SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL ON GAMING LICENSING

SECOND INTERIM REPORT

OCTOBER 2007
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TERMS OF REFERENCE

On 14 February 2007 the Legislative Council agreed to the following Resolution:

1. A Select Committee of 7 Members be appointed to inquire into and report on —
   a. the conduct, processes and circumstances (including but not limited to the probity thereof) pertaining to post-2008 public lotteries licensing in Victoria pursuant to the Gambling Regulation Act 2003 (the Act) and any related matter;
   b. the conduct, processes and circumstances (including but not limited to the probity thereof) pertaining to the extension of Tattersall's public lotteries licence until 30 June 2008;
   c. the conduct, processes and circumstances (including but not limited to the probity thereof) pertaining to post-2012 Electronic Gaming Machine (EGM) operator licensing in Victoria pursuant to the Act, and any related matter;
   d. the adequacy or otherwise of the legislative and regulatory framework pertaining to the number, location, distribution and specification of EGMs in Victoria and any related matter;
   e. the effectiveness or otherwise of current measures to minimise and address the incidence of problem gambling in Victoria, the merits of alternative measures and any related matter;
   f. the financial position of the Community Support Fund (the Fund) described in the Act, including, but not limited to:
      i. payments into the Fund under section 10.3.2 of the Act (and its predecessors);
      ii. payments from the Fund under section 10.3.3 of the Act (and its predecessors); and
      iii. the criteria, processes and methodology for the selection of projects funded by payments referred to in sub-paragraph (ii) above; and
      iv. the community benefit statements prepared by those venues not required to contribute to the Fund;
   g. any other associated matters dealing with gaming licensing issues.
REPORT

The Select Committee on Gaming Licensing has the honour to report as follows:

1. On 14 February 2007 the Legislative Council resolved to establish a select committee of seven members to inquire into and report on gaming licensing in Victoria. A copy of the Terms of Reference is attached page 2.

2. On 14 March 2007, the Legislative Council agreed to a Sessional Order outlining the process by which the Council may call for documents from Government departments.

3. On 14 March 2007, the Leader of the Government, Mr John Lenders MLC, requested that the President obtain legal advice to confirm the Council’s ability to call for documents as outlined in the Sessional Order.

4. On 6 June 2007, the Deputy President (for the President) tabled legal advice received from Mr Bret Walker SC concerning the powers of the Legislative Council and its Select Committees to order the production of documents.

5. On 8 June 2007, the Committee wrote to the President requesting further legal opinion with regard to the Committee’s powers to call for documents covered by statutory secrecy provisions, in particular, relevant provisions within the Gambling Regulation Act 2003.

6. On 4 October 2007, the President of the Legislative Council wrote to the Committee enclosing a copy of the legal opinion obtained from Mr Bret Walker SC with respect to statutory secrecy.

7. The Committee tables this further legal opinion for the information of the Legislative Council (see Appendix A).

Committee Room
9 October 2007
APPENDIX A
Legal Opinion from Mr Bret Walker S.C.

4 October 2007

Mr Gordon Rich-Phillips MLC
Chair
Select Committee on Gaming Licensing
Parliament House
EAST MELBOURNE VIC 3002

Dear Mr Rich-Phillips,

Re: Select Committee on Gaming Licensing – Production of Documents

I refer to your letter of 8 June 2007 requesting that the Council obtain further advice in regard to the provisions of the Gambling Regulation Act 2003.

The Clerk has received the legal opinion from Mr Bret Walker SC and I attach a copy for the Committee’s information.

Yours sincerely

Hon Robert Smith, MLC
President of the Legislative Council
I am asked to advise the Clerk of the Legislative Council on a number of questions arising in relation to the effect on the power of the Council to compel witnesses to attend to give evidence or to order documents to be produced to it, arising from the kind of legislative provision imposing so-called statutory secrecy.

The questions arise partly from matters left open by me in paras 40 and 41 of my Opinion on "Orders for Papers" dated 4th June 2007. In particular, they arise specifically in relation to Division 6 of Part 1 of Chapter 10 of the Gambling Regulation Act 2003 (Vic) ("the Act"), which has been invoked by a number of official personages as one of the reasons for declining to produce certain papers – as discussed in my earlier Opinion.

Without repeating them, I call in aid for present purposes the description of the relevant powers of the Council in relation to compelling the attendance of witnesses and the production of documents, set out in paras 4 – 9 of my earlier Opinion.

Division 1 of Part 1 of Chapter 10 of the Act constitutes and prescribes the nature of the Victorian Commission for Gambling Regulation ("the Commission"), including as a public authority which represents the Crown: sec 10.1.2. Its objectives are important in addressing the present questions. Section 10.1.3 provides:-

The objectives of the Commission are—

(a) to ensure that gaming on gaming machines is conducted honestly;
(b) to ensure that the management of gaming machines and gaming equipment is free from criminal influence and exploitation;
(c) to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;
(d) to act as a source of advice to the Minister on gambling issues and to ensure that the Government's policy on gambling is implemented;
(e) to foster responsible gambling in order to—
   (i) minimise harm caused by problem gambling; and
   (ii) accommodate those who gamble without harming themselves or others;
(f) any objectives set out in the Casino Control Act 1991 or any other Act.

Similarly, the manner in which the functions of the Commission are prescribed could be critical in answering the questions asked of me. Those functions are expressed by sec 10.1.4 as follows:-
(1) The Commission has the functions conferred on it by or under this or any other Act.

(2) The functions of the Commission include—
   (a) regulating the use of gaming machines in casinos and approved venues;
   (b) regulating the activities of key operatives in the gaming machine industry, including those who manufacture, supply, repair or own, or provide venues for and operate, gaming machines;
   (c) ensuring that the conduct of gaming at approved venues is supervised;
   (d) detecting offences committed in or in relation to approved venues;
   (e) receiving and investigating complaints from gaming patrons concerning the conduct of gaming in approved venues;
   (f) regulating the activities of key operatives in the wagering, club keno, interactive gaming, community and charitable gaming, bingo, onboard gaming and public lottery industries;
   (g) advising the Minister on community concerns about the economic and social impact of gambling on the well-being of the community.

(3) The Commission also has the functions of—
   (a) informing itself, in the manner it sees fit, of current and emerging issues and practices in Victoria and elsewhere with respect to gambling, including—
      (i) responsible gambling;
      (ii) probity;
      (iii) game security and integrity;
      (iv) facility development; and
   (b) informing and educating the public as to the Commission's regulatory practices and requirements.

Further, as "a relevant entity", the Commission is itself scrutinized by the Review Panel established under sec 10.2A.2: subsec 10.2A.3(1) and sec 10.2A.1 definition of "relevant entity" para (a). The Review Panel's functions concern matters of probity in particular, and their enactment, as well, may be relevant to the present concerns. Section 10.2A.3 describes the functions of the Review Panel as follows:-

(1) The functions of the Review Panel are—
   (a) to consider, and report to the Minister, whether, in the preparation of recommendations or reports to the Minister by a relevant entity with respect to the regulatory review—
      (i) all parties interested in a relevant activity have been treated impartially and have been given the same opportunity to access information and advice in relation to the review process; and
      (ii) information received from parties referred to in subparagraph (i) has been managed to ensure the security and confidentiality of intellectual property and proprietary information; and
      (iii) every relevant entity involved in the regulatory review has been required to declare any actual or perceived conflict of interest before participating in the regulatory review; and
      (iv) any conflict of interest referred to in subparagraph (iii) has been appropriately addressed; and
      (v) there has been any improper interference with the making of a recommendation or report; and
(vi) the preparation of a recommendation or report discloses bias or anything that could lead to a reasonable apprehension of bias;

(b) to consider, and report to the Minister, whether, in the preparation of recommendations or reports to the Minister by a relevant entity with respect to the authorisation and licensing process—

(i) all registrants (if applicable) and applicants for an authorisation or a licence have been treated equally and impartially and have been given the same opportunity to access information and advice about the authorisation and licensing process; and

(ii) all protected information has been managed to ensure its security and confidentiality; and

(iii) all registrants and applicants referred to in subparagraph (i) have been evaluated in a systematic manner against explicit predetermined evaluation criteria; and

(iv) every relevant entity involved in the authorisation and licensing process has been required to declare any actual or perceived conflict of interest before participating in the process; and

(v) any conflict of interest referred to in subparagraph (iv) has been appropriately addressed; and

(vi) there has been any improper interference with the making of a recommendation or report; and

(vii) the preparation of a recommendation or report discloses bias or anything that could lead to a reasonable apprehension of bias;

(c) to consider, and report to the Minister on, any other matter referred to the Review Panel under subsection (2);

(d) to report to the Minister on request under section 10.2A.12(2).

(2) On the recommendation of the Minister, the Governor in Council, by Order published in the Government Gazette, may refer any matter to the Review Panel for consideration and report to the Minister.

(3) The Review Panel has all the powers necessary to perform its functions.

(4) Subject to subsection (5), nothing in this Part requires or authorises the Review Panel to consider or report to the Minister with respect to the regulatory review or the authorisation and licensing process to the extent that the review or process led to any decision publicly announced by the Minister before the commencement of this Part.

(5) Subsection (4) does not prevent the Review Panel performing its functions under section 10.2A.3(1)(b) to the extent that those functions include considering and reporting on the process that led to the decision to extend the current public lottery licence until 30 June 2008 (the extension process), if the Review Panel considers that considering and reporting on the extension process is relevant to considering and reporting on the authorisation and licensing process.

In carrying out its extensive functions in relation to the regulation of gambling, the Commission must gather information and in certain circumstances permit interested persons to participate in that exercise. It has been given ample powers to do so, including holding hearings and making reports. It may hold hearings in public or private, as it determines: subsec 10.1.22(1). The way in which Parliament has controlled this administrative discretion, however, may cast some light on the present issues. Under subsec 10.1.22(2) a large range of
very important matters to do with gambling regulation are prima facie to be the subject of public hearings rather than private hearings – unless “special circumstances” impel the Commission to choose privacy. Similarly, the provisions of subsec 10.1.22(3) guide the exercise of this discretion by the Commission, by permitting a private hearing where the interests of justice or the public interest require it.

I think there is also significance for the present questions in the provisions of para 10.2A.11.1(b) of the Act, regulating the tabling of reports given by the Review Panel to the Minister under sec 10.2A.10. The Minister is obliged to table these reports, which of their nature will largely be concerned with questions of probity and process, but may also touch upon matters of administrative efficiency. That is, the Act creates a system whereby the Commission regulates certain gambling activities, the Review Panel scrutinizes the Commission, and reports to the Minister – who communicates such reports to the Houses of Parliament.

The qualification made by subsec 10.2A.11(3) to the obligation of the Minister to table Review Panel reports is of some textual and contextual importance in construing the statutory secrecy provisions about which I have been asked. First, it is significant that the Minister is given a discretion (“may exclude”) whether to redact a Review Panel report before tabling it. Second, the only permitted redactions under this provision are “protected information” (as to which see below) and legal professional privilege. (For the reasons touched on in my earlier Opinion, matters attracting legal professional privilege, say, in a court of law may not be beyond compulsory production in a House of Parliament – but legislation such as para 10.2A.11(3)(b) of the Act may of course affect that position. This category is of no other relevance to the present issues.)

The critical provisions which seem to have produced some conflict between the demands of the Select Committee on Gaming Licensing and the positions of the various personages refusing to produce documents, as noted in my earlier Opinion, are thus to be read in the context of other provisions of the Act. As to those other provisions quoted or paraphrased above, the following general and preliminary comments may be made concerning their indications for statutory secrecy as it may affect parliamentary privilege. (I use “parliamentary privilege” in the sense, here, of the powers of a chamber of parliament peculiar to its legislative and scrutinizing functions.)

It is obvious from the nature of the tasks to be carried out by the Commission and the Review Panel that, from the very nature of the subject matter and the possible outcomes, much information already in the public domain, as well as a great deal of data about weighty matters of private commerce and confidential administration, will be considered, weighed and adjudicated by those bodies. At a very high level of generality, these tasks are required to be performed for the purposes of dealing with social activities which attract pointed political concern. Gambling is in itself a matter of abiding governmental concern, not least because of the social controversy (eg enjoyment on the one hand, disapprobation on the other) that it arouses. The explicit legislative concerns seen in the provisions of the Act quoted and paraphrased above include the perceived mischief of excessive gambling as it affects players, their families and connexions. Less explicit, but nonetheless contextual, is the enacted fact that Victoria derives considerable taxes and charges from gambling activities and their regulation. Finally, the legislative concerns are relevant as well to the control and promotion of...
of recreation and tourism – matters nowadays of perennial interest to government.

12 In short, these provisions of the Act demonstrate a detailed and controlled regulation of activities which are the stuff, themselves, of everyday social and political debate, of formal parliamentary consideration (eg the Act itself) and of periodical electoral importance. This is the description of activities which one would ordinarily expect would never be placed by Parliament itself beyond the scrutiny of its own Houses. Plain words or necessary implication, in any enactment claimed to have done so, should be required before reaching such a counter-intuitive result.

13 The words in question are to be found in secs 10.1.30 and 10.1.34, as follows:-

10.1.30 General duty of confidentiality

(1) A regulated person must not, directly or indirectly, make a record of, or disclose to someone else, any protected information acquired by the person in the performance of functions under a gaming Act or gaming regulations.

   Penalty: 60 penalty units.

(2) Subsection (1) does not apply to—

   (a) a record or disclosure made in the performance of functions under a gaming Act or gaming regulations; or

   (b) a record or disclosure permitted or required to be made by or under another provision of this Division.

10.1.34 Third party disclosures

(1) A person (other than a regulated person) to whom protected information is disclosed by a regulated person must not make a record of, or disclose to someone else, any of the information.

   Penalty: 60 penalty units.

(2) Subsection (1) does not apply to—

   (a) a record or disclosure made with the prior written authorisation of the Commission or the Minister; or

   (b) a record or disclosure made by an enforcement agency or a gambling regulator in the performance of functions of the agency or regulator (as the case requires); or

   (c) protected information that has been given in evidence or produced before a court.

14 The important category of “regulated person”, being the subject of sec 10.1.30 and defining the other kinds of persons who are the subject of sec 10.1.34, is defined in subsec 10.1.29(1) to mean, among others, the Commission, a commissioner, the Minister, Departmental employees, persons acting on behalf of the Commission or the Commissioner and a member of the Review Panel. It is striking from this definition that the general duty of confidentiality imposed by sec 10.1.30 thus binds the very persons who, as noted above, are involved in the scheme of regulation, supervision, scrutiny and report (potentially culminating in tabling reports in Parliament) by which the Act is administered, the probity and efficiency of that administration are checked and Government policy is implemented.

15 The pivotal concept of “protected information”, which is the object of both secs 10.1.30 and 10.1.34, is defined in subsec 10.1.29(1) to mean “(a) information with respect to the affairs of any person; or (b) information with respect to the
establishment or development of a casino”. It can be seen at once that para (a) of this definition comprehends a very large, if not unlimited, range of information. In particular, I advise that “the affairs of any person” in the context of the Act will certainly include matters concerning the conduct and character, antecedents and dealings, of both natural persons and corporations involved in the gambling industry. Further, in my opinion the expression could well – although not so certainly – extend to include the doings, acts or omissions, of anybody involved in the administration of the Act or the implementation of Government policy in relation to gambling. Thus, by way of example only, if information had been gathered concerning contact between a gambling entrepreneur and a Government official charged with the administration of the Act, both sides of the dealing would fall within the class of protected information.

16 It is plain that information under para (b) of “protected information” will include administrative as well as private commercial matters – because the establishment or development of a casino involves governmental and regulatory, as well as commercial, activities.

17 Subject only to the doubts expressed above concerning the extension of protected information to encompass administrative conduct by a person, I therefore advise that secs 10.1.30 and 10.1.34 prohibit (and criminalize) the recording or disclosure of a large range of information critical to an informed understanding of how the gambling industry is operating, how the regulation of it under the Act is proceeding, and how that regulation might be improved – all being matters of keen and abiding public and political interest.

18 The question, then, is whether the “someone else” in subsecs 10.1.30(1) and 10.1.34(1) should be read to include the Council, Members of the Council, committees of the Council (including the Select Committee on Gaming Licensing) and parliamentary staff assisting those persons. Obviously, as a matter of literal English, the phrase “someone else” does include all other persons on the planet. On the other hand, it is by no means obvious that, say, the Council as a political organ constituted by natural persons could be – literally or colloquially – within the ordinary English of “someone”. And if the Council were not within that language, then it would be odd, on one view of the matter, to imply permission to disclose to the Council but not to any person constituting or assisting the Council.

19 Further important context is supplied by the exceptions provided in subsecs 10.1.30(2) and 10.1.34(2). As to the first, it essentially permits “a gaming Act or gaming regulations” or “another provision of this Division” (ie in the Act itself) to authorize the recording or disclosure of protected information. There are no such provisions referring to the Council or any of its committees in the Act, unless the provisions noted above for the tabling of reports in Parliament were seen in that light.

20 In my opinion, one would simply not expect legislation such as the Act, or for that matter any legislation or delegated legislation concerning gaming and its regulation, to be the place where radical truncation was to be carried out of the constitutional functions of the Houses of Parliament. Clearly, that effect could be achieved by legislation, and the core issue in answering the present questions is whether the Act has done so. But it is appropriate to start with some scepticism that a fundamentally important power, part of the essential character of the Houses of Parliament, has been swept away by a general expression (“someone else”). The scepticism is properly sharpened by the query why Parliament would
have intended these statutory secrecy provisions to have frustrated parliamentary scrutiny of Government policy and its implementation on the topic of gambling and its regulation. After all, as noted above, the Act contains a number of important provisions highlighting Parliament’s manifest perception that this is a topic of wide social importance, governmental significance and parliamentary concern.

21 The second set of exceptions, found in subsec 10.1.34(2), tend, in my opinion, further to increase the scepticism that Parliament has indeed stripped its own Houses of what was hitherto its long established power to gather information so as to scrutinize the workings of the Executive, as well as to consider the efficacy of its own legislation.

22 Under para 10.1.34(2)(a), in effect a discretion is given to the Commission and the Minister to grant prior written authorisation so as to except the recording or disclosure of protected information from constituting a criminal offence. This, with respect, may make a lot of sense in relation to the dealings of the Commission and the Minister with other regulators, in Victoria and elsewhere, and for a number of official purposes. But the notion that by these general provisions the Commission – ultimately accountable via tabled reports to the Houses of Parliament – could itself decide whether to give prior written authorisation or not, and thus to determine whether the Houses of Parliament could obtain certain information, is puzzling to say the least.

23 More puzzling, and of larger constitutional significance, is the notion that these provisions should be read so as to give the Minister a similar power to pick and choose what sensitive information should be given to a House of Parliament. Put simply, the irreducible centre of responsible government is not only the mere membership of Ministers in a House of Parliament, but also, stemming from and based on that membership, the amenability of Ministers to questioning in a House (and by extension and delegation, by a committee). Further, there is such importance to this rôle, that as a matter of reasonable necessity, explained eg in Egan v Willis (1996) 40 NSWLR 650, (1998) 195 CLR 424, a Minister who failed to assist his or her House in this regard could well be subject to coercive measures such as suspension from its service.

24 For these reasons, in my opinion the highly specific, indeed peculiar, aspect of parliamentary privilege in question (viz the power, for the exercise of responsible government, to compel persons to attend to be questioned and the production of documents) should not be included within the completely general prohibition of disclosure contained in secs 10.1.30 and 10.1.34 of the Act. So to interpret those provisions would not be purposive, given the evident purpose of the Act to systematise and enhance the accountability of gambling industry participants and their regulators. I stress, in any constitutional or legal consideration of accountability, there can be no higher organ of government than each of the Houses of Parliament – except for the organ en masse, so to speak, constituted by the voters at periodical elections. The impracticibility or undesirability of complete and uncontrolled availability of information to all electors heightens the functional importance of its availability to Members of Parliament, as the electors’ representatives.

25 Another aspect of the second class of exceptions concerns protected information given in evidence or produced before a court: para 10.1.34(2)(c). In the exercise of interpreting the scope of the offences created by secs 10.1.30 and 10.1.34, this exception might be thought to cut both ways. In favour of reading the
offence provisions widely enough to prohibit disclosure to a House of Parliament, it might be said that the explicit exclusion for disclosure to a court and subsequent disclosures of that information bespeaks an intention that otherwise the general words should be universally comprehensive. In my opinion, that approach would give too great a weight to the lower rank canon of statutory interpretation “expressio unius est exclusio alterius”.

Against that wide meaning as a result of the exception concerning the administration of justice, it first may be inquired how one would read the Act as intending to indicate such a contrast between a willingness for protected information to be given in judicial proceedings (as to which see below) which could not ever be given in parliamentary proceedings (subject to a curious Executive discretion).

Next, one notes the excessive literal width of the definition of the word “court” in subsec 10.1.29(1), at least on my reading of it. The expression is defined to include “any tribunal, authority or person having power to require the production of documents or the answering of questions”. In modern usage, the possibility of a House of Parliament being a “tribunal” or “authority” can be discarded. In some contexts and other circumstances, it has been doubted whether bodies such as a court, and by extension such as a House of Parliament, would naturally fall within the description “person”. In the present context, it is worth recalling that the arguments in favour of the offence provisions prohibiting disclosure to the Council of protected information under the Act proceeds upon the premise that the Council – or the natural persons constituting or assisting it – is or are “someone else”. Taking this argument consistently, presumably those urging it would have to describe the Council and such persons as also being a “person”.

In my opinion, the idea that Parliament has included its own Houses within its definition of “court” in the Act should be rejected. Not only is it startling, and once again a remarkably bland and sideward fashion of truncating fundamental constitutional equipment, it is also at odds with the enacted text. By this, I refer to the heading of sec 10.1.31, which reads as follows:-

**10.1.31 Disclosure in legal proceedings**

> Subject to subsection (2), a regulated person is not, except for the purposes of a gaming Act or gaming regulations, required—
> (a) to produce in a court a document that has come into the person's possession or under the person's control; or
> (b) to disclose to a court any protected information that has come to the person's notice—
> in the performance of functions under a gaming Act or gaming regulations.

A regulated person may be required to disclose protected information to a court or produce in court any document containing information if—

> (a) the Minister certifies that it is necessary in the public interest that the information should be disclosed to a court; or
> (b) the person to whose affairs the information relates has expressly authorised it to be disclosed to a court.

The heading is part of the enacted text: subsec 36(1) of the *Interpretation of Legislation Act 1984* (Vic). I cannot accept that the epithet “legal” in the expression “Disclosure in legal proceedings” should be construed to include
proceedings in a House of Parliament or any of its committees including the Council’s Select Committee in this case. As a matter of ordinary legal usage, there is sufficient substance in the admittedly imprecise and incomplete notion of separate powers or arms of government, to demarcate “legal proceedings” apart from the legislative and scrutinizing functions of a House of Parliament. It is true that the extended definition of “court” in the Act does require reading “legal proceedings” as including quasi-judicial as well as non-judicial administrative exercises, but it would be going too far to read the heading of sec 10.1.31 as referring to parliamentary proceedings by combination of silence and the fictitious express definition of “court”.

30 Furthermore, purposively it would be extraordinary to contemplate the application of sec 10.1.31 to the case of parliamentary proceedings, by reason of the nature of the exception provided in subsec 10.1.31(2) for disclosure “to a court”. Under para 10.1.32(a), a requirement to disclose or produce would depend on the Minister certifying that it is necessary “in the public interest”. Again, this is a topsy-turvy world of responsible government if the offence provisions and the treatment of legal proceedings were construed so as to prevent disclosure to the Council subject to treating proceedings in the Council as “legal” proceedings. Ministers’ responsibility to their Houses of Parliament require them to provide information (with established exceptions such as Cabinet secrets), rather than them to choose whether they will do so, without the possibility of sanction or coercion.

31 Next, under para 10.1.31(2)(b), a requirement to disclose “to a court” would depend on the person to whose affairs the protected information relates expressly authorising the disclosure. Although it is, in my opinion, within the constitutional power of the Victorian Parliament to give individuals the right to veto the supply of information to its own Houses, it is such a startling reversal of the expectation that Parliament would ensure that its own Houses remained capable of finding out what is going on, that scepticism should be the first response. Next, given that ordinarily confidentiality is no justification to resist compulsory disclosure in either parliamentary or judicial proceedings, it would be curious if this statutory reversal of that position for “legal proceedings” should also be a silent and sideway erection of a confidentiality exclusion for participants and regulators of the gambling industry – no reason appearing (indeed, the contrary) in the Act so to favour secrecy from Members of Parliament of their affairs and conduct.

32 The better reading, by far, of the provisions of subsec 10.1.31(2), therefore, is that they have no application whatsoever to parliamentary proceedings. It should follow that the scheme of Division 6 of Part 1 of Chapter 10 of the Act contra-indicates any intention to deprive the Houses of Parliament of their power to obtain information.

33 Further context casting doubt, for somewhat similar reasons, on the contention that the offence provisions (ie secs 10.1.30 and 10.1.34) of the Act would criminalize disclosure of protected information to the Council or the Select Committee is supplied by secs 10.1.32 and 10.1.33. As to the first, the similar reasoning focusses on the oddity of the Commission or the Minister obtaining the power to frustrate parliamentary enquiries by exercise of their discretion “in the public interest” or depending whether they considered disclosure to be “not unreasonable”. As to the second, statistical information, about all manner of activities within the legislative competence of the Victorian Parliament, should probably nowadays be considered essential as information available to Members
of Parliament, including for their scrutiny and testing. Yet the discretion given to the Minister or the Commission whether to publish “disaggregated statistical information” (thereby, I suppose, permitting inferences concerning particular persons’ affairs to be drawn) is presumably regarded by those arguing for the offence provisions to prevent disclosure in parliamentary proceedings, also to prevent the Houses of Parliament from requiring, say, the primary data which were used to produce so-called aggregated statistical information. No sensible purpose appears from the Act for such a reversal of the normal relationship between scrutinizing parliamentary chambers and the Executive.

34 Finally as a matter of context, and placing an overall emphasis on the seriously political nature of the topics upon which it has been argued (contrary to my opinion) that the Act prevents the Council from obtaining protected information, there are the purpose, objectives and outline of the Act in sec 1.1. Together with sec 1.6, binding the Crown, these general provisions reinforce the constitutional expectation that the Council and the Select Committee have not been prevented by the Act itself from obtaining such information as Members resolve they should see in order to scrutinize the implementation of Government policy, administration of the Act and the social mischief or phenomena involved in gambling.

35 In my opinion, the reasons given above support the view that the offence provisions did not provide a good ground for the position taken by the Attorney-General, the Solicitor-General, the Chief Commissioner of Police and the Executive Commissioner of the Victorian Commission for Gambling Regulation, as noted in my earlier Opinion.

36 The strongest consideration against the view I have reached, it should be noted, is found in the powers of redaction given to the Minister by Parliament, with respect to reports to be tabled in the Houses, under subsec 10.2A.11(3), as noted in para 9 above. On balance, I do not regard its provisions as so affecting the contextual interpretation I have set out, as to demonstrate that Parliament has actually deprived itself (ie its Houses) of the capacity to compel protected information to be produced for parliamentary enquiries. In particular, I doubt whether the Ministerial discretion indicates such an outcome, especially as the contrary argument, again, reverses the expected relationship in a system of responsible government, as between Ministers and their Houses. There is no provision in the Act purporting to regulate how the Houses of Parliament might react by debate or otherwise to a tabled Review Panel report. Nor would one expect one Parliament to presume to bind future Parliaments (or itself, for that matter) in that regard. And debate on any report could not sensibly proceed on a take-it-or-leave-it basis: critical scrutiny necessarily involves the capacity to question what one has been told, or to enquire for further and better particulars.

37 On the other hand, I am conscious that these report-redaction provisions should not be rendered nugatory by an interpretation forcing the Minister, in effect, to produce, apart from the tabled report, the protected information he or she may have redacted from it. There is no straightforward answer to this aspect of the contextual interpretation task. On balance, I repeat that these provisions are in my opinion inadequate to outweigh the matters discussed above.

38 My attention has been drawn to the express inclusion of committees of Parliament as exclusions from statutory secrecy provisions in the Accident Compensation Act 1985 (Vic) and the Occupational Health and Safety Act 2004 (Vic). It would be drawing a long bow to reason from these provisions that the
Act being interpreted in this Opinion should hear a different meaning from that meaning otherwise to be preferred. Further, I note the curiosity that the express provisions in subpara 155(2)(c)(iic) of the former Act and subpara 11(1)(d)(iv) of the latter Act refer solely and specifically to a “committee of Parliament” – query, as opposed to a House? Committees are delegates, that report to Houses. Is silence about Houses in these provisions to be read as prohibiting disclosure to a House by its own committee? That would be absurd. It illustrates the tenuous nature of any interpretation argument directed to the offence provisions in the Act considered in this Opinion, being an argument derived from provisions in other statutes.

39  (1) As a general principle, would statutory secrecy provisions of Acts of Parliament prevent the disclosure of information to the Legislative Council pursuant to an order for the production of documents, or any parliamentary committees?

They may or may not, depending completely on their proper interpretation.

40  There is undoubtedly legislative competence for the Victorian Parliament to enact statutory secrecy provisions which would have this effect. The question always will be whether the enacted text, in context, has done so. The interpretation exercise should start with a requirement for plain words or necessary implication before concluding that such fundamental attributes of parliamentary privilege (see para 10 above) have been diminished.

41  (2) Do the confidentiality provisions contained in Division 6 (sections 10.1.29 to 10.1.34) of Part 1 of Chapter 10 of the Gambling Regulation Act 2003 apply to a select committee of the Legislative Council or any other parliamentary committee?

No.

42  (3) Is there any reason to prevent the disclosure of “protected information” by a “regulated person” as both defined in section 10.1.29(1) of the Act to a Parliamentary committee?

None is disclosed in these provisions, which do not have this effect.

43  (4) Is there any reason to prevent a “regulated person” or any other person to give evidence to a parliamentary committee on matters which come within the ambit of the confidentiality provisions of the Act?

No, as in 3 above.

44  (5) Similarly, is there any reason to prevent a person other than a regulated person from providing to a parliamentary committee protected information which has been disclosed to them by a regulated person, which is prohibited by section 10.1.34 of the Act?

No, as in 3 and 4 above.

45  (6) If the answers to 4 and 5 are yes, would any person so giving evidence and providing any material or other information to the committee be protected by parliamentary privilege?
However, the very existence of the protection (based on Article 9 of the Bill of Rights) illustrates the fundamental importance of these parliamentary proceedings.

(7) If the answers to 4 and 5 are yes, should a committee formally summons a witness to give evidence or is an invitation sufficient and should the witness be sworn or affirmed when giving evidence?

Unnecessary to answer, but see 6 above.

Also, the provisions of sec 19A of the Constitution Act 1975(Vic) are facultative rather than mandatory. The general position as a matter of pre-existing parliamentary power and privilege and thus protection of witnesses and providers of information) is preserved by subsec 19A(9).

(8) Do the “other permitted disclosures” provisions in section 10.1.32 of the Act apply in relation to the provision of information to a parliamentary committee?

No.

See para 33 above. Further, none of the bodies named in subsec 10.1.32(1) comprehends a House of Parliament.