exclusion order will be an offence, carrying a maximum penalty of two years imprisonment.

## Submissions received

The Committee has received and considered submissions from the following organisations. The submissions will be posted on the Committee's website.

Flemington and Kensington Legal Centre

Human Rights Law Centre

Victorian Equal Opportunity and Human Rights Commission

Fitzroy Legal Service Inc.

Law Institute of Victoria

Victorian Trades Hall Council

Homeless Law

Madge Australia Inc.

Federation of Community Legal Centres (Victoria) Inc.

Victorian Council of Social Service

## Charter report

The Committee notes that its predecessor reported on the existing move-on powers provision when it was introduced in 2009.<sup>19</sup> That Committee referred to Parliament for its consideration the questions of whether or not that provision (specifically, the ground of likely 'breach of the peace') was sufficiently clear and accessible to satisfy the Charter's test for reasonable limits on rights; and whether or not alternative grounds in other Australian legislation (including NSW's provision) were less restrictive means reasonable available.

The Committee observes that clause 3(6) preserves the existing exemption of people engaged in picketing, protest or expression from being required to move on because of a likely breach of the peace; and that clause 3(2)'s new grounds of apprehended violence, undue obstruction, drug trading and impeding access are similar to or narrower than existing grounds for the exercise of move-on powers in NSW.<sup>20</sup>

The Summary Offences and Sentencing Amendment Bill 2013 is, therefore, compatible with the rights set out in the Charter of Human Rights and Responsibilities.

### **The Committee makes no further comment**

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<sup>19</sup> SARC, *Alert Digest No 14 of 2009* (reporting on the Summary Offences and Control of Weapons Amendment Bill 2009).

<sup>20</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s. 197(1).

## Extract from the Proceedings

The Minutes of the Committee show that the following division took place during the consideration of *Alert Digest No 1 of 2014* on Monday 3 February 2014.

### Summary Offences and Sentencing Amendment Bill 2013

Motion – That the report on the Summary Offences and Sentencing Amendment Bill 2013 stand part of Alert Digest No. 1 of 2014.

Moved:                Mr Graham Watt MP  
Seconded            Dr Bill Sykes MP

The Committee divided.

Ayes, 4	Noes, 2
Hon. Richard Dalla-Riva MLC	Hon. Christine Campbell MP
Mr Michael Gidley MP	Mr Don Nardella MP
Dr Bill Sykes MP	
Mr Graham Watt MP	

And so it passed in the positive.



# Appendix 1

## Index of Bills in 2014

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	<b>Alert Digest Nos.</b>
Assisted Reproductive Treatment Further Amendment Bill 2013	1
Children, Youth and Families Amendment (Security Measures) Bill 2013	1
Corrections Legislation Amendment Bill 2013	1
Crimes Amendment (Grooming) Bill 2013	1
Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Bill 2013	1
Game Management Authority Bill 2013	1
Fences Amendment Bill 2013	1
Jury Directions Amendment Bill 2013	1
Legal Profession Uniform Law Application Bill 2013	1
Parliamentary Budget Officer Bill 2013	1
Small Business Commissioner Amendment Bill 2013	1
Summary Offences and Sentencing Amendment Bill 2013	1



## **Appendix 2**

# Committee Comments classified by Terms of Reference

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*This Appendix lists Bills and Regulations under the relevant Committee terms of reference where the Committee has raised issues requiring further correspondence with the appropriate Minister or Member.*

**Alert Digest Nos.**

### **Section 17(a)**

**(Viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities Act 2006**

Legal Profession Uniform Law Application Bill 2013

1



## Appendix 3

### Ministerial Correspondence 2014

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**Table of correspondence between the Committee and Ministers and members during 2013-14**

<b>Bill Title</b>	<b>Minister/ Member</b>	<b>Date of Committee Letter / Minister's Response</b>	<b>Alert Digest No. Issue raised / Response Published</b>
Planning and Environment (Fees) Further Interim Regulations 2013 (SR No. 127 / 13)	Planning	09-12-13	17 of 2013
Subdivision (Fees) Further Interim Regulations 2013 (SR No. 128 / 13)	Planning	09-12-13	17 of 2013
Legal Profession Uniform Law Application Bill 2013	Attorney-General	04-02-14	1 of 2014