



Scrutiny of Acts and Regulations Committee

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SCRUTINY OF ACTS AND
REGULATIONS COMMITTEE

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**Scrutiny of Acts and
Regulations Committee**

**Subordinate Legislation
Regulations 2001**

**Bibliography
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**EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS OF THE
LEGISLATIVE COUNCIL**

TUESDAY, 14 DECEMBER 1999

- 26 SCRUTINY OF ACTS AND REGULATIONS COMMITTEE**
— By leave, the Honourable M.R. Thomson moved, by leave, That the Honourables M.A. Birrell, M.T. Luckins, J. Mikakos and C.A. Strong be members of the Scrutiny of Acts and Regulations Committee.

Question — put and resolved in the affirmative.

WEDNESDAY, 26 SEPTEMBER 2001

- 5 SCRUTINY OF ACTS AND REGULATIONS COMMITTEE**
— The Honourable M.M. Gould moved, by leave, That the Honourable M.T. Luckins be discharged from attendance upon the Scrutiny of Acts and Regulations Committee and that the Honourable A.P. Olexander be added to such Committee.

Question — put and resolved in the affirmative.

**EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY**

TUESDAY, 14 DECEMBER 1999

- 8 JOINT INVESTIGATORY COMMITTEES** — Motion made, by leave, and question — That —
(g) Ms Gillett, Mr Carli, Ms Beattie, Mr Robinson and Mr Dixon be members of the Scrutiny of Acts and Regulations Committee.

(*Mr Batchelor*) — put, after debate, and agreed to.

TUESDAY, 25 SEPTEMBER 2001

- 8 MEMBERSHIP OF JOINT INVESTIGATORY COMMITTEES** — Motion made, by leave, and question — That:
(6) Mr Dixon be discharged from attendance on the Scrutiny of Acts and Regulations Committee and that Mr Maclellan be appointed in his stead.

(*Mr Batchelor*) — put, after debate, and agreed to.

TERMS OF REFERENCE

The statutory functions of the Scrutiny of Acts and Regulations Committee as set out in section 4D of the *Parliamentary Committees Act 1968* (Vic) are –

- (a) to consider any Bill introduced into a House of the Parliament and to report to the Parliament as to whether the Bill, by express words or otherwise –
 - (i) trespasses unduly upon rights or freedoms; or
 - (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers; or
 - (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions; or
 - (iiia) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000*.
 - (iiib) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2000*.
 - (iv) inappropriately delegates legislative power; or
 - (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny; and
- (b) to consider any Bill introduced into a House of the Parliament and to report to the Parliament –
 - (i) as to whether the Bill by express words or otherwise repeals, alters or varies section 85 of the *Constitution Act 1975* (Vic), or raises an issue as to the jurisdiction of the Supreme Court;
 - (ii) where a Bill repeals, alters or varies section 85 of the *Constitution Act 1975* (Vic), whether this is in all the circumstances appropriate and desirable; or
 - (iii) where a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975* (Vic), but where an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue; and
- (c) such functions as are conferred on the Committee by the *Subordinate Legislation Act 1994* (Vic); and
- (ca) such functions as are conferred on the Committee by the *Environment Protection Act 1970* (Vic); and
- (d) to review any Act where required so to do by or under this Act, in accordance with terms of reference under which the Act is referred to the Committee.

PRINCIPLES OF REGULATION REVIEW

21. Review of statutory rules by the Scrutiny Committee

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

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CHAIRS' FOREWORD

This *Annual Review* summarises the operations of the Regulation Review Subcommittee during 2001. The Regulation Review Subcommittee had an extremely heavy workload during that year with responsibility for scrutinising regulations and conducting the *Inquiry into the Subordinate Legislation Act 1994*.

While the Regulation Review Subcommittee did not make any adverse reports to Parliament in 2001, the Subcommittee sent 27 letters to Ministers seeking clarification of issues or raising concerns. Ministerial responses have generally been prompt and most helpful to the Regulation Review Subcommittee. The *Annual Review* seeks to identify areas of concern and continues to include a number of Practice Notes in Appendix 3 in order to offer department and agency officers some guidance as to the Regulation Review Subcommittee's expectations. While the Regulation Review Subcommittee considers that the quality of regulations made in 2001 and accompanying documentation has been of a high standard, there remains scope for improvement in some areas. In particular more careful attention needs to be given to the preparation of Regulation Impact Statements (RISs) and the requirements which RISs must meet both under the *Subordinate Legislation Act 1994* (Vic) and the *Premier's Guidelines*.

Conducting the *Inquiry into the Subordinate Legislation Act 1994* has proved challenging and most worthwhile. In July 2001 a delegation from the Regulation Review Subcommittee met with key players in the regulatory systems of selected jurisdictions in the United States of America. These meetings were invaluable and have influenced some of the Committee's recommendations. The Committee's *Report on the Subordinate Legislation Act 1994* was tabled in Parliament in September 2002. It assesses regulation-making processes in Victoria and makes recommendations which will enable Victoria to achieve best practice standards set by the Organisation for Economic Co-operation and Development. The Regulation Review Subcommittee looks forward to the Government's response to the Committee's Report.

I take this opportunity to thank previous and current members of the Regulation Review Subcommittee for their work and contribution to the examination and review of regulations made during 2001 and to the *Inquiry into the Subordinate Legislation Act 1994*. These members include Ms. Mary Gillett MLA, Mr. Tony Robinson MLA, the Hon. Robert Maclellan MLA and the Hon. Andrew Olexander MLC. I note that part way through the Regulation Review Subcommittee's consideration of regulations made in 2001 Mr. Martin Dixon, MLA and the Hon. Maree Luckins, MLC resigned from the Committee and I wish to thank them for their participation and contribution to the scrutiny of regulations and to the Inquiry.

I also wish to thank our staff for their commitment and dedication to the Regulation Review Subcommittee. I wish to thank our Legal Adviser, Ms Jenny Baker for providing the Subcommittee with legal advice on regulations and for her excellent research and analysis of issues for the *Report on the Subordinate Legislation Act 1994*. I also wish to thank Mr. Matthew Groves and Ms Fiona Lewandowski for providing assistance with the review of regulations made during 2001 and Mr Simon Dinsberg and, more recently, Ms Sonya Caruana for providing administrative support to the Regulation Review Subcommittee. Thanks also to Mr. Mark Roberts, Mr. Andrew Campbell and Mrs Andrea Agosta for assisting with proofreading.

**Hon. Jenny Mikakos, MLC
Chair,
Regulation Review Subcommittee
September 2002**

**Ms Mary Gillett, MLA
Chair,
Scrutiny of Acts and Regulations Committee
September 2002**

INTRODUCTION

This *Annual Review* examines the major issues arising out of the review and scrutiny by the Regulation Review Subcommittee of regulations made in Victoria in 2001.

What is the Regulation Review Subcommittee?

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

What are ‘regulations’?

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

The term ‘regulations’ encompasses a variety of legislative instruments such as statutory rules, court rules, local laws, orders-in-council, proclamations, notices, guidelines, ministerial directions, codes of practice and so on. Regulations are made by the Executive and other non-Parliamentary bodies including government departments and statutory authorities and agencies in accordance with Parliament’s authority as contained in Acts of Parliament.

Parliamentary Oversight

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

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

Parliament authorises the Executive to make regulations because there is insufficient time to debate and pass all the legislation which needs to be enacted, especially where the proposed legislation is very technical or scientific. While regulations are sometimes perceived to be of lesser importance than Acts of Parliament, regulations do control and prohibit the conduct of citizens and may adversely affect the rights and liberties of citizens in much the same way as Acts of Parliament. The potential for abuse of the regulation-making power and erosion of citizens' rights always exists. As Mr Justice Stephen commented in *Watson v. Lee*² the history of delegated legislation–

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

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

Victoria has had a committee to scrutinise regulations since 1956.⁴ From 1982 to 1992 the Legal and Constitutional Committee was responsible for scrutinising regulations. In 1992, the Scrutiny of Acts and Regulations Committee was created by the *Parliamentary Committees (Amendment) Act 1992* (Vic) and it took over the scrutiny of regulations.

² (1979) 155 CLR 374 at 394.

³ Australian jurisdictions which examine regulations and bills include the ACT, the Commonwealth, Queensland and Victoria and those committees include – the Standing Committee on Legal Affairs; Scrutiny of Bills Committee (Cth); Senate Committee on Regulations and Ordinances (Cth); Scrutiny of Legislation Committee (Qld) and Scrutiny of Acts and Regulations Committee (Vic).

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

Currently the Regulation Review Committee in New South Wales reviews regulations only. However this may change if the *Legislation Review Amendment Bill 2002* is passed by the Legislative Council. (The Bill was passed by the Legislative Assembly on 27 June 2002.) Under this Bill the Regulation Review Subcommittee will be renamed the Legislation Review Committee and its role will involve the scrutiny of bills in addition to the scrutiny of regulations.

⁴ *Subordinate Legislation Subcommittee Act 1956* (Vic).

Scope of the Subordinate Legislation Act 1994

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

- Regulations made, approved or consented to by the Governor-in-Council;
- Regulations which may be disallowed by the Governor-in-Council excluding regulations made by local authorities;
- Rules relating to a court or tribunal or the procedure, practice or costs of a court or tribunal;
- Instruments prescribed to be statutory rules by the Governor-in-Council; and
- Instruments deemed to be statutory rules by their own authorising Act.

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

- the procedures of the *Subordinate Legislation Act 1994* (Vic) but remain subject to any requirements contained in legislation which empowers them to be made;
- scrutiny by the Regulation Review Subcommittee and generally not subject to Parliamentary review. However it should be noted that some regulations which fall outside the definition of ‘statutory rule’ are subject to specific Parliamentary review requirements. For example, planning schemes (and amendments) must be tabled in Parliament for 10 sitting days.⁶

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

⁵ *Subordinate Legislation Act 1994* (Vic), s. 3.

⁶ *Planning and Environment Act 1987* (Vic).

⁷ This Report was tabled in Parliament in September 2002.

Role of the Subcommittee

The Regulation Review Subcommittee examines and reviews –

- regulations within the meaning of ‘statutory rule’ contained in the *Subordinate Legislation Act 1994* (Vic);
- State Environment Protection Policies and Waste Management Policies made under the *Environment Protection Act 1970* (Vic);
- Directions made under the *Public Sector Management and Employment Act 1998* (Vic).

The Regulation Review Subcommittee meets at least twice each month to discuss regulations. Meetings of the Regulation Review Subcommittee are not open to the public. However the Regulation Review Subcommittee may invite members of the public or representatives from various organisations or departments and agencies to address it at one of its meetings. At its meetings the Legal Adviser presents the Regulation Review Subcommittee with written and verbal advice concerning each regulation. The Regulation Review Subcommittee members discuss each regulation and any issues and concerns. When the Regulation Review Subcommittee is satisfied that a regulation complies fully with the requirements of the *Subordinate Legislation Act 1994* (Vic) it passes a motion approving the regulation.

Where the Regulation Review Subcommittee is dissatisfied with any matters or needs clarification, it corresponds with the responsible Minister pointing out its concerns and seeking an explanation or amendment of the regulation. If the Regulation Review Subcommittee does not receive a satisfactory explanation and it has ongoing concerns with a regulation it may prepare a Report to Parliament and submit this to all members of the Committee for formal approval and adoption.⁸ The Committee may adopt or reject the Report or part of it or make any changes it thinks necessary.⁹ A Report to Parliament may include a recommendation that a regulation be amended or disallowed in whole or in part or it may simply provide information to Parliament as to the Committee’s concerns. As a regulation has already commenced operation by the time it comes before the Regulation Review Subcommittee, the power to recommend disallowance is only used in exceptional circumstances and where all other efforts of resolving the issue have failed.

Where the Committee decides to Report to Parliament and where it is of the opinion that considerations of justice and fairness require it, it may also recommend that a regulation be suspended while Parliament considers the issues contained in the Report.¹⁰ When regulations are suspended in this manner they are deemed not to have been made, which means that they have no effect and people are not required to comply with them during the period of suspension.¹¹

⁸ As a subcommittee, the Regulation Review Subcommittee has all the powers and privileges of the Committee, however it cannot report directly to Parliament.

⁹ *Parliamentary Committees Act 1968* (Vic), s. 4L(5).

¹⁰ *Subordinate Legislation Act 1994* (Vic), s. 22(1).

¹¹ *ibid.*, s. 22(5).

Disallowance

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

Scrutiny of Regulations

The Regulation Review Subcommittee scrutinises regulations after they have been made to determine whether they comply with the legislative principles specified in the *Subordinate Legislation Act 1994* (Vic).¹² These principles require the Regulation Review Subcommittee to ensure that regulations do not unduly trespass on rights and freedoms and that they comply with the procedural and practical requirements of the *Subordinate Legislation Act 1994* (Vic). The Regulation Review Subcommittee does not comment on matters involving government policy – its review focuses on the technical criteria contained in the *Subordinate Legislation Act 1994* (Vic). More specifically, under section 21 of the *Subordinate Legislation Act 1994* (Vic) the Regulation Review Subcommittee ensures that regulations –

- Are within the powers of the authorising Act;
- Do not, without clear and express authority –
 - have a retrospective effect;
 - impose a tax, fee, fine, imprisonment or other penalty;
 - purport to shift the onus of proof to a person accused of an offence;
 - provide for the sub-delegation of powers delegated by the authorising Act;
- Are consistent with the general objectives of the authorising Act;
- Do not make unusual or unexpected use of the powers conferred by the Authorising Act having regard to the general objectives of the Authorising Act;
- Do not contain any matters which should be contained in an Act of Parliament rather than subordinate legislation;
- Do not unduly trespass on rights and liberties of the person previously established by law;
- Do not make rights and liberties of the person unduly dependent on administrative rather than judicial decisions;

¹² *Subordinate Legislation Act 1994* (Vic), s. 21.

Scrutiny of Acts and Regulations Committee

- Do not authorise or require any acts or practices which may have an adverse effect on personal privacy within the meaning of the *Information Privacy Act 2000* (Vic);
- Do not authorise or require any acts or practices which may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2000* (Vic);
- Are consistent with principles of justice and fairness;
- Do not require explanation as to form or intention;
- Do not substantially or materially contravene the practical requirements of the *Subordinate Legislation Act 1994* (Vic) or the *Premier's Guidelines*¹³; and
- Are not likely to result in administration and compliance costs which outweigh the benefits sought to be achieved.

The Regulation Review Subcommittee also ensures that there has been compliance with the procedural requirements of the *Subordinate Legislation Act 1994* (Vic). Where a RIS has been prepared, some of the procedural issues the Regulation Review Subcommittee examines include whether –

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

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

¹³ Department of Premier & Cabinet, *Premier's Guidelines* (made pursuant to section 26 of the *Subordinate Legislation Act 1994* (Vic)), December 1997.

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

- the regulation is correctly exempted or excepted or whether it should have been made with a RIS;
- the regulation is exempted or excepted under the appropriate category in the *Subordinate Legislation Act 1994* (Vic);
- the exemption or exception certificate specifies the section under which the exemption or exception was granted;
- the exemption or exception certificate is signed and dated by the responsible Minister;
- the exemption certificate contains reasons for granting the exemption as required by section 9(2);
- a regulation exempted by a Premier's certificate sunsets within 12 months.

The Regulation Review Subcommittee also ensures that –

- explanatory memoranda clearly set out the nature and extent of any changes and the reasons for the changes; and
- there is compliance with all notice, gazettal and tabling requirements of the *Subordinate Legislation Act 1994* (Vic).

Scrutiny of Environment Protection and Waste Management Policies

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

More specifically State Environment Protection Policies include –

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

Until recently waste management policies made under the *Environment Protection Act 1970* (Vic) applied only to industrial waste. With changes brought about by the *Environment Protection (Resource Efficiency) Act 2002* (Vic) waste management

¹⁵ *Environment Protection Act 1970* (Vic), s. 16(1).

¹⁶ *ibid.*, s. 16(1B).

¹⁷ *ibid.*, s. 16(1C).

policies now apply to waste generally.¹⁸ Waste management policies are now enacted under s. 16A of the *Environment Protection Act 1970* (Vic).¹⁹

Waste Management Policies include policies dealing with –²⁰

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

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

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

- during a minimum period of 21 days, the EPA must publish on three occasions in a relevant newspaper – notice of intention to declare a policy. The notice must include the area affected and advise that any person affected may submit information to the EPA;
- the EPA must consider information provided to it by any person affected or likely to be affected;

¹⁸ See definition of ‘waste’ in the *Environment Protection Act 1970* (Vic), s. 4.

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

²⁰ *Environment Protection Act 1970* (Vic), s. 16A.

²¹ *ibid.*, s. 16(1).

²² *ibid.*, s. 18D(1).

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

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

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

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

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

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

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

- contains any matter in contravention of *Environment Protection Act 1970* (Vic).

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

The disallowance provisions contained in sections 23 and 24 of the *Subordinate Legislation Act 1994* (Vic) apply to State Environment Protection Polices and Waste Management Policies.²⁴ This means that the 18 sitting day deadline applies, that is the Committee must table a motion for disallowance within 18 sitting days after the Order has been tabled before that House.

Scrutiny of Directions of the Commissioner for Public Employment

The Regulation Review Subcommittee also reviews Directions made by the Commissioner for Public Employment. The Directions issued by the Commissioner for Public Employment concern the application of employment and conduct principles contained in sections 7 and 8 of the *Public Sector Management Employment Act 1998* (Vic). The employment principles require agency and public sector authority heads to establish employment processes that will ensure that –²⁵

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

The conduct principles require public sector employees to –²⁶

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

Section 40 of the *Public Sector Management Employment Act 1998* (Vic) provides that the tabling and scrutiny provisions of the *Subordinate Legislation Act 1994* (Vic) apply to Directions, thus giving the Committee the power of review. This means that

²³ *ibid.*, s. 18D(4).

²⁴ *ibid.*, s. 18D(6).

²⁵ *Public Sector Management Employment Act 1998* (Vic), s. 7.

²⁶ *ibid.*, s. 8.

if Directions do not comply with the tabling requirements or the principles of review contained in section 21 of the *Subordinate Legislation Act 1994* (Vic), the Committee may report to Parliament recommending disallowance in whole or in part or recommending amendment.

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

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

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

SIGNIFICANT ISSUES

In 2001, 176 regulations were made as well as one Industrial Waste Management Policy and four State Environment Protection Policies. The Regulation Review Subcommittee reviewed all of these and one additional Industrial Waste Management Policy made at the end of 2000. [Appendix 1](#) lists all the regulations, State Environment Protection Policies and Industrial Waste Management Policies made in 2001 and reviewed by the Regulation Review Subcommittee.

The Committee did not make any Reports to Parliament concerning regulations made in 2001. While the Committee did not make any Reports to Parliament, where the Regulation Review Subcommittee had concerns with regulations it wrote to responsible Ministers seeking clarification on each occasion. The Committee is pleased to report that Ministers responded promptly to all concerns expressed by the Regulation Review Subcommittee. [Appendix 2](#) contains a list of Regulation Review Subcommittee correspondence concerning regulations made in 2001.

Inconsistency with Principles of Justice and Fairness

Under section 21(1)(h) of the *Subordinate Legislation Act 1994* (Vic) the Regulation Review Subcommittee examines regulations to ensure that they are consistent with principles of justice and fairness.

Example

SR 41 – Health (Infectious Diseases) Regulations 2001 deal with the protection of public health, aiming to prevent and control the outbreak of infectious diseases. The draft regulations and accompanying RIS included a provision which enabled a medical officer, an environmental health officer or a nurse employed or authorised by a council to inspect children to determine whether they were suffering from pediculosis.²⁷ This provision was removed from the final version of the regulations without any further consultation with those affected.

The Regulation Review Subcommittee wrote to the Minister seeking clarification and indicating that the removal of provisions without further consultation with those affected is contrary to principles of justice and fairness and constitutes a possible breach of section 21(1)(h) of the *Subordinate Legislation Act 1994* (Vic). The Minister confirmed that while there was no consultation with schools the inspection provision was removed as a result of comments made during the RIS process. The Minister indicated that as a consequence of the removal of the inspection provision

²⁷ Head Lice.

schools will be able to develop their own policies on head lice. The Minister acknowledged the concern expressed by some schools and indicated that the Department will continue to monitor and assess the impact of the regulations on the community.

While the Regulation Review Subcommittee accepted this response and decided not to Report to Parliament on this occasion, it considered the removal of a provision without further consultation with those affected may constitute a breach of section 21(1)(h) of the *Subordinate Legislation Act 1994* (Vic).

Subcommittee's letter

SR 41 Health (Infectious Diseases) Regulations 2001

At its meeting on 8 October 2001 the Regulation Review Subcommittee examined the above Regulations, as it is required to do so under the Subordinate Legislation Act 1994.

The Health (Infectious Diseases) Regulations 2001 (the Regulations) deal with the protection of public health, aiming to prevent and contain the outbreak of infectious diseases. Some provisions of the Regulations deal specifically with schools and children's services centres, aiming to prevent and restrict the transmission of infectious diseases amongst school children. Regulation 13, for example, requires parents or guardians to notify the school or centre if their child is infected with, or has been exposed to, an infectious disease listed in Schedule 6.

Of particular concern to the Subcommittee is the removal of Regulation 15 from the final version of the Regulations.

As initially drafted, the Regulations contained Regulation 15 which enabled a medical officer, an environmental health officer or a nurse employed or authorised by a council to inspect children to determine whether they were suffering from pediculosis. Regulation 15 provided as follows –

15. Power to Inspect Students for Pediculosis

A medical officer of health, an environmental health officer or a nurse employed or otherwise authorised by a council may at any reasonable time inspect any child at a school or children's services centre, to determine whether the child is suffering from pediculosis.

The Regulation Impact Statement indicated that it was necessary to have a provision devoted exclusively to head lice "due to the rapidity with which the condition spreads among school children". The Regulation Impact Statement made clear that the only modification to be made to the provisions dealing with head lice was to remove the requirement for a registered general nurse "to be employed by the council" to allow a nurse "to be employed or authorised by a council". This change was made because not all councils provided for this service and this resulted in "delays and confusion for schools in managing infestations of head lice". The Regulation Impact

Statement made clear that this change was made to allow schools to manage head lice infestations appropriately.

Thirty Four submissions were received in response to the Regulation Impact Statement. Thirteen of those submissions made comments concerning Regulation 15, in its modified form. These included the Maroondah City Council; Central Goldfields and Pyrenees Shire; Ararat Rural City Council; City of Ballarat; Debbie Kirwan (a parent); Megan Counahan; City of Latrobe; Australian Institute of Environmental Health; City of Whittlesea; Moreland City Council; Nilumbrik Shire Council; Helen Walsh (Department of Human Services) and Rural city of Wangaratta. Some of these submissions suggested that Regulation 15 required clarification and strengthening. Only five submissions suggested that Regulation 15 should be removed and three of those supported the removal of Regulation 15 on the basis that there should be separate guidelines or regulations dealing specifically with the issue of head lice.

The Subcommittee understands that a panel meeting of Department officers was held on 26 April of this year. At that meeting a decision was made by Department officers to remove Regulation 15 on the basis of the comments made in the submissions received in response to the Regulation Impact Statement.

As far as the Subcommittee understands prior to making the decision to remove Regulation 15 from the Regulations, no consultation was undertaken with those affected by the removal of the Regulation. This means that schools and councils were only given the opportunity to comment on the Regulations as originally drafted, that is, including Regulation 15. The removal of Regulation 15 from the Regulations constitutes a significant change and a change made without providing schools, councils and parents with an opportunity to comment. The Department has indicated to the Subcommittee that the decision to remove Regulation 15 “satisfied all submissions received”. From the evidence presented to the Subcommittee, the removal of Regulation 15 appears to have been an overly simplistic way of dealing with submissions expressing concerns with proposed Regulation 15.

The Subcommittee is of the view that the removal of Regulation 15, without further consultation with those directly affected by the Regulation constitutes a possible breach of section 21(1)(h) of the Subordinate Legislation Act 1994 which requires regulations to be consistent with principles of justice and fairness.

The Subcommittee seeks your advice as to whether any consultation took place with schools and councils prior to the decision to remove Regulation 15 from the Regulations. If no consultation took place with schools and councils prior to the decision, the Subcommittee seeks clarification as to the evidence relied upon by the Department, that schools, councils and parents actually support the removal of Regulation 15.

The Subcommittee looks forward to receiving your response.

Minister's Response²⁸

SR 41 – Health (Infectious Diseases) Regulations 2001

Thank you for your letter dated 18 October 2001 in which you sought my advice as to whether any consultation took place with schools and councils prior to the decision to remove Regulation 15 from the above mentioned Regulations.

As you are aware, the previous regulation provided the power to designated staff from local councils to inspect children for head lice without parental consent. Even though councils had the power to carry out inspections without consent, there was no requirement that they provided this service. When drafting the Regulatory Impact Statement (RIS) it was proposed to broaden the inspection power to appropriate staff either employed or authorised by council. This change would have enabled schools and children services centres to have employed (either paid or voluntary services) staff directly to undertake these inspections if desired. Over the years a number of these services had complained that the regulation restricted their ability to develop their own management strategies particularly when council provided no service.

No specific consultation with schools took place outside the RIS public consultation process. The removal of the proposed regulation now enables schools and councils to develop their own policy on head lice inspections.

The removal of the regulation occurred in light of responses during the RIS process. The Department of Human Services assessed all the submissions received on the proposed regulation 15. As indicated in your correspondence, thirteen submissions were received regarding head lice. Four of these submissions related purely to the exclusion of cases (Schedule 2) and nine submissions discussed the earlier proposed regulation 15. Of these nine submissions, eight rejected the proposed change, but for differing reasons. Five of the eight submissions suggested the regulation should be removed. Reasons given included local government concern on potential legal liability issues, and suggestions that as head lice do not transmit any infectious disease, they should not form any part of the regulations.

Therefore, the majority of the submissions rejected the proposed change and most suggested it be removed. The comments in these submissions stimulated considerable discussions by the panel of senior Departmental officers about the merit of the regulation given that head lice do not transmit any infectious disease and that the regulation did not give power for inspection without the consent of parents for any other condition, either infectious or non-infectious. Based on these submissions and subsequent discussions, the view was taken that it was inappropriate and ineffective to continue to regulate in this area.

²⁸ The Minister for Health's letter to the Chair of the Subcommittee is dated 13 December 2001.

While I understand that some schools are concerned about the removal of this regulation, I should add that the requirement to obtain the consent of parents for a physical inspection of a child is an obligation under the common law and not an obligation arising as a result of any regulatory change.

As part of the ongoing evaluation of the regulations, I assure you that my Department will assess the impact within the community of the changes.

I trust that this information is of assistance to the Committee.

Non Compliance with the Subordinate Legislation Act 1994

Under section 21(1)(j) of the *Subordinate Legislation Act 1994* (Vic) the Regulation Review Subcommittee examines regulations to ensure that there is substantial compliance with the requirements of the Act and the *Premier's Guidelines*.

Example 1

SR 74 – Juries (Fees, Remuneration and Allowances) Regulations 2001 set remuneration for jurors and the fees payable for civil matters heard by a judge and jury in the County or Supreme Courts. Jurors are paid at a specified rate and employers are required to pay employees called for jury service the gap between what the employee receives as a juror and what the employee would have received but for attending jury service. The RIS assessed some of the benefits of the proposed regulations but in the view of the Regulation Review Subcommittee failed to adequately examine the costs and in particular the cost impact on self-employed people and employers.

The Regulation Review Subcommittee was concerned that the RIS did not comply with the requirements of the *Subordinate Legislation Act 1994* (Vic) –

- Section 10(1)(d) requires a RIS to include “an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives”;
- Section 2 requires a cost benefit analysis to include “an assessment of the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs”.

The Regulation Review Subcommittee wrote to the Attorney-General raising these concerns and indicating that the failure to assess the costs of the regulations may constitute a breach of section 21(1)(j) of the *Subordinate Legislation Act 1994* (Vic). The Attorney-General indicated that a review of jury remuneration will be undertaken once the new system has been in place for 12 months and there is sufficient up-to-date data to base the assessment on.

The Regulation Review Subcommittee accepted these reasons, but considered that in order to comply with statutory requirements, a RIS must assess the costs and the impact on affected parties regardless of time constraints, lack of data or impending systematic reviews.

Subcommittee's letter

SR 74 – Juries (Fees, Remuneration and Allowances) Regulations 2001

At its meeting on 29 October 2001 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.

The Juries (Fees, Remuneration & Allowance) Regulations 2001 (the Regulations) set remuneration for jurors and the fees payable by those who choose to have civil matters in the County or Supreme Courts heard by a judge and jury.

The Subcommittee wishes to thank you for your letter of 15 August 2001.

Under the Regulations jurors are paid a specified amount determined by the number of days of jury service. Jurors are paid a daily rate of \$36 for the first 6 days. The amount paid to jurors under these Regulations is the same as under the previous regulations which means there has been no change in the level of juror remuneration since 1992. Employers are required to pay employees called for jury service the gap between what the employee receives as a juror and what the employee would have received but for attending jury service. The Subcommittee notes that the Law Institute of Victoria, the Victorian Bar Council and the Victorian Automobile Chamber of Commerce have all expressed concern about the amount paid to jurors.

The Subcommittee has some concerns about the Regulation Impact Statement (RIS). Section 10(1)(d) of the Subordinate Legislation Act 1994 requires a RIS to include “an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives”. Section 10(2) of the Subordinate Legislation Act 1994 provides a further explanation of what a cost benefit analysis should include, namely “an assessment of the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs”. While the RIS assessed some of the benefits of the Regulations it did not specifically assess the costs. For example, no assessment has been made of the cost impact on self-employed people or on employers. The Subcommittee considers that failure to assess the costs of the Regulations may constitute a contravention of section 21(1)(j) of the Subordinate Legislation Act 1994 which allows the Committee to Report to Parliament where a regulation “has been prepared in contravention of any of the provisions of this Act or the guidelines with respect to the statutory rule and the contravention is of a substantial or material nature”.

The Subcommittee is concerned about the level of remuneration paid to jurors and in particular the increasing gap between jury remuneration and the ‘top-up’ required to be paid to employees by employers. In the Subcommittee’s view this gap is placing an increasing cost on employers. The Subcommittee is also concerned as to the financial hardship being experienced by self-employed persons who cannot access such ‘top-up’ payments.

The Subcommittee notes your comments that the impact on business has been offset by new jury initiatives and in particular new jury pool procedures in Melbourne which ensure that non-empanelled jurors are only absent from

their employment for one day instead of three days. You indicate in your letter that the issue of jury remuneration will be “re-examined once the new patterns of jury service become evident” and that this will enable identification of “the extent of applications for excusal on the grounds of financial hardship, including those who may no longer claim automatic excusal”. The Subcommittee is aware that the Juries Act 2000 has introduced changes with a view to ensuring that the composition of future juries more closely resembles the broader community, and therefore acknowledges that an analysis is required of the new jury service procedures. However, given that there have been no changes to the level of jury remuneration since 1992 the Subcommittee believes that a review of jury remuneration needs to be done as soon as possible.

The Subcommittee is seeking some additional information on the trends which have emerged so far and in particular would like to know –

- *From currently available data, is there an increasing trend for salary and wage earners seeking to be excused from jury duty on the grounds of financial hardship and what proportion of such persons are actually excused?*
- *From currently available data, is there an increasing trend for self-employed people to seek to be excused on the basis of financial hardship and what proportion of such persons are actually excused?*
- *The Subcommittee notes from your letter that the new jury pool procedures operate in Melbourne. What procedures are in place in regional Victoria to ensure that jurors attending are empanelled for one day instead of three or more days?*
- *When will the review of jury fees occur and when is any possible increase in jury payments likely to commence?*

As the Subcommittee has a number of concerns with these Regulations it is seeking your assistance in providing additional information to the Subcommittee prior to its next meeting on Monday 12 November 2001.

The Subcommittee looks forward to receiving your response.

Minister's Response²⁹

SR 74 – Juries (Fees, Remuneration and Allowances) Regulations 2001

Thank you for your letter dated 2 November 2001 advising of the Regulation Review Subcommittee’s examination of the above Regulations.

I note that Subcommittee’s concern about the gap between the level of remuneration paid to jurors and the ‘top-up’ required to be paid to employees by employers and its belief that the review of jury remuneration needs to be done as soon as possible.

However to properly undertake such a review it is imperative that it be supported by accurate and comprehensive data. Sadly there is a dearth of historical data, particularly in relation to rural circuit courts, as it is only

²⁹ The Attorney-General’s letter to the Chair of the Subcommittee is dated 26 November 2001.

since the commencement of the Juries Act 2000 that a statewide juries management system has been developed and rolled out to circuit courts.

The following information drawn from the Melbourne jury district (which handles over 2/3rds of the State's jury requirements) may be of assistance in addressing the specific additional information sought by the Subcommittee. Whilst there is no historical data upon which to base trends, over 10,000 jury questionnaires have been issued and responded to since August 2001. Of these, 1590 were granted excusal on special grounds. Fifty one persons (or 0.5% of respondents and 3.2% of those excused) were granted excusal on the grounds of financial hardship and a further 524 (5.3% of respondents or 33% of excusals) because they were self employed and providing jury service would have created significant detrimental impact on that employment.

Whilst many of these would have been based solely on financial hardship, other factors may include the need to be available to supervise employees and apprentices or because of specific contracts that were required to be fulfilled within a timeframe that coincided with the jury service requirement. A further 4 persons were excused because they were employees of small businesses where their absence would create unreasonable demands on their employers and 45 (2.8% of excusals) were excused for what have been described as 'work reasons'. As a point of reference over the same period 638 jurors (6.4% of respondents or 40% of excusals) were excused because such service would have created unreasonable family hardship.

The one day jury panel works well in the metropolitan area where there is a huge pool of potential jurors and where the pool services a large number of courtrooms. It would not be viable to implement one day panels at circuit courts, as it would have the capacity to totally exhaust the jury roll as persons drawn cannot be redrawn within the following 12 months. However the impact on jurors is minimised at rural courts by the use of a telephone 'call-in' system where summoned jurors are required to phone a specific number the evening before they are required to attend to ascertain if their attendance is still required on the following day. In most cases, jurors are then only required to attend on the day that they will actually be required to face jury empanelment, and in many cases, particularly when civil matters settle or offenders change their plea, they are not required to attend at all.

The review will be undertaken after the new system has been in place for 12 months thus ensuring that proper data is available. Any changes to the level of remuneration would be implemented as soon as practicable thereafter.

Thank you for drawing these matters to my attention.

Example 2

SR 176 – Building (Swimming Pool Fences) Regulations 2001 deal with matters concerning the construction, installation, maintenance, operation and use of fences and other barriers for swimming pools and spas. The RIS for these Regulations was advertised in the Victorian Government Gazette on 20 November 2001 and the closing date for submissions was 18 December 2001. The Regulations commenced operation on 20 December, effectively allowing two days to consider comments made in submissions.

The Regulation Review Subcommittee considered that a failure to give adequate consideration to submissions may constitute a breach of section 21(1)(j) of the *Subordinate Legislation Act 1994* (Vic).

The Regulation Review Subcommittee was concerned that inadequate time was allocated to considering comments made in submissions. The *Subordinate Legislation Act 1994* (Vic)³⁰ and the *Premier's Guidelines*³¹ emphasise that it is essential that comments made as part of the submission process be carefully considered prior to the enactment of regulations. Advice and clarification have been sought from the Minister but as yet a response has not been received. For this reason, the Regulation Review Subcommittee was unable to form a view as to whether there has been adequate consideration of submissions in this case.

Subcommittee's letter

SR 176 – Building (Swimming Pool Fences) Regulations 2001

At its meeting on 17 June 2002 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.

The Building (Swimming Pool Fences) Regulations 2001 prescribe matters concerning the construction, installation, maintenance, operation and use of fences and other barriers for swimming pools and spas.

In January this year, the Subcommittee received correspondence from Mr. A. Threadwell of the Moreland City Council highlighting concerns with the consultation process and in particular the lack of time available to the Department to consider the comments made in submissions. These comments led the Subcommittee to investigate this issue further. The Subcommittee found that the RIS was advertised in Special Gazette No. S 206 on 20 November 2001 and that the closing date for submissions was 5.00 pm on Tuesday 18 December 2001. The Subcommittee notes that these Regulations commenced operation on 20 December 2001, two days after the end of the submission process.

Section 11(3) of the Subordinate Legislation Act 1994 (Vic) requires the responsible Minister to ensure “that all comments and submissions are considered before the statutory rule is made”. Paragraph 5.42 of the Premier's Guidelines reiterates this requirement. The Subcommittee further considers that two days is insufficient time within which to give adequate consideration to comments made in submissions. The Subcommittee notes that the normal practice of the Executive Council requires draft Regulations to be delivered to the Department of Premier and Cabinet two working days before the Executive Council meets. The failure to give adequate consideration to submissions constitutes a breach of section 21(1)(j) of the Subordinate Legislation Act 1994 (Vic). The Subcommittee seeks your advice as to what consideration was given to comments made in submissions.

The Subcommittee also draws your attention to the failure to date the certificates accompanying these Regulations. The Premier's Guidelines

³⁰ *Subordinate Legislation Act 1994* (Vic), s. 11(3).

³¹ Department of Premier and Cabinet, *Premier's Guidelines*, December 1997, paragraph 5.42.

require all certificates to be dated at the time of signing. The Subcommittee considers that failure to sign certificates is a serious issue because it raises the possibility that the certificates may have been signed at an earlier date.

The Subcommittee looks forward to receiving your response.

Benefits greater than Administration and Compliance Costs

Under section 21(1)(k) of the *Subordinate Legislation Act 1994* (Vic) the Regulation Review Subcommittee examines regulations to ensure that the administration and compliance costs do not outweigh the benefits sought to be achieved.

Example

SR 21 – Accident Compensation Regulations 2001 make various changes to improve the efficiency of administration of the *Accident Compensation Act 1985* (Vic) and the *Accident Compensation (WorkCover Insurance) Act 1993* (Vic). These changes included an increase in the contributions payable by self-insurers. The RIS justified this increase on the basis that previously WorkCover had not been recovering its administrative costs from self-insurers and that it had subsidised a 40% shortfall. The Regulation Review Subcommittee was concerned that while the RIS emphasised the benefits self-insurers would obtain from the increase in contributions, no details of the benefits or services were provided. This made it difficult for the Regulation Review Subcommittee to assess the impact of the changes on self-insurers.

The Regulation Review Subcommittee sought clarification from the Minister as to the benefits or services provided to self-insurers. The Minister indicated that after consideration of public submissions self-insurer's contributions had been frozen at the amount payable prior to the introduction of the regulations and the amount of those contributions was under review. The Minister's response provided details of the benefits to be derived by self-insurers and emphasised that the costs imposed on self-insurers are intended only to cover the costs of services provided to them.

Subcommittee's letter

SR 21 – Accident Compensation Regulations 2001

At its meeting on 28 May 2001 the Regulation Review Subcommittee examined the above Regulations as it is required to do so under the Subordinate Legislation Act 1994.

The Accident Compensation Regulations 2001 replace the Accident Compensation Regulations 1990, making a number of changes designed to improve the efficiency of administration of the Accident Compensation Act 1985 and the Accident Compensation (WorkCover Insurance) Act 1993. The

Regulations contain a number of provisions concerning self-insurers and in particular they prescribe –

- *the formulae for determining the amount of contribution payable by self-insurers to the WorkCover Authority Fund. The new formula is expected*

to significantly increase contributions paid by self-insurers to WorkCover;

- *a fee for assessment of applications for approval to operate as self-insurers and a renewal fee for existing self-insurers. This fee has been set at 0.03 per cent of remuneration and is aimed at achieving administrative cost recovery;*
- *terms and conditions for self-insurers. These terms and conditions cover such things as document management, accessibility of claim forms, use of agents, notification requirements, conduct of audits and so on.*

The Subcommittee notes that under these Regulations self-insurers will pay much larger contributions than under the previous Regulations. The Regulation Impact Statement (RIS) states that under the previous Regulations WorkCover's administrative costs were never fully recovered from self-insurers and that WorkCover subsidised a 40% shortfall. The RIS explains that the increase in contributions by self-insurers "is necessary to bring them into line with the costs of WorkCover's administration and other services it provides in relation to the requirements for self-insurance under the Acts." As a result of these changes the self insurance sector will incur additional costs of around \$4.5 million per annum.

The Subcommittee accepts that the issue of whether a department or agency should recover the costs of administration and the provision of services is essentially a policy decision. However, under section 21(1)(k) of the Subordinate Legislation Act the Subcommittee may report to Parliament if it considers that any statutory rule "is likely to result in administration and compliance costs which outweigh the likely benefits sought to be achieved by the statutory rule".

The Subcommittee notes that, while the RIS states in a number of places that self-insurers derive significant benefits from services provided by WorkCover, it does not explain what these benefits or services are. In view of the significant increase in costs to the self-insurance sector contemplated by the statutory rule, the Subcommittee has decided not to approve the Regulations at this stage pending further clarification and advice as to the precise benefits self-insurers derive under these Regulations.

The Subcommittee looks forward to receiving your response.

Minister's Response³²

SR 21 – Accident Compensation Regulations 2001

Thank you for your letter of 31 May 2001, seeking clarification as to the precise benefits self-insurers derive under the Accident Compensation Regulations 2001. I apologise for the time taken in my reply.

I have noted your concerns that the Regulations circulated for public comment would have significantly increased costs for the self-insurance sector. The purpose of the proposed increase was to spread the burden of workers' compensation costs more equitably between Victorian businesses. Given that

³² The Minister for WorkCover's letter to the Chair of the Subcommittee is dated 30 July 2001.

the WorkCover scheme is required to be fully self-funded, if one sector of the scheme is not paying its full contribution, this means it will be effectively cross-subsidised by other sectors – in this case, by insured employers.

Self-insurers' contributions are intended to cover only the costs of services from which self-insurers are able to derive a benefit. Costs that are solely related to the provision of services to premium paying employers are excluded from the calculation of self-insurers' contributions.

It should be noted, however, that following consideration of public submissions on the draft Regulations and accompanying Regulatory Impact Statement (RIS), the Government agreed to freeze self-insurers' contributions at current levels. Moreover, in the interests of equity, it was decided to include a review of contributions paid by self-insurers as part of the Victorian WorkCover Authority's current Premium Review. The Accident Compensation Regulations 2001 did not, therefore, contain the proposed provisions increasing self-insurers' contributions.

Nonetheless, justification for the existing and proposed contribution formulae was provided in the RIS. Appendix G of the RIS sets out the bases from which the current and proposed contribution formulae were derived. In relation to your specific query, the benefits self-insurers derive from services provided by WorkCover were clearly set out in the RIS. These benefits included the following:

- (a) 'Public good' type services, such as broadcast publicity and safety campaigns. These services focus on promoting occupational health and safety in the workplace. They include advertising and media campaigns by Workcover and are designed to prevent injuries from occurring in the first place and therefore obviate the need to pay compensation.*
- (b) 'Overhead services' such as field services (compliance, enforcement and investigation activities of WorkCover's inspectorate). Workcover has a responsibility to monitor and audit self-insurers to ensure their compliance with the Accident Compensation Act. As part of its regulatory function, WorkCover provides a range of prevention programs and services that are designed to achieve health and safety improvements at all workplaces, including those of self-insurers. These programs include regular programmed inspections, selected industry-based improvement programs, accident and incident investigation, ongoing follow-up and compliance activity, 24 hour hot-line to industry, extended field office hours, WorkCover Internet/Business Channel, targeted compliance and enforcement activity, and provision of legislation and standard setting.*
- (c) Administration costs of WorkCover in performing its functions and powers.*
- (d) The remuneration (including allowances) of the Board of Directors and staff of the Authority and, where appropriate, any member of the WorkCover Advisory Committee.*
- (e) Other costs and expenses incurred by WorkCover under this Act or an other Act.*

- (f) *Those costs incurred by WorkCover directly related to meeting any liability incurred by WorkCover under section 151 of the Act (where a body corporate ceases to be a self-insurer).*

I hope this information is of assistance to the Committee.

Clarity of Intention and Practical Operation

Regulations should be clear, easy to understand and simple to put into practice so that those affected are able to comply with their requirements.

Example 1

SR 65 – Prevention of Cruelty to Animals (Amendment) Regulations 2001 remove restrictions that required stock contractors and instructors to be accredited by the Australian Professional Rodeo Association, providing more flexible accreditation arrangements in a voluntary code of practice – *the Code of Practice for the Welfare of Rodeo and Rodeo School Livestock* (the Code of Practice). Although it was stated that the Code of Practice would include more flexible accreditation requirements for stock contractors and instructors, it was silent on the accreditation of instructors. Also as Codes of Practice are voluntary, stock contractors can choose whether or not to become accredited. The Regulation Review Subcommittee was concerned about the voluntary nature of accreditation and that the accreditation of instructors had inadvertently been left unregulated.

The Minister's response to the Regulation Review Subcommittee indicated that a working group will be established to review the Code of Practice so that instructors can be included and the Regulations will be amended to include the Code, thus ensuring that stock contractors and instructors do obtain accreditation.

The Regulation Review Subcommittee was satisfied with the Minister's response.

Subcommittee's letter

SR 65 – Prevention of Cruelty to Animals Regulations 2001

At its meeting on 15 October 2001 the Regulation Review Subcommittee examined the above Regulations as it is required to do so under the Subordinate Legislation Act 1994.

The Prevention of Cruelty to Animals (Amendment) Regulations 2001 (the Regulations) remove restrictions that required stock contractors and instructors to be accredited by the Australian Professional Rodeo Association. Accreditation requirements for stock contractors will now be governed by the requirements of the Code of Practice for the Welfare of Rodeo and Rodeo School Livestock (the Code of Practice) which allows stock contractors to be accredited by an organisation approved by the Director of the Bureau of Animal Welfare. The Code of Practice is silent on the accreditation of instructors.

The Subcommittee notes that there are two issues arising from these Regulations –

- 1. Firstly the Code of Practice is not compulsory which means that stock contractors may choose whether or not to become accredited.*
- 2. Secondly the Code of Practice fails to make provision for the accreditation of instructors.*

The Subcommittee notes that in telephone discussions between one of the Subcommittee's Legal Advisers and policy officers in your department it was acknowledged that the failure to include instructors in the Code of Practice was an oversight and that it would have been more appropriate for the flexible accreditation arrangements to have been dealt with in Regulations rather than in the voluntary Code of Practice. The Subcommittee was also advised that flexible accreditation arrangements for instructors and stock contractors will now need to be subject to the regulation impact statement process, so that both may be dealt with by the Regulations rather than the Code of Practice.

The Subcommittee notes that in the meantime there are no provisions in place controlling the accreditation of instructors and that the accreditation of stock controllers remains voluntary. The Subcommittee is therefore of the view that there is some urgency required in remaking these Regulations and commencing the regulation impact assessment process.

The Subcommittee looks forward to the early remaking of these Regulations and appreciates your assistance in this regard.

Minister's Response³³

SR 65 – Prevention of Cruelty to Animals (Amendment) Regulations 2001

Thank you for your letter of 18 October 2001, in which you comment on the Code of Practice for the Welfare of Rodeo and Rodeo School Livestock in Victoria.

The two issues which you describe in your letter are being reviewed by the Department of Natural Resources and Environment. In regard to the Code not being compulsory under the Prevention of Cruelty to Animals (Amendment) Regulations 2001, it was the intention of the working group members who developed the Code that it would be referred to in Section 10(1) and 10(4) of the Regulations in reference to accreditation of stock contractors and in Schedule 4 in reference to accreditation of rodeo school instructors, to replace reference to the Australian Professional Rodeo Association (APRA). Reference to an Approved Organisation as defined in Appendix 1 of the Code would be included in these Sections.

It has been arranged that the working group will review the Code in regard to the inclusion of reference to instructors for rodeo schools. Following this,

³³ The Minister for Agriculture's letter to the Chair of the Subcommittee is dated 12 November 2001.

amendment to the Regulations to include the Code under the required Sections will be addressed by the Department.

Thank you for bringing this matter to my attention.

Example 2

SR 78 – Fisheries (Recreational Fishing) Regulations 2001 make various changes aimed at protecting Victorian fish resources. The Regulation Review Subcommittee found that certain aspects of these Regulations were unclear and ambiguous.

The Regulation Review Subcommittee drew the Minister's attention to a typographical error in the Regulations which resulted in two different definitions of 'salmonids'. In a Table on page 7 of the Regulations 'salmonids' was defined as "brown taut, rainbow trout, Atlantic trout and chinook salmon" while in other parts of the Regulations and throughout the RIS 'salmonids' was defined as "brown trout, rainbow trout, Atlantic salmon and chinook salmon". The Minister indicated that the department was aware of the error and that it would be rectified.

Provisions placing minimum size and bag limits for golden perch were removed from the Regulations so that they could be dealt with under the *Flora and Fauna Guarantee Act 1988* (Vic). The Regulation Review Subcommittee sought advice as to whether an Order had been made to bring golden perch under the auspices of the *Flora and Fauna Guarantee Act 1988* (Vic) and clarification as to who would be responsible for enforcing compliance with the provisions protecting golden perch, given that fisheries officers are not responsible for enforcing compliance with the *Flora and Fauna Guarantee Act 1988* (Vic).

The Minister indicated that the relevant Order had in fact been made and that minimum size and bag limits had been set under *Order No. 1 of 2001*. The Minister noted that through an agreement with the Department the provisions concerning golden perch would be enforced by fisheries officers. The Regulation Review Subcommittee was satisfied with the Minister's response.

Subcommittee's letter

SR 78 – Fisheries (Recreational Fishing) Regulations 2001

At its meeting on 29 October 2001 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.

The Fisheries (Recreational Fishing) Regulations 2001 (the Regulations) make changes to recreational catch limits for various species of fish, prohibit the removal of roe from sea urchins while at sea, prohibit the recreational use or possession of yabby pots and make other amendments which are designed to protect Victoria's fish resources.

As originally drafted the closed season for the fishing of salmonids from all inland waters except for those listed in Part C of Schedule 11 was to be extended so as to commence on the second Sunday in May and ending at

midnight on the Friday before the first Saturday in September each year. We understand that following some submissions received during the Regulation Impact Statement process, it was decided not to extend the closed season for the fishing of salmonids and to maintain the status quo. Under these Regulations the closed season continues to operate from midnight on the Monday of the Queen's Birthday weekend in June each year to midnight on the Friday before the first Saturday in September. The Subcommittee understands it is intended that this issue will be the subject of re-examination in a RIS process during 2001-02. The Subcommittee seeks your advice as to whether this RIS process has commenced yet and if not, when it is likely to commence.

As originally drafted, the Regulations set minimum size limits and maximum bag limits for golden perch on the basis of comments made by recreational fishers, community groups and Departmental Fisheries Officers. In the final version of the Regulations, the size and bag limits were removed even though the majority of submissions supported the imposition of minimum size and maximum bag limits. The Subcommittee notes that golden perch is listed as a member of a threatened community under the provisions of the Flora and Fauna Guarantee Act 1988. The explanation provided for the removal of these provisions was that these restrictions are to be dealt with by Governor-in-Council Order made under the Flora and Fauna Guarantee Act 1988. The Subcommittee would like to know whether a Governor-in-Council Order has been passed specifying these restrictions on golden perch. The Subcommittee notes that fisheries officers have no responsibility for enforcing the requirements of the Flora and Fauna Guarantee Act 1988. As this is the case the Subcommittee would like to know who has responsibility for enforcing the restrictions on golden perch and how those restrictions will be enforced.

The Subcommittee would also like to draw your attention to what appears to be a typographical error in the Table on page 7 of the Regulations. In that Table salmonids are defined as "brown trout, rainbow trout, Atlantic trout and chinook salmon". In other parts of the Regulations and throughout the RIS salmonids are defined as "brown trout, rainbow trout, Atlantic salmon and chinook salmon". It appears to the Subcommittee that the reference to Atlantic Trout needs to be replaced with a reference to Atlantic salmon.

As the Subcommittee has a number of concerns with these Regulations it will reconsider them at its next meeting on Monday 12 November 2001.

The Subcommittee looks forward to receiving your response.

Minister's Response³⁴

SR 78 – Fisheries (Recreational Fishing) Regulations 2001

Thank you for your letter of 2 November 2001 regarding the Fisheries (Recreational Fishing) Regulations 2001.

³⁴ The Minister for Energy and Resources and Ports' letter to the Chair of the Subcommittee is dated 13 November 2001.

With respect to the proposal to extend the salmonid closed season, the Department of Natural Resources and Environment received 34 responses to the draft Regulations and Regulatory Impact Statement (RIS), of which 16 supported the proposed extension while 18 opposed it. As there were clearly mixed views amongst stakeholders in relation to this proposal, I determined that the issue should be investigated further before any legislative change was introduced. The Department is currently investigating further the level of community support for the conduct of another RIS process which would be conducted during the autumn of 2002. An extension of the closed season will only be implemented if it is demonstrated that there is strong support for this action amongst stakeholder groups.

The Flora and Fauna Guarantee (Taking Trading in and Keeping of Listed Fish) Order No. 1/2001 which allows the taking of golden perch and other Flora and Fauna Act listed fish species of interest to recreational anglers, was gazetted on 9 August 2001 (pp 1861-64). The regulations pertaining to size limits, bag limits and possession limits, as well as the requirement that the fish are landed as a carcass, are tabulated in this Order. By agreement within the Department, arrangements have been made for these regulations to be enforced by Fisheries Officers.

The Department is aware of the typographical error in the Regulations referred to in your letter and this will be addressed in the proposed RIS process in autumn 2002.

The Regulations also included a new provision which prohibits the use or possession of fishing hooks and lines in or beside and within 20 metres of the banks of four specified rivers including the Goulburn River, the Mitta Mitta River, the Kiewa River and the Tanjil River during the closed season. The Regulation Review Subcommittee was concerned about the impact of this provision on owners of structures, garages, caravans and sheds in which hooks and lines are being stored. The Minister indicated that the provision is aimed at protecting spawning stocks and not at prohibiting the legitimate storage of fishing hooks and lines. The Minister confirmed that fisheries officers are authorised to search premises but this is only done where there are suspicious circumstances.

The Regulation Review Subcommittee was satisfied with the Minister's response.

SR 78 – Fisheries (Recreational Fishing) Regulations 2001

Further to the Subcommittee's letter of 2 November 2001, your advice is also sought as to another matter concerning the above Regulations.

New regulation 533A prohibits the use or possession of fishing hooks and lines in or beside and within 20 metres of the banks of four specified rivers including the Goulburn River, the Mitta Mitta River, the Kiewa River and the Tanjil River.

Subcommittee members seek your advice as to whether there are any structures, garages, sheds, caravans, camping grounds or carparking areas within 20 metres inland of the banks of these rivers and if so the consequences

of this prohibition on persons who own structures, garages, sheds and caravans which may contain hooks and lines.

The Subcommittee has already received verbal advice from Mr Ainsworth from your department who indicated that there was a possibility that there may be some structures or sheds within 20 metres inland of the specified rivers. However Mr Ainsworth pointed out that fisheries officers have a wide discretion and that it is not the intention of these provisions to prohibit the storage of hooks and lines in structures and sheds within 20 metres inland of the specified rivers. Mr Ainsworth also explained that under the previous regulations fisheries officers had to catch a person in the act of illegal fishing whereas these provisions allow fisheries officers to prosecute someone who is in possession of a hook and line and is within 20 metres inland of the specified rivers, making it easier to prosecute illegal fishermen.

The Subcommittee now seeks your written confirmation as to these matters.

The Subcommittee will reconsider these Regulations and the matters raised in this letter and its letter of 2 November at its next meeting on Monday 26 November 2001.

The Subcommittee looks forward to receiving your response.

Minister's Response³⁵

SR 78 – Fisheries (Recreational Fishing) Regulations 2001

Thank you for your recent letter in which you seek written confirmation about the intention and application of regulation 533A of the Fisheries (Recreational Fishing) Regulations 2001 that prohibits the use or possession of fishing hooks and lines in or beside, and within 20 metres of the banks of specified sections of the Goulburn, Mitta Mitta, Kiewa and Tanjil Rivers.

I'm advised that there are structures, garages, sheds, caravans, camping grounds and carparks that are within 20 metres of the banks of these specified sections of river and it is probable that fishing lines and hooks would, on occasion, be stored in some of these structures and areas during the closed salmonid season.

Section 102(3) of the Fisheries Act provides for authorised officers to search specified equipment which is related to fishing activities. Fisheries officers routinely investigate suspicious circumstances which indicate that illegal fishing is occurring or has occurred. These officers do not routinely search premises where no suspicious circumstance are observed.

Should there be suspicious circumstances in the defined areas during the closed salmonid season, fisheries officers will have the ability to gather evidence with a view to proceeding with a Crown prosecution where they have identified stored fishing hooks and lines in structures within 20 metres of the

³⁵ The Minister for Energy and Resources and Ports' letter to the Chair of the Subcommittee is dated 25 November 2001.

specified sections of the river and they believe that the individual has or plans to illegally fish during the closed season.

Authorised officers will not be targeting the possession of storage of fishing equipment by individuals where there is no reason to suspect that this is being used during the closed season.

The intent of regulation 533A is to improve the protection of spawning stocks by improving the effectiveness of authorised officers in enforcing the salmonid closed season. It is not to prohibit the legitimate storage of fishing lines and hooks in structures located close to the river bank.

Example 3

SR 89 – *Children and Young Persons (General) Regulations 2001* provide for the custody and guardianship of children. Regulation 8 deals with permanent care orders and provides that ‘marital and family relationships’ are one of the factors which must be taken into account. It was unclear to the Regulation Review Subcommittee whether the reference to ‘marital and family relationships’ was consistent with the use of the term ‘domestic relationship’, a term used in other legislation. The Minister indicated that the term ‘marital and family relationships’ is meant to include single people and all couples irrespective of whether they are married or in de facto or same sex relationships. The Minister acknowledged that there was a possible ambiguity and indicated that the Regulations would be amended to make it clear that permanent care applicants do not need to be married.

Subcommittee’s letter

SR 89 – *Children and Young Persons (General) Regulations 2001*

At its meeting on 12 November 2001 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.

The Children and Young Persons (General) Regulations 2001 provide for the custody and guardianship of children, the terms and conditions of youth parole orders, the details to be recorded when a person is detained in a remand centre, youth residential centre or youth training centre, the manner in which searches are to be conducted, and other related matters.

Subcommittee members wish to compliment Department officers and Parliamentary Counsel on the format of these Regulations which include an index.

The Subcommittee seeks your advice on regulation 8, which deals with the matters to be considered by a court when making a permanent care order. The provisions require ‘marital and family relationships’ to be taken into account. The Subcommittee seeks your advice as to whether the reference to ‘family relationships’ is consistent with the Government’s recent adoption of the term ‘domestic relationship’ in other legislation. The Subcommittee also seeks your advice as to whether there was any consultation with affected stakeholders prior to the making of these regulations.

The Subcommittee will reconsider these Regulations and the matters raised in this letter at its next meeting on Monday 26 November 2001.

The Subcommittee looks forward to receiving your response.

Minister's Response³⁶

SR 89 – Children and Young Persons (General) Regulations 2001

Thank you for your letter dated 16 November 2001 regarding Regulation 8 of the Children and Young Persons (General) Regulations 2001.

I understand that Ms Jenny Lobato rang to advise that it would not be possible to respond prior to the meeting of the Regulation Review Subcommittee held on 26 November 2001.

The proposed contents of the Regulations were developed by a working party that involved representatives from the Department of Justice, the Children's Court of Victoria, and the Child Protection and Juvenile Justice Branch and Legal Services Branch of the Department of Human Services.

The working party distributed the proposed Regulations to a wide range of stakeholders including legal bodies, community service organisations, and consumer groups, for comment prior to their completion. No responses were received in relation to Regulation 8.

Section 112(1)(c) of the Children and Young Persons Act 1989 indicates that the Court must be satisfied with regard to any prescribed matters regarding the person or persons named in the permanent care application as suitable to have the custody and guardianship of the child named in the application. The wording of the legislation is meant to be inclusive, and permanent care orders have been made in respect to a child to single people, couples, who are married, or in a defacto or same sex relationship, with, or without children.

Regulation 8 outlines the matters prescribed for the purposes of s112(1)(c). In relation to the prescribed matters outlined in Regulation 8, I do not perceive any issue with the term 'family relationships' which is not defined in the Regulations and in practice has been interpreted broadly to include a number of relationships, such as parental relationships.

However, your question raises the possible ambiguity caused by the use of the term 'marital relationships' in the Regulations, i.e. that suitable permanent care order applicants may be required to be married.

Departmental staff will consider an appropriate recommended amendment to the Regulation to ensure the terms used in the Regulations do not unintentionally infer that permanent care applicants are to be married.

³⁶ The Minister for Community Services' letter to the Chair of the Subcommittee is dated 14 December 2001.

Consultation

Section 6 of the *Subordinate Legislation Act 1994* (Vic) sets out the requirements for consultation. These requirements apply to regulations made with or without RISs. Responsible Ministers must ensure that there is consultation “where the guidelines³⁷ require consultation” with any sector of the community on which an appreciable economic or social burden may be imposed and other Ministers whose area of responsibility may be affected.³⁸ The *Premier’s Guidelines* provide –³⁹

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

The *Premier’s Guidelines* indicate that the “nature and degree of consultation that is appropriate for any particular rule will vary with the nature of that rule”.⁴⁰ This places ultimate responsibility on Ministers to ensure that appropriate consultation takes place and includes all those affected by a proposed regulation.

While the *Premier’s Guidelines* provide assistance with the consultation process, the Regulation Review Subcommittee acknowledges that some sections are unclear and ambiguous, making it difficult for department and agency officers to determine in what circumstances consultation should take place. There is, for example, an inconsistency between the *Subordinate Legislation Act 1994* (Vic) and the *Premier’s Guidelines* as to whether consultation **must**⁴¹ or **should**⁴² occur in accordance with the *Premier’s Guidelines*. The Committee has made recommendations on this and other issues concerning consultation in its *Report on the Subordinate Legislation Act 1994*.

It is the strong preference of the Regulation Review Subcommittee that consultation take place with all those affected by a particular regulation and that the current ambiguities be resolved.

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

³⁷ Department of Premier and Cabinet, *Premier’s Guidelines*, December 1997.

³⁸ *Subordinate Legislation Act 1994* (Vic), s. 6.

³⁹ Department of Premier and Cabinet, *Premier’s Guidelines*, December 1997, paragraph 5.20.

⁴⁰ Department of Premier and Cabinet, *Premier’s Guidelines*, December 1997, paragraph 5.17.

⁴¹ *Subordinate Legislation Act 1994* (Vic), s. 6.

⁴² Department of Premier and Cabinet, *Premier’s Guidelines*, December 1997, paragraph 5.20.

Example 1

SR 67 Magistrates' Court (Civil Jurisdiction) (Sheriff's Fees) Regulations 2001 set fees, costs and charges relating to the issue of warrants for enforcement of orders made by the Magistrates' Court in civil proceedings. While consultation took place with the Magistrates' Court, the Enforcement Management Unit and the Law Institute of Victoria, there was no consultation with any consumer-oriented groups representing those most affected by the regulations, namely litigants and debtors.

The Regulation Review Subcommittee wrote to the Attorney-General expressing concern at the narrow focus of the consultation undertaken. The Regulation Review Subcommittee was pleased to receive a response from the Attorney-General that acknowledged the lack of consultation with debtor representative organisations and indicated that when regulations which affect debtor groups are made in the future, appropriate representative organisations will be consulted. The Attorney-General also highlighted the Enforcement Management Unit is undertaking initiatives to build stronger relationships with debtor representative organisations. The Regulation Review Subcommittee was satisfied with the Minister's response.

Subcommittee's letter

SR 67 – Magistrates' Court (Civil Jurisdiction)(Sheriff's Fees) Regulations 2001

At its meeting on 15 October 2001 the Regulation Review Subcommittee examined the above Regulations as it is required to do so under the Subordinate Legislation Act 1994.

The Magistrates' Court (Civil Jurisdiction) (Sheriff's Fees) Regulations 2001 (the Regulations) set fees, costs and charges for the issue of warrants for enforcement of orders made by the Magistrates' Court in civil proceedings. The Subcommittee notes that the Regulations also simplify the fee structure in the Sheriff's Office by establishing a degree of uniformity in fees paid for similar functions in respect of enforcement in the County and Supreme Courts.

The Regulation Impact Statement and the Certificate of Consultation indicate that prior to making these Regulations consultation was undertaken with the Magistrates' Court, the Enforcement Management Unit and the Law Institute of Victoria. The Subcommittee is concerned about the breadth of consultation undertaken for these Regulations.

Section 6(b) of the Subordinate Legislation Act 1994 requires the responsible Minister to ensure that consultation take place with any sector of the public on which an appreciable economic or social burden may be imposed by a proposed regulation. Paragraph 5.20 of the Premier's Guidelines provides –

If the proposed statutory rule is likely to impose any appreciable burden, cost or disadvantage on any sector of the public, consultation should take place with that sector, eg business groups, community groups, special interest groups.

The Subcommittee is of the view consultation for these Regulations was too narrowly focussed. Although the Subcommittee acknowledges that there is no organisation that directly represents the interests of litigants, in the case of the present Regulations the fees are ultimately passed on to debtors. It would have been appropriate to have consulted the Federation of Community Legal Centres as an organisation that frequently represents debtors. The Subcommittee seeks confirmation that for future regulations dealing with court fees and charges, consultation will be sought with a broader range of organisations representing the interests of “consumers” of the justice system.

The Subcommittee looks forward to receiving your response.

Minister's Response⁴³

SR 67 – Magistrates Court (Civil Jurisdiction)(Sheriff's Fees) Regulations 2001

I refer to your letter of 18 October 2001 in respect of the consultation process for the making of these regulations, and in particular, your Subcommittee's comments on the need to consult with organisations that represent debtors who may be affected by such fees.

While consultation on these regulations was undertaken with the Law Institute of Victoria, which was identified as being able to represent the concerns of judgement creditors, I agree that it would also have been appropriate to consult with debtor representative organisations. I have accordingly given instructions that this should occur in the future where regulations are being made affecting the fees ultimately payable by debtors.

Your Subcommittee may wish to note that apart from CPI increases, the fees created by these regulations did not increase the overall burden imposed on parties to litigation.

I am also advised that Enforcement Management, which includes the Sheriff's Office, has undertaken a number of initiatives over the past 12 months to build closer relations with debtor representative organisations. These activities have included metropolitan and regional information days, participation of the Federation of Community Legal Centres in a research project into community attitudes to on-the-spot fines, and developing a closer relationship with the Financial and Consumer Rights Council.

Should you or the members of your Subcommittee wish to discuss these matters further, please do not hesitate to contact the Director, Enforcement Management, Mr Chris Humphreys (tel: 9637 5660).

Example 2

SR 81 – Livestock Disease Control (Amendment) Regulations 2001 set out the records which must be kept by those involved in the sale of livestock. The Regulation Review

⁴³ The Attorney-General's letter to the Chair of the Subcommittee is dated 16 November 2001.

Subcommittee noted that under the previous Regulations record keeping requirements were only imposed on the sale of cattle, sheep, pigs and horses whereas under the amending Regulations, records need to also be kept for the sale of deer and goats.

The Regulation Review Subcommittee sought clarification as to whether vendors of goats and deer were consulted prior to the enactment of the amending Regulations. The Minister advised that there had been broad consultation with all key sectors of the Victorian livestock industry including the Victorian Farmers Federation Pastoral Group and that there was no opposition to these changes.

The Regulation Review Subcommittee was satisfied that adequate consultation had taken place.

Subcommittee's letter

SR 81 – Livestock Disease Control (Amendment) Regulations 2001

At its meeting on 12 November 2001 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.

Section 94A of the Livestock Diseases Control Act 1994 requires stock and station agents, abattoir operators or any business dealing with the selling of livestock, who sells as agent for another person, to keep detailed records of those sales. The Livestock Disease Control (Amendment) Regulations 2001 (which amend the Livestock Disease Control Regulations 1995) set out the records which must be kept. These include –

- The name and address of the seller;*
- If the sale relates to cattle, the property identification number of the seller;*
- The date of the sale;*
- The location of the sale;*
- The number of livestock sold;*
- The description of the livestock including species, age and sex;*
- The name and address of the purchaser;*
- If the sale relates to cattle, the property identification number of the purchaser (if known).*

Prior to these Regulations, the Auction Sales Act 1958 required auctioneers to keep similar records for the sale of cattle, sheep, pigs and horses. However the Auction Sales Act 1958 will cease to exist from 1 January 2002 and the amended Livestock Disease Control Regulations 1995 will fill the gap. The Subcommittee notes that the Auction Sales Act 1958 only imposed record

keeping requirements on the sale of cattle, sheep, pigs and horses but that under the Livestock Disease Control (Amendment) Regulations, record keeping requirements are now also imposed on the sale of deer and goats.

As the new Regulations were not accompanied by a Regulation Impact Statement, the Subcommittee is concerned that the additional burden being imposed on vendors of goats and deer to keep records may not have been adequately considered. The Subcommittee seeks your advice as to whether any consultation with goat and deer vendors occurred prior to making these Regulations.

The Subcommittee will reconsider these Regulations and the matters raised in this letter at its next meeting on Monday 26 November 2001.

The Subcommittee looks forward to receiving your response.

Minister's Response⁴⁴

SR 81 – Livestock Disease Control (Amendment) Regulations 2001

I refer to your letter dated 16 November 2001.

The Livestock Disease Control (Amendment) Regulations 2001 set out the records which must be kept under section 94A of the Livestock Disease Control Act 1994 by an approved agent or stock and station agent relating to the sale of livestock including goat and deer.

As you pointed out in your letter, the Auction Sales Act 1958 which will shortly be repealed, required auctioneers to keep similar records under section 35 of that Act for the sale of cattle (being horses, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, ewes, wethers, rams, lambs and swine). Although section 35 of that Act does not require the keeping of records in relation to goat and deer, sellers of goat and deer currently maintain sales records that consist of details of the purchaser, the animals sold, and the date of the transaction for tax and business purposes. It is therefore considered that no additional burden is being imposed on goat and deer sellers.

With respect to industry consultation, the making of the Livestock Disease Control (Amendment) Regulations 2001, in the context of the government's response to the National Competition Policy review of the Auction Sales Act 1958, was discussed with the Victorian Livestock Industry Consultative Committee (LICC). This committee has broad representation of all the key sectors of the Victorian Livestock industry. The Victorian Farmers Federation Pastoral Group, which represents sheep, cattle, pig, goat and deer producers, is a key member of the LICC, as are stock agents and saleyard operators. There was no opposition to the proposed Regulations.

⁴⁴ The Minister for Agriculture's letter to the Chair of the Subcommittee is dated 22 November 2001.

If you have any further queries please contact Dr Hugh Millar, Chief Veterinary Officer, on telephone number 9217 4247.

Example 3

SR 110 – Discharged Servicemen’s Preference Regulations 2001 specify theatres of war enabling discharged servicemen involved in those particular wars to obtain preference in employment and promotion. The Regulation Review Subcommittee noted that World War Two was removed as a theatre of war as a consequence of the age of the veteran population. Advice was sought from the Minister as to what consultation had taken place prior to the removal of World War Two as a theatre of war. The Minister indicated that consultation had taken place with the Defence Reserves Re-employment Board and that no inquiries had been made by World War Two veterans for more than 10 years. The Regulation Review Subcommittee was satisfied that adequate consultation had taken place.

Subcommittee’s letter

SR 110 – Discharged Servicemen’s Preference Regulations 2001

At its meeting on 14 December 2001 the Regulation Review Subcommittee examined the above regulations as required under the Subordinate Legislation Act 1994.

The Discharged Servicemen’s Preference Regulations 2001 (the Regulations) replace the Discharged Servicemen’s Preference Regulations (No 2) 1992, which sunset on 1 February 2002. The Regulations prescribe the Theatres of War for the purposes of the definition of ‘discharged servicemen’ under the Discharged Servicemen’s Preference Act 1943. The Act provides for persons falling within the definition of ‘discharged servicemen’ to obtain benefits relating to re-employment after discharge and preference in employment and promotion. The theatres of war prescribed by the Regulations include – United Nations operations in Korea; operations in Malaya (including Singapore); operations in Vietnam; and operations in Sabah, Sarawak and Brunei. The Subcommittee noted the only change to prescribed theatres of war was the removal of the Second World War as this was considered no longer relevant due to the passage of time and the aging veteran population.

The Subcommittee seeks your advice as to what consultation took place prior to making the decision to remove World War Two as a Theatre of War. While the Subcommittee notes the reasoning behind the removal of this particular war, it questions why this could not have been left in, as there may still be a small number of veterans who may wish to utilise these provisions. The Subcommittee would also seek your advice as to what consideration, if any, was given to prescribing additional Theatres of War in these regulations, such as the recent East Timor conflict.

The Subcommittee looks forward to receiving your response.

Minister's Response⁴⁵

SR 110 – Discharged Servicemen's Preference Regulations 2001

Thank you for your letter dated 21 December 2001 in relation to the Discharged Servicemen's Preference Regulations 2001 ("the Regulations"). I will respond to each of the concerns raised by the Subcommittee in turn.

Removal of World War Two as a theatre of war

The Subcommittee has sought my advice as to what consultation took place prior to making the decision to remove the World War Two as a theatre of war for the purposes of the definition of "discharged serviceman" in Discharged Servicemen's Preference Act 1943 ("the 1943 Act").

As you are aware, the Regulations replaced the Discharged Servicemen's Preference Regulations (No 2) 1992 which were due to sunset on 1 February 2002. As part of the process of reviewing and remaking the Regulations, Consumer and Business Affairs Victoria sought the views of the Defence Reserves Re-employment Board ("the Board") on the content of the proposed new regulations. The decision to remove the World War Two as a prescribed theatre of war was made on the recommendation of the Board.

The provisions of the 1943 Act provide for the re-instatement, and preference in employment and promotion, of discharged service personnel. The provisions of the 1943 Act requiring an employer to re-instate a discharged serviceman only applied for two years after the completion of the serviceman's war service. The provisions that provide for preference in employment and promotion continue to apply to World War Two and other prescribed classes of veterans. The Board has advised, however, that they have not received any enquiries in relation to the provisions of the Act from World War Two veterans for more than 10 years. The decision to remove World War Two as a prescribed theatre of war was made on the basis of the lack of enquiries made to the Board and the advanced age of this veteran community.

Prescribing additional theatres of war

The Subcommittee has also sought my advice as to what consideration was given to prescribing additional theatres of war, such as the recent conflict in East Timor.

The 1943 Act was designed to apply to service men and women who had been away on active war service and applied to re-enter the work force upon their return. The 1943 Act aimed to protect, and give preference to, those men and women who had served their country in a theatre of war.

In 1995, Parliament enacted the Defence Reserves Re-employment Act 1995 ("the 1995 Act"). This Act was designed to provide protection to men and

⁴⁵ The Minister for Consumer Affairs' letter to the Chair of the Subcommittee is dated 31 January 2002.

women who have completed a period of qualifying service in the armed forces reserves and provides for the re-employment of eligible reservists. The Minister is able, on recommendation of the Board and by notice in the Government Gazette, to declare service of a specified type to be qualifying service for the purposes of the Act.

The 1995 Act was intended to provide for the re-employment of reservists, whilst at the same time maintaining the protection afforded ex-service personnel under the 1943 Act (a copy of the relevant excerpt from Hansard is enclosed). At the time the 1995 Act went through Parliament, it was not considered appropriate to extend the provisions of the 1943 Act to any further theatres of war. As a result, no new theatres of war, after the conflict in Vietnam, have been prescribed for the purposes of the 1943 Act. Declarations have, however, been made under the 1995 Act to protect reservists who have served in Papua New Guinea, East Timor, and Yugoslavia. I will be making a declaration, to cover any reservist who may serve as part of the international coalition in the current War Against Terrorism, in relation to Afghanistan in the very near future.

I trust I have addressed the Subcommittee's concerns.

Example 4

SR 150 – *Health (Pest Control Operators) (Amendment) Regulations 2001*, which amend the *Health (Pest Control Operators) Regulations 1992* (the Principal Regulations), establish new fees for licensing of users of pesticides and add several specialist qualifications to the list of accredited courses. The Regulation Review Subcommittee noted that the only consultation undertaken was with the Australian Environment Pest Managers Association and that the Victorian Farmers Federation was not consulted. While farmers will only need a licence if they are providing pest control services to other farmers, the Regulation Review Subcommittee considers that the Victorian Farmers Federation should have been consulted. The Principal Regulations expire later this year and are currently subject to review by the Department.

The Department advised that the review of the Principal Regulations will involve consultation with key stakeholders including the Victorian Farmers Federation. The Regulation Review Subcommittee wrote to the Minister noting the advice received. The Minister confirmed that officers from the Department of Human Services contacted the Farmsafe Alliance Manager and the Executive Officer of Water and Chemicals from the Victoria Farmers Federation concerning the proposed new Principal Regulations. The Minister also confirmed that a copy of the RIS will be forwarded to the Victorian Farmers Federation and they will also be invited to attend one of the state-wide workshops being held. The Regulation Review Subcommittee was satisfied with the Minister's response.

Subcommittee's letter

SR 150 – Health (Pest Control Operators) (Amendment) Regulations 2001

At meetings on 25 March and 17 June 2002 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.

The Health (Pest Control Operators) (Amendment) Regulations 2001 amend the Health (Pest Control Operators) Regulations 1992 by removing provisions which are out of date, establishing new fees for licensing of users of pesticides and adding several specialist qualifications to the list of accredited courses.

The Subcommittee notes that the only consultation undertaken was with the Australian Environment Pest Managers Association and that there has been no consultation with the Victorian Farmers Federation. Your department has advised that farmers would only need a licence if they are providing pest control services to other farmers, and that as the Principal Regulations expire later this year as part of the review process, consultation will take place with key stakeholders including the Victorian Farmers Federation. The Subcommittee notes the advice received.

The Subcommittee considers consultation with key stakeholders to be essential and it draws your attention to the provisions of section 6 of the Subordinate Legislation Act 1994 (Vic) and to paragraphs 5.19, 5.20 and 5.21 of the Premier's Guidelines. Paragraph 5.19 of the Premier's Guidelines provides –

Under section 6(b) of the Act, the responsible Minister must ensure that there is consultation in accordance with these guidelines with any sector of the public on which an appreciable economic or social burden may be imposed by a proposed statutory rule. The aim of consultation is to ensure that the need for and scope of the proposed statutory rule is considered.

Although the Subcommittee considers that it would have been appropriate for the Victorian Farmers Federation to be consulted when these Amending Regulations were made, it notes the advice received from your Department that during the review of the Principal Regulations, consultation will occur with key stakeholders, including the Victorian Farmers Federation.

Minister's Response⁴⁶

Health (Pest Control Operators) Regulations 2002

Thank you for your letter of 15 July concerning consultation with the Victorian Farmers Federation in the review of the Health (Pest Control Operators) (Amendment) Regulations 2001.

The Health (Pest Control Operators) Regulations 1992 sunset on 27 October 2002 under the Subordinate Legislation Act 1994. The proposed Health (Pest

⁴⁶ The Minister for Health's letter to the Chair of the Subcommittee is dated 12 August 2002.

Control Operators) Regulations 2002 will prescribe pests, licensing fees, qualifications, returns and records and powers of inspection by authorised officers. These Regulations will apply to persons who use pesticides in the course of the business of a pest control operator.

I have been advised that officers from the Department of Human Services contacted the Farmsafe Alliance Manager and the Executive Officer, Water and Chemicals from the Victorian Farmers Federation on 20 June 2002 regarding the proposed Regulations. The Federation will be forwarded a copy of the Regulatory Impact Statement for comment and will also be sent an invitation to attend of the state-wide workshops about the impact of the proposed Regulations.

Regulation Impact Statements

A Regulation Impact Statement (RIS) must accompany all regulations that are made, unless the regulations fall within an exception⁴⁷ or exemption⁴⁸ under the *Subordinate Legislation Act 1994* (Vic). A RIS is an assessment of the economic and social costs and benefits of a proposed regulation. It is not supposed to be complex but “a commonsense document which provides an honest assessment of the foreseeable impact of a proposed regulation”.⁴⁹ A RIS should carefully consider and evaluate the impact of a proposed regulation on those affected and the competing interests involved. It should also contain an evaluation of alternatives to a proposed regulation and the reasons for rejection of those alternatives. A person reading a RIS should be able to conclude that the proposed regulatory change is justified and that the benefits of the particular regulation outweigh the potential costs which may be imposed on the community.

In 2001 there were 43 regulations made with RISs. The Regulation Review Subcommittee notes that there is still considerable variation in the quality of RISs produced. This issue is discussed in detail in the Committee’s *Report on the Subordinate Legislation Act 1994*. The Regulation Review Subcommittee sought clarification from Ministers concerning various aspects of RISs including competition policy analysis, identification and discussion of alternatives to proposed regulations, cost-benefit analysis, the impact of the proposed regulations and the extent of consultation.

Example 1

SR 9 – Fisheries (Bream Catch Limit) Regulations 2001 set a daily bag of 10 and removed minimum size restrictions for recreational fishing of bream. A RIS specifically concerning these regulations was not prepared and instead reliance was placed on the RIS prepared for the *Fisheries (Catch Limit) Regulations 2000*. The RIS did not examine the costs and benefits of or alternatives to removing minimum size requirements for bream and the analysis of competition principles related to the *Fisheries (Catch Limited) Regulations 2000*. This made it very difficult for

⁴⁷ *Subordinate Legislation Act 1994* (Vic), s. 8.

⁴⁸ *ibid.*, s. 9.

⁴⁹ Department of Premier & Cabinet, *Premier’s Guidelines*, paragraph 13.1.

Regulation Review Subcommittee members to assess the costs and benefits and environmental consequences of the changes made to recreational bream fishing.

The Regulation Review Subcommittee wrote to the Minister seeking clarification of these issues. The Minister's response explained why a separate RIS had not been prepared, indicating that the proposal to remove minimum size restrictions reduced the economic and social burden on those affected and had already been addressed in the RIS for the *Fisheries (Catch Limit) Regulations 2000*. The Regulation Review Subcommittee noted the Minister's response and considers that where a regulatory proposal does not fall within an exception or exemption it should be subject to a RIS.

Subcommittee's letter

SR 9 – Fisheries (Bream Catch Limit) Regulations 2001

At its meeting on 28 May 2001 the Regulation Review Subcommittee examined the above Regulations as it is required to do so under the Subordinate Legislation Act 1994.

The Fisheries (Bream Catch Limit) Regulations 2001 apply to recreational fishing of bream. In 1997 daily bag limits were introduced for bream, allowing a maximum of 10 bream to be caught each day and only two of that 10 could be equal to or greater than 36 cm in length. The Fisheries (Bream Catch Limit) Regulations 2001 still apply the maximum daily limit of 10, but remove the minimum size restrictions.

The Subcommittee notes that a Regulation Impact Statement (RIS) specifically concerning these Regulations was not prepared but instead reliance was placed on the RIS prepared for the Fisheries (Catch Limit) Regulations 2000. The Fisheries Catch Limit Regulations 2000, which have not yet been enacted, aim to protect Victoria's fish resources by –

- Introducing new or amended recreational catch limits for marine and freshwater scale fish and crustacean species.*
- Introducing new or amended recreational catch limits for marine and freshwater fin fish and invertebrate species, a new vehicle limit for recreational mollusc catches and minimum size limits for golden perch and mulloway.*
- Introducing a recreational daily bag limit of 20 sea urchins per person.*
- Prohibiting the removal of roe from sea urchin shells while at sea.*
- Modifying bag and possession limits for snapper and bream.*
- Requiring recreational fishers to mark their catches of whiting, snapper and bream but cutting off a pectoral (side) fin.*
- Prohibiting the recreational use of Yabby Pots.*

The RIS relied upon for the Fisheries (Bream Catch Limit) Regulations 2001 examines the costs and benefits of the proposed changes outlined above and does not specifically examine the costs and benefits of removing minimum size requirements for bream. The Subcommittee notes that the cost-benefit analysis, the discussion of alternatives and the analysis of competition principles relates to the Fisheries (Catch Limit) Regulations 2000 and not to the removal of minimum size restrictions on recreational bream catches. The Subcommittee wishes to point out that since the change introduced by the Fisheries (Bream Catch Limit) Regulations 2001 was not specifically addressed in the RIS for Fisheries (Catch Limit) Regulations 2000, a separate RIS should have been prepared. As a consequence the Subcommittee has found it very difficult to assess the costs and benefits, and in particular the environmental consequences of these Regulations.

While the Subcommittee has approved the Fisheries Bream (Catch Limit) Regulations 2001, it wishes to indicate that in future, it may not approve Regulations, where a separate RIS should have been prepared.

*Minister's Response*⁵⁰

SR 9 – Fisheries (Bream Catch Limit) Regulations 2001

Thank you for your letter of 31 May 2001 raising concerns on behalf of the Regulation Review Subcommittee regarding the process associated with the making of the Fisheries (Bream Catch Limit) Regulations 2001. I have directed that relevant staff in the Department of Natural Resources and Environment be notified of the issues you have raised.

I am advised that the following considerations had a bearing on the assessment of the need to conduct a separate additional RIS process for the Fisheries (Bream Catch Limit) Regulations:-

- the proposal to remove restrictions on catches of larger bream was included in the Fisheries (Catch Limit) Regulations RIS, and was supported by a majority of RIS submissions and by VRFish (the recreational fishing peak body);*
- recreational bream catch limits were introduced in 1997 and amended in 2001 to reflect current community perceptions of responsible bream fishing practices, rather than to address bream stock protection objectives. Consequently, there were no anticipated environmental costs or benefits associated with the introduction of the Fisheries (Bream Catch Limit) Regulations 2001; and*
- the Fisheries (Bream Catch Limit) Regulations 2001 relaxed, rather than increased, restrictions on recreational bream fishing, and were therefore likely to reduce, rather than increase, any economic or social burdens associated with regulation of recreational fishing.*

⁵⁰ The Minister for Energy and Resources and Ports' letter to the Chair of the Subcommittee is dated 28 June 2001.

Given these circumstances and the provisions of Section 9(1)(a) of the Subordinate Legislation Act 1994, the Department concluded that an additional stand-alone RIS process for the Fisheries (Bream Catch Limit) Regulations 2001 was unnecessary.

Thank you once again for raising this issue, as it provides further guidance in determining best practice for regulatory change processes.

Example 2

SR 28 – Subdivision (Body Corporate) Regulations 2001 deal with matters concerning the management of common property and the constitution, operation, functions and powers of bodies corporate. One of the alternatives analysed in the RIS was the creation of new legislation dealing specifically with bodies corporate. This alternative would have involved a stricter enforcement regime, more investigation of complaints, dispute resolution and stronger financial management standards. The RIS indicated that the reason for not adopting this alternative was that it needed further investigation and there was insufficient time available to do this.

The Regulation Review Subcommittee sought an explanation from the Minister as to why this option had not been pursued given that it appeared to be the best means of achieving the objectives of the regulations. The Minister advised that submissions received in response to the RIS raised a number of significant issues concerning bodies corporate and there was insufficient time available to adequately address these issues. This was because the current regulations were due to expire and without the enactment of the *Subdivision (Body Corporate) Regulations 2001*, there would be no regulations in place governing bodies corporate. The Minister emphasised that further reform of bodies corporate legislation is on the agenda and that the Inter-departmental Body Corporate Task Force set up in October 2000 will be reconvened to consider these reform options. The Regulation Review Subcommittee noted the Minister's advice.

Subcommittee's letter

SR 28 – Subdivision (Body Corporate) Regulations 2001

At its meeting on 20 August 2001 the Regulation Review Subcommittee examined the above Regulations, as it is required to do so under the Subordinate Legislation Act 1994.

The Subdivision (Body Corporate) Regulations 2001 deal with matters concerning the management of common property and the constitution and operation of bodies corporate. The Regulations give bodies corporate a broad range of powers so that bodies corporate can perform their functions. Some of these powers include – the setting of fees and levies; the acquisition and disposal of personal property; investment of money and operation of bank accounts. The Regulations also contain provisions regulating financial matters ensuring that bodies corporate are financially accountable to members and giving bodies corporate the ability to recover amounts owing to them. Other matters dealt with by the Regulations include the use, repair and maintenance of property; insurance; body corporate rules; appointment of

managers and secretaries; body corporate meetings; duties and rights of members. Given the serious nature of the matters dealt with by the Regulations, Subcommittee members are of the view that empowering bodies corporate to perform a range of functions should more appropriately have been dealt with by an Act of Parliament rather than in Regulations and that the ten year review provided an opportunity of doing this.

Subcommittee members also note that, as an alternative to these Regulations, consideration was given to creating new legislation dealing specifically with bodies corporate. This alternative would have involved a stricter enforcement regime, great public information and awareness, more investigation of complaints; dispute resolution together with stronger financial management and standards of performance amongst professionals dealing with the body corporate community. The RIS notes that this alternative would achieve all the objectives of the Regulations and that it warrants further consideration but given time constraints this option was not able to be pursued. Time constraints aside, Subcommittee members are curious as to why this option was not pursued, given that it seems by far the best means of achieving the objectives sought to be achieved by the new Regulations.

Overall the Subcommittee members would like to pass on their gratitude to the staff in your department for preparing a good quality regulation impact statement and for undertaking broad consultation.

The Subcommittee looks forward to receiving your response.

Minister's Response⁵¹

SR 28 – Subdivision (Body Corporate) Regulations 2001

Thank you for your letter of 27 August 2001 regarding the making of the Subdivision (Body Corporate) Regulations 2001.

I understand that the Regulation Review Subcommittee has asked for further information on the review of the regulations, specifically for comment on why the alternative of translating the existing body corporate regime into a fuller consumer protection regime through legislation was not pursued.

As stated in the Regulatory Impact Statement, the Subdivision (Body Corporate) Regulations 1989 were effectively under review from December 1992 when the then Minister for Planning established an Advisory Committee to the Review of the Body Corporate Regulations.

The Advisory Committee included representatives from the legal profession, body corporate management, the insurance industry and Land Victoria. A report entitled the “Review of the Subdivision (Body Corporate) Regulations 1989”, was made widely available for public comment in May 1996, detailing proposals for amendment. Submissions were analysed and further amendments to the Regulations were proposed. The Committee concluded its

⁵¹ The Minister for Planning’s letter to the Chair of the Subcommittee is dated 25 October 2001.

considerations in August 1999. As is evident, the process of review was protracted, and the Committee was not always in agreement on the proposed reforms.

The Department of Infrastructure began the second major stage of the review in 1999, intending to build on the work of the Advisory Committee. However, as work progressed, it became clear that the recommendations of the Committee did not fully reflect the needs of the body corporate community, or the complexity of the growing body corporate sector. This was confirmed during the subsequent formal process of regulatory review under the Subordinate Legislation Act 1994.

The submissions to the latter review attracted a wide range of views and proposals for possible reform. Submissions considered by the newly established Inter-departmental Body Corporate Task Force from October 2000 to March 2001 raised substantial concerns, including:

- *the nature of the proprietary interest provided to bodies corporate members;*
- *appropriate mechanisms for dispute resolution and litigation; and*
- *levels of accountability and control of finances.*

The proposals made in many submissions represented such a complex and fundamental review of the regulatory framework, and of the role and management of bodies corporate, that such significant policy and legislative questions could not therefore be resolved by the Task Force in the time available before the regulations expired.

At this point in time, the Department of Infrastructure has a significant workload in providing ongoing support for the introduction of the new regulations, assisting in distribution of publications and dealing with information requests from the public. When this initial phase has passed, it is intended to reconvene the Task Force to ask them to consider options for progressing further reform of the body corporate regime in Victoria.

I hope this information is of assistance to the Subcommittee. Should you have any further comments about the Regulations, please contact Louise Johnson, of the Department of Infrastructure, on telephone 9655 6720.

Example 3

SR No 90 – Wildlife (Game) Regulations 2001 prescribe conditions and restrictions for game hunting in Victoria. The Regulation Review Subcommittee was concerned with provisions relating to the use of toxic shot for duck hunting. The Wildlife (Game) Regulations 2001 allow two exceptions to the general prohibition on the use of toxic shot – those using guns which are less than 12 gauge may use toxic shot until 31 December 2004 and users of muzzle-loading, Damascus steel or twist barrelled shotguns. Under previous regulations – SR No. 10 – Wildlife (Game) (Amendment) Regulations 2000 the use of toxic shot in guns of less than 12 gauge was to be phased

out by 31 December 2001. The RIS accompanying the *Wildlife (Game) (Amendment) Regulations 2000* discussed the serious environmental consequences which result from the use of toxic shot.

The Regulation Review Subcommittee sought advice from the Minister as to the reasons for extending the use of toxic shot to 31 December 2004 and the extent to which non-toxic shot is commercially available. The Minister explained that non-toxic shot is difficult to obtain for firearms with a gauge less than 12 and that the extension was provided to allow arrangements to be made with ammunition importers to ensure that non-toxic shot is available for use in small gauge firearms. The Minister indicated that less than 1% of duck hunters use muzzle-loading, damascus steel or twist barrelled shotguns and that these types of firearms cannot be converted to the use of non-toxic shot. The Minister also noted that it is unlikely that non-toxic shot will become commercially available for these types of firearms.

The Regulation Review Subcommittee accepted the Minister's explanation.

Subcommittee's letter

SR 90 – Wildlife (Game) Regulations 2001

At its meeting on 12 November 2001 the Regulation Review Subcommittee examined the Wildlife (Game) Regulations 2001 as it is required to do under the Subordinate Legislation Act 1994.

The Wildlife (Game) Regulations 2001 (the Regulations) prescribe the conditions and restrictions for game hunting in Victoria. They specify open and closed seasons, bag limits, restricted and permitted hunting methods and areas, licensing requirements, deer tagging requirements, species of prescribed hunting game and conditions relating to possession and use of game. These Regulations replace the Wildlife (Game) Regulations 1990 (which, after a 12 month extension, expired on 18 September 2001). While the Regulations leave unchanged the majority of arrangements existing under the previous regulations, they do make some changes. A number of amendments were also made to the proposed regulations as a result of submissions received during the Regulation Impact Statement (RIS) process. The Subcommittee is particularly concerned with one of these changes, relating to the extended use of toxic-shot.

The Regulations prohibit the use and possession of toxic shot for duck hunting with two exceptions –

- 1. where the gun is 12 gauge or less toxic shot is allowed to be used until 31 December 2004; or*
- 2. where the person is using a muzzle-loading, Damascus steel or twist barrelled shotgun.*

The RIS defines non toxic shot as steel, bismuth, tungsten matrix, tungsten polymer, tungsten iron or tin shot. As originally drafted and released for public comment the regulations allowed no exceptions to the prohibition on

the use of toxic shot and allowed two exceptions to the prohibition of possession - a person hunting quail in specified areas or where the shot was secured in a vehicle. The final Regulations are much more lenient on the use and possession of toxic shot than the Regulations released for comment during the RIS process and as compared to the previous Regulations.

Under the previous Regulations the use of toxic shot in guns of 12 gauge or less was to be phased out by 31 December 2001. However under these new Regulations the use of toxic shot in guns of 12 gauge or less has been extended to 31 December 2004. In addition the Regulations also allow a person to use or be in possession of toxic shot when using a muzzle-loading, Damascus steel or twist barrelled shotgun. This is a new exception and the Regulations do not make any provision for toxic shot in these types of guns to be eventually phased out.

The Subcommittee notes the adverse comments about the use of toxic shot made in the RIS accompanying SR No. 10 – Wildlife (Game)(Amendment) Regulations 2000. The RIS indicated that the use of toxic shot causes serious damage to the environment and wildlife and that the use of non-toxic shot would result in the “elimination of lead poisoning of a range of wildlife and a reduction in the deposition of a toxic substance into the environment”. The RIS noted that the use of toxic shot would be allowed “until non-toxic alternatives are readily commercially available or by the start of the 2002 duck season in Victoria, whichever is sooner”. That same RIS also pointed out that non-toxic shot has been available for some years in Australia, that its use has been encouraged by the Victorian Hunting Guide since 1997 and that the use of toxic shot has been listed as a potentially threatening process under the Flora and Fauna Guarantee Act 1988.

The RIS accompanying these new Regulations stated –

The proposed regulations ensure that game is hunted in a sustainable, controlled, humane and ethical manner and define and encourage responsible and conservative hunting practices.

The Subcommittee is concerned about the environmental consequences and the threat to wildlife posed by the use of toxic shot. It is concerned about the additional two years granted to owners of guns of 12 gauge or less and the total exemption granted to users of muzzle-loading damascus steel or twist barrelled shotguns. The use of toxic shot does not appear to constitute responsible and conservative hunting practices. The Subcommittee therefore seeks your advice as to the following matters –

- *The reasons for extending the use of toxic shot in guns of 12 gauge or less to 31 December 2004;*
- *To what extent non toxic shot is commercially available;*
- *The extent to which muzzle loading, damascus steel or twist barrelled shotguns are used;*

- *Whether it is possible to convert muzzle loading, damascus steel or twist barrelled shotguns to the use of non toxic shot.*

The Subcommittee will reconsider these Regulations and the matters raised in this letter at its next meeting on Monday 26 November 2001.

The Subcommittee looks forward to receiving your response.

*Minister's Response*⁵²

SR 90 – Wildlife (Game) Regulations 2001

Thanks you for your letter of 16 November 2001 regarding exemptions to the mandatory use of non-toxic shot for duck hunting in Victoria.

After the Department of Natural Resources and Environment considered submissions to the Regulatory Impact Statement (RIS) process for the Wildlife (Game) Regulations 2001, a number of amendments were made to the regulations, including a three-year exemption from the mandatory use of non-toxic shot for duck hunting for shotguns with a gauge of less than 12 and a permanent exemption for muzzle-loading, Damascus steel and twist barrelled shotguns. The exemptions do not include 12 Gauge shotguns. The reasons for making these exemptions are detailed below.

Use of non-toxic shot in shotguns with a gauge of less than 12

Twelve-gauge shotguns are the most popular firearm used for duck hunting in Victoria. Non-toxic shot is readily available for firearms in this gauge. However, due to the low demand, non-toxic shot is currently difficult to obtain in gauges smaller than 12 (i.e. 20, 16 or .410 gauge), throughout Australia. This issue was raised by a number of submissions to the RIS and, in response, the exemption to the mandatory use of non-toxic shot for duck hunting for shotguns with a gauge of less than 12 was extended until 31 December 2004. This extension was implemented to allow the Department and hunting organisations to work with ammunition importers to ensure a supply of smaller gauge non-toxic shot for duck hunting, before the exemption period expires.

Use of non-toxic shot in muzzle-loading, Damascus steel and twist barrelled shotguns

Muzzle-loading, Damascus steel and twist barrelled shotguns are very old forms of firearm, used occasionally for duck hunting in Victoria. Only a small number of enthusiasts use these types of firearms for duck hunting, as they are not particularly suited for this purpose, due to a number of practical difficulties associated with their use and poor ballistic performance. Although there are no reliable estimates of the number of hunters who use these types of firearms, a considered estimate would indicate that less than 1% of duck

⁵² The Minister for Environment and Conservation's letter to the Chair of the Subcommittee is dated 7 December 2001.

hunters (less than 250 individuals) would use muzzle-loading, Damascus steel or twist barrelled shotguns.

It is not possible to convert Damascus steel or twist barrelled shotguns to use non-toxic shot as they are not designed to withstand the high internal pressures generated by the firing of modern day shotgun cartridges (both lead shot and non-toxic cartridges). Non-toxic shot can be used in muzzle-loading firearms, however, non-toxic shot components for these firearms are not readily available in Australia due to the low demand for these products. It is unlikely that non-toxic shot products will become commercially available for muzzle-loading firearms in Australia.

Example 4

SR 118 – Fisheries (Rock Lobster and Giant Crab) Regulations 2001 provide for the management of rock lobster and giant crabs through a quota management system and introduce a closed season for giant crabs. In the past the rock lobster and giant crab industry was managed through input controls, that is limited access licences, minimum size lengths and other restrictions. The Regulations introduced a major change through quota management. The Regulation Review Subcommittee received submissions from Seafood Industry Victoria and the Eastern Zone Rock Lobster Association raising various issues concerning the Regulations. The Regulation Review Subcommittee considered that the RIS focussed on the cost impact on DNRE rather than the fishers and that in examining the alternatives, it tended to focus on particular aspects of the regulations rather than the regulations as a whole.

The Regulation Review Subcommittee sought advice from the Minister concerning these issues and whether the new provisions caused any practical difficulties for fishers. The Minister indicated that the RIS did examine the costs to industry such as the purchase of scales, phone calls and record keeping requirements but that the focus had been on the costs for the Department because the move to quota management resulted in most compliance costs being borne by the Department. The Minister advised that the move to a quota system had only been undertaken after years of extensive consultation with major stakeholders including those who made submissions to the Regulation Review Subcommittee and that quota management was viewed as the best means of achieving a sustainable industry. The Minister also noted that while there were a few ‘teething’ problems for fishers when the regulations commenced, fishers were not experiencing any practical difficulties complying with them.

In addition to the advice obtained from the Minister, the Regulation Review Subcommittee met with two senior officers from the Department Mr. Stephen McCormack, Manager Commercial Fisheries and Mr. David Mallay, Manager Giant Crab and Rock Lobster Fisheries. The Regulation Review Subcommittee considered that this meeting was very worthwhile and gave subcommittee members an opportunity to obtain an in-depth understanding of the new Regulations. The Regulation Review Subcommittee noted the advice received from the Minister and her departmental officers.

Subcommittee's letter

SR 118 – Fisheries (Rock Lobster and Giant Crab) Regulations 2001

At its meeting on 14 December 2001 the Regulation Review Subcommittee examined the above regulations as it is required to do under the Subordinate Legislation Act 1994.

The Fisheries (Rock Lobster and Giant Crab) Regulations 2001 prescribe new requirements for rock lobster and giant crab fisheries in order to overcome the decline in catch rates and the failure of input controls to allow rock lobster and giant crab stocks to rebuild. The Regulations provide for management of rock lobster and giant crabs through a quota management system; introduce a giant crab closed season; close the Tamboon Inlet fishery and make other amendments. The major impact of the Regulations will result from a shift in management from input controlled to output controlled fisheries.

Prior to these Regulations, the rock lobster and giant crab fisheries were managed through input controls – limited access licences, minimum size lengths, closed seasons, restrictions on taking egg bearing females, restricted pot numbers etc.

The Committee received two submissions concerning these regulations from Seafood Industry Victoria (SIV), and the Eastern Zone Rock Lobster Association (EZRLA), raising various issues for the Subcommittee to consider. Copies of these submissions are enclosed for your information.

The Subcommittee seeks clarification concerning various aspects of the RIS.

The Subcommittee is concerned with the cost/benefit analysis included in the RIS. Section 10(2) of the Subordinate Legislation Act 1994 provides –

The assessment of the costs and benefits must include an assessment of the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs.

Although the RIS does identify a substantial number of economic, social and environmental impacts, the RIS fails to adequately identify the likely costs to the industry of the proposed regulations, particularly in respect of the compliance costs. The Subcommittee notes that the RIS has identified some compliance costs, but the analysis particularly focuses on the costs to DNRE, rather than fishers.

The Subcommittee is also concerned with the analysis of alternatives in the regulations. Section 10(1)(c) of the Subordinate Legislation Act 1994 requires a RIS to include “a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options.” Whilst the RIS did assess various alternatives to these regulations, it did so only in relation to particular aspects of the regulations and not the regulations

as a whole. The approach favoured by industry, namely, more stringent input controls, was not considered. The Subcommittee is of the view that a RIS should examine and evaluate regulatory alternatives in relation to the regulations as a whole and that in these circumstances there should have been some consideration of the input control approach.

In its submission to the Committee, SIV indicates that the timing of the introduction of the changes was inappropriate as there was no opportunity for any of the provisions to be trialed or tested. SIV expressed concern that some of the new provisions may cause practical difficulties for the fishers and that in certain situations the new provisions may not be workable. While not expressing a view as to the concerns expressed by SIV, in view of the absence in the RIS of any consideration of alternative approaches, the Subcommittee seeks your advice on the matters raised by SIV.

The Subcommittee will reconsider these Regulations and the matters raised in this letter at its next meeting on Friday 1 February 2002. In order for the Subcommittee to obtain a more complete understanding of the Regulations, I would like to extend an invitation to relevant policy officers from your department to attend the Subcommittee's meeting on 1 February 2002 to discuss these issues further.

The Subcommittee looks forward to receiving your response.

Minister's Response⁵³

SR 118 – Fisheries (Rock Lobster and Giant Crab) Regulations 2001

Thank you for your letter of 27 December 2001 regarding the Fisheries (Rock Lobster and Giant Crab) Regulations 2001 and various aspects of the Regulatory Impact Statement (RIS) on which the Subcommittee is seeking clarification.

It should be noted that the independent advice as to the adequacy of the regulatory impact statement was provided by the Office of Regulation Reform which is responsible for providing government departments with advice in relation to regulatory issues. In its assessment of the RIS, it noted that:

the RIS provides a transparent account of the relevant costs and benefits associated with the proposed regulations. The RIS also provides feasible alternatives that could at times equally achieve required objectives, but with associated lower net benefits.

The first issue raised in the letter is that although the RIS identifies a substantial number of economic, social and environmental impacts and some compliance costs, the analysis particularly focuses on the costs to the Department of Natural Resources and Environment (DNRE) rather than to fishers. All relevant costs to the industry such as purchase of scales, phone calls and record keeping were considered by the RIS. The RIS appears to

⁵³ The Minister for Energy and Resources' letter to the Chair of the Subcommittee is dated 23 January 2002.

focus on the costs to DNRE because most compliance costs from the move to quota management will be borne by DNRE.

Industry may be concerned that any future move towards full cost recovery will result in the increased cost of quota management ultimately being borne by industry. However as licence fees are set by regulation, any future move to full cost recovery would need to be considered separately and would require a further RIS. Industry has been advised that they will be fully consulted in the implementation of any cost recovery policy and that any future costs increases will take into account the fishers' ability to pay.

Your letter indicates that the Subcommittee is of the view that although the RIS assessed various alternatives to the regulations it should also have examined and estimated the costs of more stringent input controls. The decision to move to quotas was made after many years of extensive consultation with major stakeholder groups, including Seafood Industry Victoria and the Eastern Zone Rock Lobster Association, the two organisations that have made submissions to the Subcommittee. During this period, a number of different input control options were fully evaluated and discussed. However, in the end the decision was made that the joint objectives of ecologically sustainable development and economic efficiency could best be met for the rock lobster fishery through a system of individual transferable catch quotas. As the Minister responsible for fisheries, I announced this decision in November 2000 and issued a Ministerial Direction published in the Government Gazette under the provisions of the Fisheries Act 1995, for the rock lobster fishery to be managed under quotas.

In May 2001, Quota Orders were also issued and published in the Gazette. The Quota Orders were the legislative instruments which established that the rock lobster fishery would be managed by quota. The purpose of the regulations that were introduced last October was to implement administrative arrangements to support the move to quota management. Although more stringent input controls is an alternative to quota management, it was not an alternative to the regulations as the regulations were not the legislative instrument which introduced quota management for the rock lobster fishery.

I note the comments from Seafood Industry Victoria (SIV) in relation to the timing of the implementation of the quota arrangements and the lack of opportunity for trialling of the new systems. I considered a submission in this regard from SIV in the lead up to the season opening. The Department was confident however that the effort put in to support fishers in the transition to the new arrangements would minimise any potential problems. Two months into the season, the Department's confidence seems to have been well founded. While there have been some teething problems, as you would anticipate, the new arrangements have generally bedded down better than could have been expected.

Thank you for the invitation for relevant policy officers from the Department to attend the next meeting of your Subcommittee to discuss these matters in further detail. I will ensure that the relevant officers are available. Would

you please advise the Executive Director of Fisheries Victoria, Mr Richard McLoughlin, (tel: 9412 5777, email: Richard.McLoughlin@nre.vic.gov.au), of the meeting details.

Example 5

SR No. 146 – National Parks (Fees and Charges) Regulations 2001 impose fees on visitors to various national parks. The Regulation Review Subcommittee noting that the major cost impact of the Regulations was on individuals and tour operators who pay fees for entering national parks sought advice from the Minister concerning the extent to which visitor numbers will be affected by these fees.

The Minister advised that the fees are expected to have very little impact on the number of visitors to national parks. The Minister pointed out that the fees are very similar to existing fees and that only 7 out of 21 fees have been increased. The Minister noted that park entry fees have been increased every couple of years for more than 20 years and that visitors to parks have continued to increase. The Minister also advised that the cost of \$1.10 per person charged to tour operators is not expected to reduce the number of visitors taking commercial tours. The Minister indicated that the Department is currently conducting a review of the fees paid by tour operators.

The Regulation Review Subcommittee was satisfied with the advice received from the Minister.

Subcommittee's letter

SR 146 – National Parks (Fees and Charges) Regulations 2001

At its meeting on 6 May 2002 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.

The National Parks (Fees and Charges) Regulations 2001 impose fees on visitors to various national parks including Wilson's Promontory National Park; Baw Baw National Park; Mornington Peninsula National Park; Yarra Ranges National Park and Mount Buffalo National Park.

The Subcommittee notes that the fees are based on a model of partial cost recovery and that 32% of the total cost of maintaining parks and facilities will be recovered. The main cost impact identified by the RIS will be on individuals and tour operators who have to pay fees for entering the national parks. The Subcommittee could not find in the RIS any discussion of the impact these Regulations will have on the number of visitors to national parks. The Subcommittee therefore seeks your advice as to whether any consideration was given to this issue when preparing the Regulations and if so would you please provide the Subcommittee with details of the impact of these Regulations on the number of visitors to National Parks.

The Subcommittee looks forward to receiving your response.

Minister's Response⁵⁴

SR 146 – National Parks (Fees and Charges) Regulations 2001

Thank you for your letter of 9 May 2002 seeking advice on the impact of the National Parks (Fees and Charges) Regulations 2001 (S.R. No. 146/2001) on visits to national parks.

The impact of fees on visitation is an important consideration as the Government is keen to promote recreation in Victoria's magnificent parks system. The Regulatory Impact Statement (RIS) does consider the impact of the regulations and alternatives on visitation in a qualitative manner. To respond to your query I refer to the key points made in the RIS which are summarised below. Supplementary information is also provided.

An impact of the full cost recovery alternative examined in the RIS would be a decline in visitation because this would entail at least a three-fold increase in entry fees (RIS p.35). This, and associated impacts, was one of the reasons for electing to select the partial recovery approach used in the regulations.

It is considered that the fees in the regulations for many visitors are likely to constitute only a moderate to small cost component of the total cost of visitation (other costs include travel, time, accommodation and food). While at the margin this would be expected to reduce visitation, and thus impact adversely on visitors and potential visitors, the impact is expected to be relatively small, particularly when various fee options are available. For visitors who live close to parks, the entry fee is likely to comprise a greater share of the total cost of visitation. For these visitors, the annual national parks pass and annual pass (that is proposed for three parks) would offer less expensive entry fees than the daily pass option (RIS p.29).

If a comparison is made with the fees payable under the former National Parks (Fees and Charges) Regulations 1990, rather than the base case of no regulation at all, the impact on visitation is anticipated to be negligible because of the following features of the new regulations (see attachment I):

- No fees in five parks in which fees were previously payable (this could stimulate increased visitation);*
- Of the 21 fees retained only seven have increased (the aim was to establish relativity between fees, not increase revenue); and*
- New fee options have been introduced, including multiple day passes and annual passes to individual parks for cars and buses, which provide the opportunity for reduced overall entry costs.*

Entry fees are only charged at five of the 92 parks on the Schedules of the National Parks Act 1975. These parks all receive high levels of visitation and

⁵⁴ The Minister for Environment and Conservation's letter to the Chair of the Subcommittee is dated 5 July 2002.

have extensive visitor facilities and therefore incur substantial costs. Fees have been charge in these parks for many years and are well accepted by the public.

Although park entry fees have been increased every year or two for more than 20 years, visitation across the park system has continued to increase. This could be a combination of more parks being legislated, acceptance of the fees and visitors who do not wish to pay entry fees substituting visits to parks with entry fees for visits to parks without entry fees.

The RIS explores the impacts of the new fees on commercial tour operators. They are required to pay entry fees where levied or, where there is no entry fee, a public land use fee of \$1.10 per person per day for all tours, or \$0.75 per person per day for school groups. This fee is virtually the same as the entry fee where tour buses are approaching full capacity. The fees specified in the regulations are reasonable, including a mix of increases and decreases, and are not expected to significantly reduce the numbers of visitors taking commercial tours. The Department is currently reviewing the fees paid by tour operators.

In summary, the National Parks (Fees and Charges) Regulations 2001 are expected to have very little impact on visitation because they apply to a small proportion of parks, are well accepted by the public, do not significantly add to the costs incurred by commercial tour operators, and the entry fees are similar to the pre-existing fees and provide new options for visitors to decrease their entry costs.

If you would like to discuss this matter further please contact Paul FitzSimons, Senior Policy Officer, on 9637 8440.

Extension of Operation

The *Subordinate Legislation Act 1994* (Vic) allows regulations which are due to expire to be extended for a further 12 months where the Minister certifies that due to ‘special circumstances’ there is insufficient time to undertake a RIS.⁵⁵ The *Premier’s Guidelines* indicate that ‘special circumstances’ exist where a review of the whole area is under way but is incomplete or where national scheme legislation is being negotiated. Regulations normally expire 10 years after they have been made⁵⁶ so this exception effectively extends the life of a regulation to 11 years instead of 10.

The Committee is pleased to report that there was a decline in the number of regulations made under this exception during the last 12 months, with only 11 being made.⁵⁷ Extensions of regulations should not be granted for mere administrative convenience or poor management procedures. The Regulation Review Subcommittee considers that ‘special circumstances’ include the development of national scheme legislation or national competition policy reviews. The Regulation Review

⁵⁵ *Subordinate Legislation Act 1994* (Vic), s. 8(1)(d)(iii).

⁵⁶ *Subordinate Legislation Act 1994* (Vic), s. 5(1).

⁵⁷ In 1999 there were 14 and in 2000 there were 19 regulations made under section 8(1)(d)(iii).

Subcommittee remains concerned about the practice of failing to clearly explain ‘special circumstances’ in section 5(3) certificates or in explanatory memoranda. Paragraphs 12.4 and 12.5 of the *Premier’s Guidelines* reinforce the need for details of the ‘special circumstances’ to be provided in section 5(3) certificates and explanatory memoranda. The Committee makes recommendations dealing with these issues in its *Report on the Subordinate Legislation Act 1994*.

Example 1

SR 6 – Subordinate Legislation (Local Government (Long Service Leave) Regulations 1991 – Extension of Operation) Regulations 2001 extend the operation of the *Local Government (Long Service Leave) Regulations 1991*. The section 5(3) certificate and the explanatory memorandum referred to ‘special circumstances’ without providing any details. The Regulation Review Subcommittee wrote to the Minister indicating that it considered the failure to explain the nature of ‘special circumstances’ as a serious omission, potentially breaching section 21(1)(j) of the *Subordinate Legislation Act 1994* (Vic).

The Regulation Review Subcommittee was satisfied with the Minister's response which explained the reasons for granting the extension and indicated that the Department will be reviewing documentation prepared under the *Subordinate Legislation Act 1994* (Vic) to ensure that in future all requirements are met.

Subcommittee’s letter

SR 6 – Subordinate Legislation (Local Government (Long Service Leave) Regulations 1991 – Extension of Operation) Regulations 2001

At its meeting on 19 March 2001 the Regulation Review Subcommittee examined the above Regulations as it is required to do so under the Subordinate Legislation Act 1994.

The Subordinate Legislation (Local Government (Long Service Leave) Regulations 1991 – Extension of Operation) Regulations 2001 extend the operation of the Local Government (Long Service Leave) Regulations 1991 to 18 February 2002.

Under sub-section 5(4) of the Subordinate Legislation Act 1994 the Governor-in-Council may extend the operation of existing regulations for a maximum period of 12 months provided that the Minister is satisfied that due to ‘special circumstances’ there is insufficient time to enable compliance with the requirements of Part 2 of the Subordinate Legislation Act 1994.

Both the sub-section 5(3) certificate and the Explanatory Memorandum accompanying these Regulations note the existence of ‘special circumstances’ but fail to explain the ‘special circumstances’. Paragraphs 12.4 and 12.5 of the Premier’s Guidelines make clear that details of ‘special circumstances’ giving rise to the extension of regulations must be provided in sub-section 5(3) certificates and Explanatory Memoranda. Paragraph 12.4 of the Premier’s Guidelines provides –

Therefore, it is the responsibility of each agency to ensure that the Minister is properly advised as to why special circumstances exist which justify the extension of regulations which would otherwise sunset. The Governor in Council will need to be advised as to what the special circumstances are. This will involve setting out the circumstances in the Explanatory Memorandum.

The Subcommittee views the failure to provide any details of the ‘special circumstances’ in any of the certificates as a serious omission, possibly constituting a breach of sub-section 21(1)(j) of the Subordinate Legislation Act 1994. The Subcommittee has decided not to approve the above Regulations until it receives details of the ‘special circumstances’ which provided the basis for extending the operation of the Local Government (Long Service Leave) Regulations 1991.

The Subcommittee looks forward to receiving your response.

Minister's Response⁵⁸

SR 6 – Subordinate Legislation (Local Government (Long Service Leave) Regulations 1991 – Extension of Operation) Regulations 2001

Thank you for your letter dated 2 April 2001 concerning these Regulations.

“Special Circumstances” necessitated the extension of these Regulations for 12 months. The Local Government (Long Service Leave) Regulations 1991 provide for long service leave for Council staff members. The Regulations set out in detail the long service leave entitlements and rules applicable to all local government staff in Victoria.

It is proposed that the Local Government (Long Service Leave) Regulations 1991 will be altered so as to allow automatic long service leave recognition and funding transfer between local governments, the State public service and Water Authorities when these regulations are remade in 2001. Initially it was envisaged the exact form of this alteration would be finalised prior to expiration of the Local Government (Long Service Leave) Regulations 1991. However, delays in obtaining interdepartmental agreement and issues relating to the new State public service award have meant that such alteration could not be finalised before 19 February 2001. Given the importance of the transferability of long service leave entitlements to the local government sector, work is continuing to achieve this end. Extension of the Local Government (Long Service Leave) Regulations 1991 was necessary in order to provide continued regulation during the period before the making of the altered regulations. On current estimates, the new Local Government (Long Service Leave) Regulations are expected to be made in December 2001. This is because the local Government division of the Department of Infrastructure is still exploring options for a number of provisions to be reformed. These include-

⁵⁸ The Minister for Local Government's letter to the Chair of the Subcommittee is dated 29 May 2001.

- *Widening the provision dealing with early entitlement to long service leave due to retirement, ill health, marriage or confinement;*
- *Improving the portability of long service leave between local councils and state government departments and local councils and water authorities;*
- *Developing better dispute resolution procedures.*

The Department of Infrastructure is consulting with the Department of Treasury & Finance and Department of Natural Resources and Environment about portability and the Department of Justice about dispute resolution. In addition, the Department plans to consult the Municipal Association of Victoria, the Victorian Local Government Association, LG Pro, the Australian Services Union, Industrial Relations Victoria, VECCI, Australian Education Union, Assoc of Professional Engineers, Scientists and Managers Australia and other relevant unions. Consultation with these interest groups will take some time and it would be very difficult for the Local Government Division to complete the preparatory work for the regulations much earlier than planned.

In the meantime, the continued extension of the operation of the Local Government (Long Service Leave) Regulations 1991 is essential to ensure certainty around the long service leave entitlements of local government employees and to avoid industrial unrest.

The Department of Infrastructure will be reviewing the documentation it prepares for the making of Regulations under the Subordinate Legislation Act 1994 to ensure that in the future your Committee's requirements are met. I trust that this letter satisfied your Committee's concerns regarding these Extension Regulations.

Example 2

SR 154 – Subordinate Legislation (Police Regulations 1992 – Extension of Operation) Regulations 2001 extend the operation of the Police Regulations 1992. The explanatory memorandum indicated that the reason for granting the extension was that a review of the Police Regulations 1992 had not yet been completed. The Regulation Review Subcommittee was not satisfied that this reason constituted 'special circumstances' and so it sought clarification from the Minister.

The Minister indicated that a major review of the *Police Regulation Act 1958 (Vic)* and the *Police Regulations 1992* had been completed at the end of 2001 and that consideration needed to be given to 109 recommendations. The Minister noted that these recommendations are likely to involve the replacement of the *Police Regulation Act 1958 (Vic)* and the *Police Regulations 1992* and that extensive consultation would be required with stakeholders in order to achieve the most appropriate outcome.

The Regulation Review Subcommittee was satisfied with the Minister's response.

Subcommittee's letter

SR 154 – Subordinate Legislation (Police Regulations 1992 – Extension of Operation) Regulations 2001

At its meeting on 25 March 2002 the Regulation Review Subcommittee examined the above Regulations as it is required to do under the Subordinate Legislation Act 1994.

The Subordinate Legislation (Police Regulations 1992 – Extension of Operation) Regulations 2001 extend the operation of the Police Regulations 1992 (the Principal Regulations) to 31 January 2003.

Under sub-section 5(4) of the Subordinate Legislation Act 1994 the Governor-in-Council may extend the operation of existing regulations for a maximum period of 12 months provided that the Minister is satisfied that due to 'special circumstances' there is insufficient time to enable compliance with the requirements of Part 2 of the Subordinate Legislation Act 1994.

The Subcommittee notes that the Premier's Guidelines make clear that extensions under sub-paragraph 5(4) should be granted because of 'special circumstances' and not for administrative convenience. Paragraph 12.5 of the Premier's Guidelines provides –

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

The section 5(3) certificate which accompanied these Regulations noted the existence of 'special circumstances' but failed to specify the 'special circumstances' The Premier's Guidelines make quite clear that the responsible Minister must elaborate on the nature of the 'special circumstances'. The Explanatory Memorandum gives some indication of the reason for extending the operation of the Principal Regulations and that is for a review of the Police Regulations 1992 to be completed.

The Subcommittee is not satisfied that the reason for extending the operation of these Regulations was for 'special circumstances' and seeks an explanation as to the 'special circumstances' which apply to these Regulations.

The Subcommittee looks forward to receiving your response.

Minister's Response⁵⁹

SR 154 – Subordinate Legislation (Police Regulations 1992 – Extension of Operation) Regulations 2001

Thank you for your letter of 27 March 2002 regarding the above Regulations, which extend the operation of the Police Regulations 1992 (the Principal Regulations) to 31 January 2003.

I note your advice that the Regulation Review Subcommittee examined the above Regulations on 25 March 2002. I also note your advice that the Subcommittee is not satisfied that the reason for extending the operation of the Principal Regulations was for “special circumstances”, in accordance with sub-section 5(4) of the Subordinate Legislation Act 1994, and that the Subcommittee seeks an explanation as to the “special circumstances” that apply to the above Regulations.

In this regard, I note that you refer in your letter to paragraph 12.5 of the Premier’s Guidelines relating to extensions under sub-paragraph 5(4) of the Subordinate Legislation Act 1994, which provides:

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

I advise that the Police Regulation Act 1958, which is the key police administration legislation in Victoria, and the Principal Regulations, which are made pursuant to that Act, are currently the subject of a major overhaul following the Ministerial Administrative Review of Victoria Police conducted by Mr John Johnson (the Review).

The Government established the Review into Victoria Police on 1 April 2000 to examine Victoria Police resourcing, operational independence, human resource planning and associated issues.

Following extensive investigations into the matters within its terms of reference, including consultation with key stakeholders such as Victoria Police Command, the Police Association, the Community and Public Sector Union and the Department of Justice, the Review presented its Final Report to me last year.

The Final Report contains 109 recommendations, including recommendations for new police legislation. The implementation of these recommendations is likely to involve the replacement of both the Police Regulation Act 1958 and the Principal Regulations. In this context, the implementation of the Review’s recommendations will involve a detailed process of policy development in

⁵⁹ The Minister for Police and Emergency Services’ letter to the Chair of the Subcommittee is dated 9 May 2002.

consultation with key stakeholders. To facilitate this process, I have endorsed the establishment of both an Implementation Steering Committee to guide the implementation process and a Stakeholder Reference Group as a vehicle for liaison and consultation with key stakeholders.

As the whole area covered by the Police Regulation Act 1958 and the Principal Regulations is currently the subject of this reform process, there was insufficient time to enable compliance with Part 2 of the Subordinate Legislation Act 1994 in relation to the Subordinate Legislation (Police Regulations 1992 – Extension of Operation) Regulations 2001. It would not have been feasible to undertake the Regulatory Impact Statement (RIS) process in relation to these Regulations separate from, and in addition to, the significant reform process that is currently underway to implement the Review's recommendations.

Further, preparing a RIS in relation to the matters contained in the Principal Regulations and inviting comments and submissions on those Regulations is likely to have created confusion amongst key stakeholders and within the public in light of the anticipated replacement of those Regulations at the conclusion of the current reform process.

I trust that the above information clarifies to the satisfaction of the Regulation Review Subcommittee the "special circumstances" that apply to these Regulations.

Example 3

The Regulation Review Subcommittee considered that the section 5(3) certificate which accompanied the following regulations is a good example of how section 5(3) certificates should be drafted. It contains a clear and detailed statement of the 'special circumstances' for granting the extension so that the reasons for granting the extension are transparent.

*Subordinate Legislation (Mineral Resources (Titles) Regulations 1991 –
Extension of Operation) Regulations 2001*

Subordinate Legislation Act 1994

Certificate under section 5(3)

I, Candy Broad, Minister for Energy and Resources, certify under section 5(3) of the Subordinate Legislation Act 1994 that, due to special circumstances, I am satisfied that there is insufficient time to enable compliance with Part 2 of that Act in respect of proposed regulations to replace the Mineral Resources (Titles) Regulations 1991 before those Regulations are to be revoked by virtue of section 5(1) of that Act. The special circumstances are as follows –

- 1. Consideration is currently being given to identify which regulations made under the Mineral Resources Development Act 1990 contained in the Mineral Resources (Health and Safety) Regulations 1991 and the Mineral Resources (Health and Safety in Open-Cut Mines) Regulations 1995 will*

be transferred to the administration of the Minister for Workcover. It is proposed that those remaining regulations which are not to be transferred to the Minister for Workcover will be included in the proposed consolidated Mineral Resources Development Regulations 2002. These will cover matters relating to royalties, infringements, mining titles and the disclosure of interests of those employees employed in the administration of Mineral Resources Development Act 1990. Before transfer of responsibility and consequential amendments to the regulations can occur, amendments are required to both the Mineral Resources Development Act 1990 and the Occupational Health and Safety Act 1985. These amendments are proposed by the Minister for Workcover for the Spring 2001 Sittings of the Parliament.

- 2. A review of the Mineral Resources Development Act 1990 has been carried out and amendments to that Act were passed by the Parliament during November 2000. These amendments made by the Mineral Resources Development (Amendment) Act 2000 were proclaimed to commence on 31 July 2001. The 12 month extension will allow sufficient time for government and industry to assess the need for further amendments to the regulations following the proclamation of the Mineral Resources Development (Amendment) Act 2000 and the proposed amendments to the Occupational Health and Safety Act 1985.*

Fundamentally Declaratory

Regulations are exempt from RIS requirements where they make minor changes.⁶⁰

Example

In 2001 Racing Victoria Limited took over from the Victoria Racing Club as the new corporate entity responsible for thoroughbred racing in Victoria.⁶¹ *SR No. 161 – Freedom of Information (Amendment) Regulations 2001* amend the *Freedom of Information Regulations 1998* by substituting a reference to the 'Victoria Racing Club' with 'Racing Victoria Limited', to enable information to be obtained through freedom of information from Racing Victoria Limited. The Regulations were correctly exempted under s. 9(1)(c) of the *Subordinate Legislation Act 1994* (Vic).

However the Regulation Review Subcommittee was uncertain whether information and materials held by Victoria Racing Club had been transferred to Racing Victoria Limited and consequently whether people would be able to access this information through freedom of information. The General Manager of Racing Victoria Limited advised that all information concerning the functions of Victoria Racing Club have been transferred to and are in the control of Racing Victoria Limited. The General Manager confirmed that people will be able to access any information concerning the industry through freedom of information and that this service is already being provided.

⁶⁰ *Subordinate Legislation Act 1994* (Vic), s. 9(1)(c).

⁶¹ *Racing (Racing Victoria Ltd) Act 2001* (Vic).

The Regulation Review Subcommittee was satisfied with this response.

*Racing Victoria's Response*⁶²

***Freedom of Information (Amendment) Regulations 2001 –
Racing Victoria Limited***

We understand the Regulations Review Committee (the “Committee”) has expressed concerns with respect to potential requests under the Freedom of Information Act 1982 (“FOI requests”) for information which was previously held by the Victoria Racing Club (the “Club”).

As you know, the Club was subject to a restructure in 2001 whereby the Club relinquished its role as the governing body for thoroughbred racing in Victoria and its status as the principal Victorian racing club to a new corporate entity known as Racing Victoria Limited (“Racing Victoria”).

As the new governing body, Racing Victoria is now responsible for all the Victorian racing industry functions previously performed by the Club. All information relating to these functions prior to the restructure has been transferred from the Club to Racing Victoria and is now under Racing Victoria’s control. The effect of this is that FOI requests addressed to the Club or Racing Victoria which relate to industry matters will now be accepted and fulfilled by Racing Victoria.

One further matter which we bring to your attention is that FOI requests to Racing Victoria can only be met in respect of information held by Racing Victoria as the governing body of the thoroughbred racing industry in Victoria. Requests for information which relate to the club functions of the Club and which relate to documents that are not in the possession of Racing Victoria do not fall within the scope of the Freedom of Information Act. To date, FOI requests received by Racing Victoria have related to industry matters and documents in the possession of Racing Victoria.

We hope this addresses your concerns.

Premier’s Certificates

Regulations may be exempted from the RIS process under section 9(3) of the *Subordinate Legislation Act 1994* (Vic) where the Premier certifies that in the ‘special circumstances’ of the case the public interest requires that the proposed regulations be made without a RIS. Regulations made under this exception may only exist for a period up to 12 months. The *Premier’s Guidelines* indicate that regulations should only be made under this exemption where it is an emergency or where there is a clear overriding public interest –

⁶² The letter from the General Manager of Racing Victoria Limited to the Chair of the Subcommittee is dated 18 July 2002.

*There is a need in each case to balance the public interest in the consultation and cost assessment involved in the RIS process and the need to make regulations without delay in emergency situations.*⁶³

The *Premier's Guidelines* emphasise that the purpose of this exemption is to ensure that matters of public interest can be made without delay and that it is not intended to operate as an alternative means of making regulations. There is no requirement for reasons to be provided as to why regulations have been granted an exemption under section 9(3). This issue has been addressed in the Committee's *Report on the Subordinate Legislation Act 1994*.

Three regulations were made with Premier's certificates in 2001.⁶⁴

Example

SR 76 – *Private Agents (Interim) Regulations 2001* deal with the licensing requirements and other matters concerning private agents.⁶⁵ The explanatory memorandum indicated that the regulations were granted an exemption under section 9(3) because the *Private Agents Act 1966* was still under review and further time was needed to complete that review before making new regulations.

The Regulation Review Subcommittee was concerned about the reasons for granting an exemption under section 9(3) and sought clarification from the Minister as to when the review would be completed. The Minister indicated that a review of the *Private Agents Act 1966* was still being conducted and that it would need to be completed by 30 June 2002, being the date on which the Interim Regulations expire.

Subcommittee's letter

SR 76 – *Private Agents (Interim) Regulations 2001*

At its meeting on 15 October 2001 the Regulation Review Subcommittee examined the above Regulations as it is required to do so under the Subordinate Legislation Act 1994.

The Private Agents (Interim) Regulations 2001 (the Interim Regulations) deal with the licensing requirements and other matters concerning private agents, that is agents employed by security firms, as crowd controllers, as security guards or as inquiry agents.

The operation of the Private Agents Regulations 1990 was extended until 12 August 2001 by the Subordinate Legislation (Private Agents Regulations 1990 – Extension of Operation) Regulations 2000 on the basis that extra time was needed to complete a review of the Private Agents Act 1966. On 12 August 2001 the Private Agents Regulations 1990 expired and were replaced by the

⁶³ Department of Premier and Cabinet, *Premier's Guidelines*, December 1997, Part 11.

⁶⁴ SR No. 76 — *Private Agents (Interim) Regulations 2001*; SR No. 82 — *Building (Single Dwellings) (Interim) Regulations 2001* and SR No. 87 — *Tobacco (Grands Prix Events) Regulations 2001*.

⁶⁵ Private agents include agents employed by security firms as crowd controllers, security guards or inquiry agents.

Interim Regulations. These Interim Regulations were exempted from the Regulation Impact Statement (RIS) process under sub-section 9(3) of the Subordinate Legislation Act 1994, which allows the Premier to certify that special circumstances and public interest require the regulations to be made without complying with the RIS process. Regulations made under sub-section 9(3) of the Subordinate Legislation Act 1994 must sunset within 12 months of being made. In this case the Interim Regulations commenced on 1 August 2001 and are due to expire on 30 June 2002.

The Explanatory Memorandum for the Interim Regulations indicates that the special circumstances and overriding public interest are that the Private Agents Act 1966 is still under review and that further time is needed to complete that review before making new regulations.

The Subcommittee seeks your advice as to when the review of the Private Agents Act 1966 commenced and when that review is likely to be completed.

The Subcommittee looks forward to receiving your response.

Minister's Response⁶⁶

SR 76 – Private Agents (Interim) Regulations 2001

Thank you for your letter of 18 October 2001.

In early 1999, the Department of Justice engaged a private consultant, the Freehills Regulatory Group (Freehills), to undertake a National Competition Policy Review of the Private Agents act 1966 (the Act).

Following a public submission process, Freehills finalised its report in October 1999.

With the change of Government in 1999, it was decided that a broader based examination, beyond that required by National Competition Policy was necessary. In recognising that a thorough review of the legislation was needed (the Act had not been fundamentally reviewed since its introduction more than thirty years ago), I authorised the release of a Public Discussion Paper in July 2000. The Paper, which was widely advertised and distributed, highlighted a number of key issues and invited the Victorian community to make written submissions concerning possible reform measures. Consultation with stakeholders has been ongoing.

It is evident that any new legislation will need to be carefully constructed to ensure that an acceptable balance is struck between avoiding the imposition of unreasonable regulatory barriers and the need for strong, comprehensive and consistent controls to effectively deal with any risks posed by the industry both now and in the future.

⁶⁶ The Minister for Police and Emergency Services' letter to the Chair of the Subcommittee is dated 23 November 2001.

In these circumstances, it is not possible for me to presently offer a definitive completion date.

Given, however, that the Private Agents (Interim) Regulations 2001 expire on 30 June 2002, the timelines are such that whatever the final outcome of the review, it will be necessary for new regulations to be made to support the Act. In accordance with the provisions of the Subordinate Legislation Act 1994, this process will obviously incorporate the publication of a Regulatory Impact Statement.

In the meantime, I thank the Subcommittee for its correspondence and for raising this important issue with me at this time.

Certificates

The *Subordinate Legislation Act 1994* (Vic) requires regulations to be prepared with various certificates. Although the *Subordinate Legislation Act 1994* (Vic) does not prescribe the exact form that certificates must take, the *Premier's Guidelines* provide detailed guidance and examples. The Regulation Review Subcommittee considers that it is important for certificates to comply with the *Premier's Guidelines* as certificates provide crucial information about regulatory proposals. For example, exception and exemption certificates explain the reasons for granting an exception or exemption from the RIS process.

The Regulation Review Subcommittee was presented with a number of inadequate certificates for regulations made during 2001. Some of the problems included – failure to date certificates; failure to provide reasons for granting exemptions as required by section 9(2) and failure to specify the precise section under which a regulation is excepted or exempted. The Regulation Review Subcommittee is also concerned about the failure of departments and agencies to provide it with all relevant documentation in a timely manner. On a number of occasions Regulation Review Subcommittee staff have needed to make inquiries to obtain copies of relevant documentation. The Committee discusses these issues and makes recommendations in its *Report on the Subordinate Legislation Act 1994*.

Example

SR 58 – Magistrates' Court (Committals) Rules 2000 set the fees, costs and charges for proceedings in the Magistrates' Court and for the enforcement of infringement penalties. The certificate provided to the Regulation Review Subcommittee in relation to these rules was inadequate in that it failed to specify the section under which the exception had been granted. The Regulation Review Subcommittee reviewed the rules as if they were excepted from the requirement to prepare a RIS under section 8(1)(b) of the *Subordinate Legislation Act 1994* (Vic). The Regulation Review Subcommittee considers that it is inappropriate for it to have to assume the section under which an exception or exemption is granted. In writing to the Attorney-General, the Regulation Review Subcommittee pointed out that while the omission is minor in nature, it is nevertheless important to comply with the practical requirements of the *Subordinate Legislation Act 1994* (Vic).

The Attorney-General confirmed that the exception certificate did relate to section 8(1)(b) of the *Subordinate Legislation Act 1994* (Vic) and acknowledged that in failing to specify the section, the certificate was defective.

Subcommittee's letter

SR 58 – Magistrates' Court (Committals) Rules 2001

At its meeting on 15 October 2001 the Regulation Review Subcommittee examined the above Rules as it is required to do so under the Subordinate Legislation Act 1994.

The Magistrates' Court (Committals) Rules 2001 (the Regulations) prescribe fees, costs and charges relating to proceedings in the Magistrates Court and the enforcement of infringement penalties. The Subcommittee notes that it dealt with the above Regulations as if they were excepted from the requirement to prepare a regulation impact statement on the basis that they relate only to a court or tribunal or the procedure, practice or costs of a court or tribunal – sub-section 8(1)(b) of the Subordinate Legislation Act 1994.

The Subcommittee wishes to point out to officers in your department the need to take care when preparing exception and exemption certificates. The certificate provided to the Subcommittee fails to specify under which section the exception has been granted. While the omission is minor in nature, the Subcommittee nevertheless wants to emphasise the importance of meeting the practical requirements of the Subordinate Legislation Act 1994 and in this case for certificates of exemption and exception to specify the sub-section under which the exemption or exception has been granted.

*Minister's Response*⁶⁷

SR 58 – Magistrates' Court (Committals)(Amendment) Rules 2001

Thank you for your letter dated 18 October 2001 in relation to the Magistrates' Court (Committals)(Amendment) Rules 2001, SR No 58/2001.

In your letter you point out that the rules have been dealt with as if they were exempted from the requirement to prepare a regulatory impact statement under section 7 of the Subordinate Legislation Act 1994, but that the exception certificate provided under the Act fails to specify under which section of the Act the exception has been granted. You emphasise the importance of meeting the practical requirements of the Act.

The exception certificate does neglect to mention the section of the Act that the exception to section 7 is granted. I confirm that the exception was granted under section 8(1)(b) of the Act on the basis that the rule is a rule which relates only to a court, or the procedure, practice or costs of a court. I acknowledge that this failure represents a deficiency in the certificate, albeit,

⁶⁷ The Attorney-General's letter to the Chair of the Subcommittee is dated 11 December 2001.

as you point out, is a minor one, and thank you and the subcommittee for drawing this to my attention.

Environment Protection and Waste Management Policies

State Environment Protection Policies and Waste Management Policies must comply with the requirements of the *Environment Protection Act 1970* (Vic). Section 18C of the *Environment Protection Act 1970* (Vic) requires a policy impact assessment to include a statement of purposes, identification of alternative policy options and an assessment of the costs and benefits of each alternative option.

The Committee was very impressed with the analysis and the breadth of consultation undertaken by the EPA in relation to its State Environment Protection and Waste Management Policies.

The Regulation Review Subcommittee did have some concerns over one Industrial Waste Management Policy and the omission to examine the costs and benefits of alternatives.

Example⁶⁸

The *Industrial Waste Management Policy (Prescribed Industrial) Waste* (the Industrial Waste Management Policy) is designed to protect human health and the environment from the risks associated with industrial waste by encouraging industry to minimise the generation of industrial waste through improved product and process design and process management.⁶⁹ While the Industrial Waste Policy clearly stated its purpose and identified the alternatives and provided a good analysis of the costs and benefits arising from the Policy itself, it failed to examine the costs and benefits associated with the policy alternatives. An assessment of “the possible financial, social and environmental impacts” is an essential element of all policy impact assessments.⁷⁰

The Regulation Review Subcommittee advised the Minister of the defect in the Industrial Waste Management Policy and indicated that it expects all future policy impact assessments to examine the costs and benefits of policy alternatives. The Minister acknowledged the Regulation Review Subcommittee’s comments and at the Minister’s initiative, the Regulation Review Subcommittee’s legal adviser met with policy officers from the EPA to discuss the requirements for Waste Management Policies and State Environment Protection Policies.

⁶⁸ Under recent amendments to the *Environment Protection Act 1970* (Vic), new waste management policies will now apply to waste generally and not be restricted to industrial waste. See discussion at pp. 7-10 of this Report.

⁶⁹ It was made under s. 16(1A) and 17(1A) of the *Environment Protection Act 1970* (Vic).

⁷⁰ *Environment Protection Act 1970* (Vic).

Subcommittee's letter

***Industrial Waste Management Policy (Prescribed Industrial) Waste –
January 2001***

At its meeting on 28 May 2001 the Regulation Review Subcommittee examined the Industrial Waste Management Policy (Prescribed Industrial) Waste (the Industrial Waste Management Policy) as it is required to do so under Part 3 of the Environment Protection Act 1970.

The Industrial Waste Management Policy was made under sections 16(1A) and 17(1A) of the Environment Protection Act 1970 and it is designed to protect human health and the environment from the risks posed by prescribed industrial waste by reducing the generation of waste and eliminating the disposal of waste to landfill. The Industrial Waste Management Policy recognises the need to move away from disposal of waste to landfill and focuses on principles of avoidance, reuse, recycling, recovery of energy, storage, treatment and containment. In particular the Industrial Waste Management Policy encourages industry to minimise the generation of prescribed industrial wastes through better product and process design, selection of appropriate raw materials and improved process management.

Section 18C of the Environment Protection Act 1970 requires a policy impact assessment to include a statement of purposes, identification of alternative policy options and an assessment of the costs and benefits of each alternative option.

The Industrial Waste Management Policy clearly states its purpose, examines the costs and benefits arising from the Policy itself and identifies various alternatives to the Policy. However the Industrial Waste Management Policy fails to assess the costs and benefits in relation to the various Policy alternatives. Section 18C(1)(c) of the Environment Protection Act 1970 specifically requires a policy impact assessment to include –

an assessment of the possible financial, social and environmental impacts of each alternative expressed in qualitative and, to the extent practicable, quantitative terms to ensure that the costs are not disproportionate to the benefits to be achieved.

While the Subcommittee has approved the Industrial Waste Management Policy, it is concerned that the Policy document does not assess the financial, social and environmental consequences of each of the alternative policy options. The Subcommittee wishes to indicate that in future it will expect all policies which are subject to the requirements of 18C of the Environment Protection Act 1970 to comply with those requirements.

Minister's Response⁷¹

Industrial Waste Management Policy (Prescribed Industrial) Waste

Thank you for your letter of 31 May 2001. I apologise for the delay in responding.

I note that the Regulation Review Subcommittee has approved the Industrial Waste Management Policy (Prescribed Industrial Waste) and, in doing so, has stated that the policy impact assessment clearly states the purpose of the policy and examines its costs and benefits.

However, I also note the Subcommittee's comments that while the policy impact assessment clearly identifies various alternatives to the policy, the financial, social and environmental consequences of each of those alternative policy options are not adequately assessed.

I have asked EPA Victoria to meet with the Executive Officer to your Subcommittee to discuss how best to ensure that all future policies provide an adequate assessment of the impacts of alternative policy options.

⁷¹ The Minister for Environment and Conservation's letter to the Chair of the Subcommittee is dated 1 August 2001.

OTHER MATTERS OF INTEREST

Practice Notes

In order to assist the Regulation Review Subcommittee with its work, the Subcommittee has prepared a series of Practice Notes.⁷² These are designed to provide department and agency officers with additional guidance when preparing regulations. The Practice Notes deal with reoccurring issues which the Regulation Review Subcommittee has been presented with over the past 12 months. It would assist the Regulation Review Subcommittee in its work if department and agency officers could be guided by the procedures contained in the Practice Notes.

Inquiry into the Subordinate Legislation Act 1994

On 14 March 2000 the Victorian Parliament requested the Scrutiny of Acts and Regulations Committee to inquire into, consider and *Report on the Subordinate Legislation Act 1994*. As the *Subordinate Legislation Act 1994* concerns regulations, the Regulation Review Subcommittee was given responsibility for conducting this Inquiry on behalf of the Committee. The Committee's final report was tabled in Parliament in September 2002 and involves a comprehensive evaluation of the existing Victorian scrutiny and regulatory systems, an overview of regulation-making processes throughout Australia and an assessment of the regulatory approach taken in six jurisdictions within the United States. The Committee considers that its recommendations will, if adopted, greatly enhance the existing Victorian regulatory system.

Australian Institute of Administrative Law Annual Conference

The Regulation Review Subcommittee's legal adviser attended Australia's annual Administrative Law Conference held in Fremantle at the Notre Dame University in July this year. The theme for the conference was "Appraising the Performance of Regulatory Agencies". The conference focused on the regulatory activities of agencies set up by Parliaments and the impact of those activities on the community, organisations and corporations. Speakers at the Conference provided excellent insight into agency activities, the impact of those activities and options available to challenge agency conduct and decisions.

⁷² [Appendix 3](#).

APPENDIX 1 – REGULATIONS 2001⁷³

Regulation Impact Statements

SR No. 3	Electricity Safety (Installations) (Amendment) Regulations 2001
SR No. 4	Wildlife (Whales)(Logans Beach) Regulations 2001
SR No. 9	Fisheries (Bream Catch Limit) Regulations 2001
SR No. 11	Pathology Services Accreditation (General) Regulations 2001
SR No. 12	Pathology Services (Exempted Tests) Regulations 2001
SR No. 13	Health (Legionella) Regulations 2001
SR No. 15	Plumbing (Cooling Towers) Regulations 2001
SR No. 16	Building (Cooling Tower Systems Register) Regulations 2001
SR No. 21	Accident Compensation Regulations 2001
SR No. 22	Water (Subdivisional Easements and Reserves) Regulations 2001
SR No. 25	Wildlife (Game) (Deer Amendment) Regulations 2001
SR No. 28	Subdivision (Body Corporate) Regulations 2001
SR No. 30	Local Government Regulations 2001
SR No. 31	Gaming Machine Control (Advertising) Regulations 2001
SR No. 38	Electricity Safety (Equipment)(Fees) Regulations 2001
SR No. 40	Health (Prescribed Accommodation) Regulations 2001
SR No. 41	Health (Infectious Diseases) Regulations 2001
SR No. 47	Road Safety (General)(Traffic Infringements) Regulations 2001
SR No. 55	Tobacco (Amendment) Regulations 2001
SR No. 60	Gaming Machine Control (Clocks) Regulations 2001
SR No. 66	Plumbing (Amendment) Regulations 2001
SR No. 67	Magistrates' Court (Civil Jurisdiction)(Sheriff's Fees) Regulations 2001

⁷³ This Appendix lists all regulations made during 2001. The Appendix categorises regulations according to whether they were made with a Regulation Impact Statement or whether they were exempted or excepted from those requirements. The Committee did not move for disallowance of any of the regulations made in 2001, however the Regulation Review Subcommittee did correspond with responsible Ministers concerning aspects of some regulations.

Regulation Impact Statements (continued)

SR No. 68	Magistrates' Court (Fees, Costs and Charges) Regulations 2001
SR No. 74	Juries (Fees, Remuneration and Allowances) Regulations 2001
SR No. 78	Fisheries (Recreational Fishing) Regulations 2001
SR No. 79	Water (Long Service Leave) Regulations 2001
SR No. 90	Wildlife (Game) Regulations 2001
SR No. 98	Petroleum (Submerged Lands) Regulations 2001
SR No. 118	Fisheries (Rock Lobster and Giant Crab) Regulations 2001
SR No. 119	Environment Protection (Fees) Regulations 2001
SR No. 125	Water Industry (Reservoir Parks Land) Regulations 2001
SR No. 127	Marine (Amendment) Regulations 2001
SR No. 128	Victorian Qualifications Authority (Interim Fees) Regulations 2001
SR No. 132	Water (Permanent Transfer of Water Rights) Regulations 2001
SR No. 141	Health Services (Supported Residential Services) Regulations 2001
SR No. 146	National Parks (Fees and Charges) Regulations 2001
SR No. 150	Health (Pest Control Operators) (Amendment) Regulations 2001
SR No. 157	County Court (Court Fees) Order 2001
SR No. 159	Supreme Court (Fees) Regulations 2001
SR No. 160	Victorian Civil and Administrative Tribunal (Fees) Regulations 2001
SR No. 168	Gaming Machine Control (Responsible Gambling) (Lighting and Views) Regulations 2001
SR No. 171	Building (Single Dwellings) Regulations 2001
SR No. 176	Building (Swimming Pool Fences) Regulations 2001

Exceptions under Section 8

S. 8(1)(a) – Fee Increases

SR No. 20	Fisheries (Fees and Levies) Regulations 2001
SR No. 32	Supreme Court (Sheriff's Fees) (Amendment) Regulations 2001
SR No. 33	Supreme Court (Fees) (Amendment) Regulations 2001
SR No. 34	County Court (Court Fees) (Amendment) Order 2001
SR No. 35	County Court (Court Fees) (Amendment) Order 2001
SR No. 52	Metropolitan Fire Brigades (General)(Fees and Charges) Regulations 2001
SR No. 91	Marine (Fees) Regulations 2001
SR No. 95	Road Safety (Vehicles)(Fees) Regulations 2001

S. 8(1)(a) – Fee Increases (continued)

SR No. 107	Motor Car Traders (Fees) Regulations 2001
SR No. 108	Pharmacists (Fees) Regulations 2001

S. 8(1)(b) – Court Rules

SR No. 17	County Court (Chapter I Amendment No. 4) Rules 2001
SR No. 24	Victorian Civil and Administrative Tribunal (Amendment No. 7) Rules 2001
SR No. 26	Supreme Court (Chapter I Amendment No. 16) Rules 2001
SR No. 27	Supreme Court (Chapter V Amendment No. 2) Rules 2001
SR No. 49	Supreme Court (Chapter V Amendment No. 3) Rules 2001
SR No. 50	Supreme Court (Chapter I Amendment No. 17) Rules 2001
SR No. 58	Magistrates' Court (Committals) Rules 2001
SR No. 61	Racing (Racing Appeals Tribunal)(Amendment) Regulations 2001
SR No. 73	Supreme Court (Chapter II Amendment) Rules 2001
SR No. 75	Juries Regulations 2001
SR No. 77	County Court (Chapter II Amendment No. 3) Rules 2001
SR No. 80	Magistrates' Court Civil Procedure (Amendment No. 7) Rules 2001
SR No. 88	Children and Young Persons (Children's Court) Regulations 2001
SR No. 92	Courts (Case Transfer) Rules 2001
SR No. 97	Victorian Civil and Administrative Tribunal (Amendment No. 8) Rules 2001
SR No. 111	Supreme Court (Chapter I Amendment No. 18) Rules 2001
SR No. 112	Supreme Court (Chapter IV Amendment No. 3) Rules 2001
SR No. 113	Supreme Court (Chapter III Amendment No. 5) Rules 2001
SR No. 122	County Court (Chapter I Amendment No. 5) Rules 2001
SR No. 123	County Court (Chapter II Amendment No. 4) Rules 2001
SR No. 124	County Court (Chapter I Amendment No. 6) Rules 2001
SR No. 129	Supreme Court (Chapter III Amendment No. 6) Rules 2001
SR No. 130	Supreme Court (Chapter I Amendment No. 19) Rules 2001
SR No. 131	Magistrates' Court (Arbitration)(Professional Costs) Regulations 2001
SR No. 142	Magistrates' Court Civil Procedure (Amendment No 8) Rules 2001
SR No. 175	Victorian Civil and Administrative Tribunal (Amendment No 9) Rules 2001

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

SR No. 6	Subordinate Legislation (Local Government (Long Service Leave) Regulations 1991 – Extension of Operation) Regulations 2001
SR No. 18	Subordinate Legislation (Petroleum (Submerged Lands) (Fees) Regulations 1991 – Extension of Operation) Regulations 2001
SR No. 96	Subordinate Legislation (Water (Lake Eildon Recreational Area) (Houseboats) Regulations 1991 – Extension of Operation) Regulations 2001
SR No. 99	Subordinate Legislation (Mineral Resources (Titles) Regulations 1991 – Extension of Operation) Regulations 2001
SR No. 100	Subordinate Legislation (Mineral Resources (Health and Safety) Regulations 1991 – Extension of Operation) Regulations 2001
SR No. 101	Subordinate Legislation (Mineral Resources (Royalties) Regulations 1991 – Extension of Operation) Regulations 2001
SR No. 102	Subordinate Legislation (Mineral Resources (Infringements) Regulations 1991 – Extension of Operation) Regulations 2001
SR No. 103	Subordinate Legislation (Mineral Resources (Disclosure of Interest) Regulations 1991 – Extension of Operation) Regulations 2001
SR No. 115	Subordinate Legislation (Supreme Court (Fees) Regulations 1991 – Extension of Operation) Regulations 2001
SR No. 154	Subordinate Legislation (Police Regulations 1992 – Extension of Operation) Regulations 2001
SR No. 164	Subordinate Legislation (Environment Protection (Vehicle Emissions) Regulations 1992 – Extension of Operation) Regulations 2001

Exemptions under Section 9**S. 9(1)(a) – No Economic Burden**

SR No. 1	Wildlife (Amendment) Regulations 2001
SR No. 7	Magistrates' Court General (Infringements) Regulations 2001
SR No. 36	Conservation, Forests and Lands (Infringement Notice) (Fisheries) Regulations 2001
SR No. 37	First Home Owner Grant Regulations 2001
SR No. 44	Wildlife (Whales)(Further Amendment) Regulations 2001
SR No. 53	Occupational Health and Safety (Plant)(Amendment) Regulations 2001
SR No. 54	Equipment (Public Safety)(General)(Amendment) Regulations 2001
SR No. 64	Pay-roll Tax (Prescribed Sporting Club) Regulations 2001
SR No. 65	Prevention of Cruelty to Animals (Amendment) Regulations 2001
SR No. 69	Associations Incorporation (Prescribed Particulars) Regulations 2001

S. 9(1)(a) – No Economic Burden (continued)

SR No. 71	Mineral Resources (Development) (Consequential Amendments) Regulations 2001
SR No. 81	Livestock Disease Control (Amendment) Regulations 2001
SR No. 83	Road Safety (Vehicles) (Domestic Partner Concessions) Regulations 2001
SR No. 86	Conservation, Forests and Lands (Infringement Notice) (Anglesea Heath) Regulations 2001
SR No. 104	Victorian Relief Committee Regulations 2001
SR No. 106	Magistrates' Court General (Further Infringements) Regulations 2001
SR No. 114	Agricultural Industry Development (Polls) Regulations 2001
SR No. 144	Fundraising Appeals (Amendment) Regulations 2001
SR No. 156	Livestock Disease Control (Further Amendment) Regulations 2001
SR No. 162	Fair Trading (Amendment) Regulations 2001
SR No. 165	Conservation, Forests and Lands (Infringement Notice) (Amendment) Regulations 2001

S. 9(1)(b) – Uniform Legislation

SR No. 5	Road Safety (Drivers) (Driving Hours) Regulations 2001
SR No. 93	Electricity Safety (Equipment Efficiency) (Amendment) Regulations 2001

S. 9(1)(c) – Fundamentally Declaratory

SR No. 19	Tobacco (Victorian Health Promotion Foundation) (Amendment) Regulations 2001
SR No. 39	City of Melbourne (Elections) Regulations 2001
SR No. 42	Evidence (Examination of Witnesses Outside the State) Regulations 2001
SR No. 45	Mental Health (Amendment) Regulations 2001
SR No. 46	Psychologists Registration Regulations 2001
SR No. 51	Health Services (Community Health Centre Elections) Regulations 2001
SR No. 63	Corporations (Ancillary Provisions) Regulations 2001
SR No. 84	Drugs, Poisons and Controlled Substances (Commonwealth Standard) Regulations 2001
SR No. 85	Dangerous Goods (Explosives) (Amendment) Regulations 2001
SR No. 105	Evidence (Affidavits and Statutory Declarations) (Amendment) Regulations 2001
SR No. 110	Discharged Servicemen's Preference Regulations 2001
SR No. 117	Credit (Administration)(Committee)(Amendment) Regulations 2001
SR No. 121	Gaming Machine Control (Miscellaneous) Regulations 2001

S. 9(1)(c) – Fundamentally Declaratory (continued)

SR No. 126	Lotteries Gaming and Betting (Search Warrant) Regulations 2001
SR No. 149	Food (Forms, Exemptions and Registration Details) (Amendment) Regulations 2001
SR No. 152	Tobacco (Victorian Health Promotion Foundation) (Further Amendment) Regulations 2001
SR No. 155	Lotteries Gaming and Betting (Corresponding Offences) (Amendment) Regulations 2001
SR No. 161	Freedom of Information (Amendment) Regulations 2001
SR No. 163	Fuel Prices (Declaration of Secrecy) Regulations 2001
SR No. 166	Essential Services Commission Regulations 2001
SR No. 167	Gaming and Betting (Betting) (Amendment) Regulations 2001
SR No. 169	Food (Competency Standards Body) Regulations 2001
SR No. 172	Road Safety (General) (Amendment) Regulations 2001
SR No. 173	Road Safety (Drivers) (Amendment) Regulations 2001
SR No. 174	Melbourne City Link (General) (Further Amendment) Regulations 2001

S. 9(1)(e) – No Advance Notice

SR No. 43	Fisheries (Mallacoota Top Lake) Regulations 2001
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S. 9(3) – Premier’s Certificate

SR No. 76	Private Agents (Interim) Regulations 2001
SR No. 82	Building (Single Dwellings) (Interim) Regulations 2001
SR No. 87	Tobacco (Grand Prix Events) Regulations 2001
SR No. 170	Health Services (Private Hospitals and Day Procedure Centres) (Interim) Regulations 2001

Exceptions and Exemptions under Combined Sections

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

SR No. 59	Zoological Parks and Gardens (Administration) (Charges) Regulations 2001
SR No. 94	Road Safety (Drivers) (Fees) Regulations 2001

S. 9(1)(a) – No Economic Burden and 9(1)(b) – Uniform Legislation

SR No. 29	Road Safety (Drivers) (Corporate Penalties) Regulations 2001
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S. 9(1)(a) – No Economic Burden and 9(1)(c) – Fundamentally Declaratory

SR No. 2	Country Fire Authority (Amendment) Regulations 2001
SR No. 8	Electricity Safety (Management) Regulations 2001
SR No. 10	Cemeteries (Incorporation of Trusts) (Amendment) Regulations 2001
SR No. 14	Building (Legionella Risk Management) Regulations 2001
SR No. 23	Heritage (Liturgical Purposes Form) Regulations 2001
SR No. 48	Transport Accident (Administration of Charges) Regulations 2001
SR No. 57	Road Safety (General)(Traffic Infringements Amendment) Regulations 2001
SR No. 70	Police (Miscellaneous Amendments) Regulations 2001
SR No. 72	Petroleum Products (Terminal Gate Pricing) Regulations 2001
SR No. 89	Children and Young Persons (General) Regulations 2001
SR No. 109	Cemeteries (Incorporation of Trusts)(Further Amendment) Regulations 2001
SR No. 116	Adoption (Amendment) Regulations 2001
SR No. 120	Patriotic Funds Regulations 2001
SR No. 133	Chinese Medicine Registration Regulations 2001
SR No. 134	Dental Practice (Amendment) Regulations 2001
SR No. 135	Physiotherapists Registration (Amendment) Regulations 2001
SR No. 136	Nurses (Amendment) Regulations 2001
SR No. 137	Osteopaths Registration (Amendment) Regulations 2001
SR No. 138	Chiropractors Registration (Amendment) Regulations 2001
SR No. 139	Medical Practice (Amendment) Regulations 2001
SR No. 140	Optometrists Registration (Amendment) Regulations 2001
SR No. 143	Agricultural and Veterinary Chemicals (Control of Use) (Amendment) Regulations 2001
SR No. 147	Flora and Fauna Guarantee Regulations 2001
SR No. 148	Audit (Public Bodies) (Amendment) Regulations 2001
SR No. 151	Pharmacists (Amendment) Regulations 2001
SR No. 153	Gene Technology Regulations 2001
SR No. 158	Whistleblowers Protection Regulations 2001

Exempt from s. 7 of the Subordinate Legislation Act 1994

SR No. 56	Road Safety (Road Rules) (Road Rules Modification No. 3) Regulations 2001
SR No. 62	Corporations (Ancillary Provisions) (Consequential Amendments) Regulations 2001

Other Enactments

Section 16(1A) – Industrial Waste Management Policies

5.12.00	Prescribed Industrial Waste ⁷⁴
5.11.01	Protection of the Ozone Layer

Sections 16(1) and (2) – State Environment Protection Policies

31.10.01	Variation of State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1
2.11.01	Variation of State Environment Protection Policy (Waters of Victoria) – Insertion of Schedule F8
21.12.01	Declaration of State Environment Protection Policy (Air Quality Management)
21.12.01	Variation of State Environment Protection Policy (Ambient Air Quality)

⁷⁴ This Industrial Waste Management Policy was made in 2000 but not reviewed by the Regulation Review Subcommittee until 2001.

APPENDIX 2

CORRESPONDENCE CONCERNING REGULATIONS MADE IN 2001

This Appendix contains a list of correspondence sent to responsible Ministers by the Regulation Review Subcommittee concerning regulations made in 2001. The Appendix categorises correspondence in accordance with the nature of the issue raised by the Regulation Review Subcommittee.

Statutory Rule	Minister	Issue
SR 41 – Health (Infectious Diseases) Regulations 2001	Health	Possible breach of section 21(1)(h) – inconsistent with principles of justice and fairness. Removal of provisions from final version of regulations without further consultation with those affected.
SR 74 – Juries (Fees, Remuneration and Allowances) Regulations 2001	Attorney-General	Possible breach of section 21(1)(j) – non compliance with <i>Subordinate Legislation Act 1994</i> and/or the <i>Premier's Guidelines</i> . Failure to examine the costs or assess the cost impact on self employed people and employers.
SR 176 – Building (Swimming Pool Fences) Regulations 2001	Planning	Possible breach of section 21(1)(j) – non compliance with <i>Subordinate Legislation Act 1994</i> and/or the <i>Premier's Guidelines</i> . Failure to give adequate consideration to comments made in submissions.
SR 21 – Accident Compensation Regulations	WorkCover	Possible breach of section 21(1)(k) – administration and compliance costs not to outweigh the benefits. Increase in contribution payable by self-insurers. Concern about the cost impact on self insurers and the benefits they obtain in return.

Scrutiny of Acts and Regulations Committee

Statutory Rule	Minister	Issue
SR 65 – Prevention of Cruelty to Animals (Amendment) Regulations 2001	Agriculture	Clarity and intention of operation. Intention to provide flexible accreditation requirements for stock contractors and instructions in a Code of Practice. Failure of the Code to deal with instructors. Voluntary nature of Code of Practice enables stock contractors to choose whether or not to become accredited.
SR 78 – Fisheries (Recreational Fishing) Regulations 2001	Energy and Resources	Clarity and intention of operation. Typographical error resulting in two different definitions of ‘salmonids’. Advice sought on the removal of provisions concerning golden perch to the <i>Flora and Fauna Guarantee Act 1988</i> and clarification on who would be responsible for enforcing those provisions.
SR 78 – Fisheries (Recreational Fishing) Regulations 2001	Energy and Resources	Clarity and intention of operation. Advice on the effect of a new provision prohibiting the use or possession of fishing hooks and lines in or beside and within 20 metres on the banks of four specified rivers.
SR 89 – Children and Young Persons (General) Regulations 2001	Community Services	Clarity and intention of operation. Clarification of the words ‘marital and family relationships’ to determine whether they are consistent with the term ‘domestic relationship’.
SR 67 – Magistrates’ Court (Civil Jurisdiction) (Sheriff’s Fees) Regulations 2001	Attorney-General	Concern about the breadth of consultation and the lack of consultation with any consumer-oriented groups representing those most affected by the regulations, namely litigants and debtors.
SR 81 – Livestock Disease Control (Amendment) Regulations 2001	Agriculture	Concern about the extent of consultation. Advice sought as to whether vendors of goats and deers were consulted.

Statutory Rule	Minister	Issue
SR 110 – Discharged Servicemen’s Preference Regulations 2001	Consumer Affairs	Advice sought as to what consultation had taken place prior to the removal of World War Two as a theatre of war.
SR 150 – Health (Pest Control Operators) (Amendment) Regulations 2001	Health	Concern about lack of consultation with the Victorian Farmers Federation.
SR 9 – Fisheries (Bream Catch Limit) Regulations 2001	Energy and Resources	Regulation Impact Statements. RIS not specifically prepared for regulations. Reliance placed on RIS prepared for <i>Fisheries (Catch Limit) Regulations 2000</i> . Failure of RIS to example alternatives and costs and benefits of alternatives for new requirements concerning bream.
SR 28 – Subdivision (Body Corporate) Regulations 2001	Planning	Regulation Impact Statements. RIS considered alternative which involved creation of new legislation dealing specifically with bodies corporate. This alternative involved a stricter enforcement regime but was not implemented because there was insufficient time to investigate it further. Advice sought as to why this option was not pursued given that it appeared to be the best means of achieving the objectives.
SR 66 – Plumbing (Amendment) Regulations 2001	Planning	Regulation Impact Statements. Questioned the reasonableness of the fee involved in obtaining specialised backflow qualifications and advice sought as to why this training could not be undertaken by trainee plumbers as part of their initial training to become plumbers.
SR 90 – Wildlife (Game) Regulations 2001	Environment and Conservation	Regulation Impact Statements. Advice sought as to reasons for extending the use of toxic shot for those using firearms which are less than 12 gauge or muzzle-loading Damascus steel or twist barrelled shotguns.

Scrutiny of Acts and Regulations Committee

Statutory Rule	Minister	Issue
SR 118 – Fisheries (Rock Lobster and Giant Crab) Regulations 2001	Energy and Resources	Regulation Impact Statements. Advice sought on the consideration given to the cost impact on fishers and the effect of the new provisions on the work practices of fishers.
SR 146 – National Parks (Fees and Charges) Regulations 2001	Environment and Conservation	Regulation Impact Statements. Advice sought on the impact of fee increases on individuals and tour operators visiting national parks.
SR 6 – Subordinate Legislation (Local Government (Long Service Leave) Regulations 1991 – Extension of Operation) Regulations 2001	WorkCover	Extension of operation – section 8(1)(d)(iii). Failure to provide details of ‘special circumstances’ justifying 12 months extension.
SR 96 – Subordinate Legislation (Water (Lake Eildon Recreational Area) (Houseboats) Regulations 1991 – Extension of Operation) Regulations 2001	Environment and Conservation	Extension of operation – section 8(1)(d)(iii). Further explanation of ‘special circumstances’ sought.
SR 154 – Subordinate Legislation (Police Regulations 1992 – Extension of Operation) Regulations 2001	Police and Emergency Services	Extension of operation – section 8(1)(d)(iii). Clarification of reason for seeking extension to ensure that the reason did in fact constitute ‘special circumstances’.
SR 64 – Pay-roll Tax (Prescribed Sporting Club) Regulations 2001	Treasurer	No economic or social burden – section 9(1)(a). Specified sporting clubs exempt from payment of pay-roll tax on the grossed up amount of fringe benefits. Advice as to whether consideration was given to exempting other major sporting clubs and whether they will be able to obtain the benefit of the concession at a later date.
SR 161 – Freedom of Information (Amendment) Regulations 2001	Attorney-General	Fundamentally declaratory – section 9(1)(c). Substitution of ‘Victoria Racing Club’ with ‘Racing Victoria Limited’. Clarification as to whether information and materials previously held by Victoria Racing Club had been transferred to Racing Victoria Limited and whether people would be able to access them through freedom of information.

Statutory Rule	Minister	Issue
SR 76 – Private Agents (Interim) Regulations 2001	Police and Emergency Services	Premier's certificate. Advice as to when the review of the Private Agents Act 1966 commenced and when the review is likely to be completed.
SR 94 – Road Safety (Drivers) (Fees) Regulations 2001	Transport	Fee increase – section 8(1)(a) and no economic or social burden – section 9(1)(a). Regulations removed 10% GST imposed on fees for practical and written tests for drivers licences other than heavy vehicles. Advice sought as to whether GST still imposed after Treasurer's decision but before final regulations commenced and if so, whether those who paid fees were entitled to any refund.
SR 58 – Magistrates' Court (Committals) Rules 2001	Attorney-General	Certificates. Failure of certificate to specify section under which exception granted.
Industrial Waste Management Policy (Prescribed Industrial) Waste – January 2001	Environment and Conservation	Failure to assess the costs and benefits of the alternatives as required by section 18C of the <i>Environment Protection Act 1970</i> .

APPENDIX 3

COMMITTEE PRACTICE NOTES

Competition Policy Certificates and Assessments

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

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

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

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

Certificate of Compliance – Subordinate Legislation that does not restrict competition

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

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

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

DATED:

[Minister]

[Title]

Certificate of Compliance – Subordinate Legislation that restricts competition

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

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

Restricts competition; and

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

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

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

DATED:

[Minister]

[Title]

Exemptions and Exceptions

- **Dating Certificates.** The Regulation Review Subcommittee has been presented with a number of undated exemption and exception certificates. The *Premier's Guidelines* make clear that all certificates including certificates of exemption and exception must be dated by the Minister at the time of signing. See sample certificates attached to the *Premier's Guidelines*. The Regulation Review Subcommittee continues to expect all certificates to be dated.
- **Reasons for Exemption.** The Regulation Review Subcommittee has received regulations exempted under section 9 with certificates of exemption which fail to adequately explain the reasons for granting the exemption or with reasons for granting the exemption contained in the Explanatory Memorandum. It should be noted that it is a requirement of section 9(2) of the *Subordinate Legislation Act 1994* (Vic) that certificates of exemption 'specify the reasons for the exemption'. The Regulation Review Subcommittee expects all exemption certificates to contain adequate explanations of the reasons for granting the exemptions.
- **Extension of Regulations for Periods up to 12 months.** Regulations expire 10 years after they have been made. The Regulation Review Subcommittee has been presented with a number of regulations made under sections 8(1)(iii) and 5(3)

extending regulations due to expire for periods up to 12 months. Before an extension of time can be granted, the Minister must certify that due to ‘special circumstances’ there is insufficient time available to comply with the formal regulation-making requirements of the *Subordinate Legislation Act 1994*. The *Premier’s Guidelines* indicate that ‘special circumstances’ include cases where a review of the whole area is underway but incomplete or where national scheme legislation is being negotiated. ‘Special circumstances’ do not include administrative oversight and the Regulation Review Subcommittee will not approve regulations made for these reasons. The Regulation Review Subcommittee expects details of the ‘special circumstances’ to be contained in the section 5(3) certificate itself as required by the *Subordinate Legislation Act 1994*. The Subcommittee remains concerned about whether the review processes referred to are actually carried out and will continue to monitor regulations made under this exception very carefully.

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

Explanatory Memoranda

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

- A brief outline of each provision.
- An explanation of the changes brought about by each provision.

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- A statement of the reasons for making the regulation.
- A statement as to whether consultation has taken place and if no consultation has taken place a statement as to why a decision was made not to consult.
- A statement as to the reasons for not making a Regulation Impact Statement where none was prepared.

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

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

Regulations increasing fees made under section 8(1)(a) of the *Subordinate Legislation Act 1994* (Vic) must not increase fees by more than the percentage set by the Treasurer. For each financial year a percentage increase is set by the Treasurer in a document entitled *Guidelines for Setting Fees and Charges Imposed by Departments and Budget Sector Agencies*. The rate for the budget year 2002-2003 is 3.0%.

A regulation may increase a number of fees, with some individual fee increases falling outside the rate set by the Treasurer. However when the total average of fee increases for that regulation is calculated, it falls within the rate fixed by the Treasurer. This practice is referred to as the 'basket approach'. The Regulation Review Subcommittee does not support this practice.

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

The Regulation Review Subcommittee also prefers if Explanatory Memoranda accompanying regulations increasing fees under section 8(1)(a) clearly set out the existing fee, the proposed fee and the percentage increase as follows:

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

This assists the Regulation Review Subcommittee in understanding the fee increases which have taken place.

Independent Advice Certificates: 10(3)

Under section 10(3) of the *Subordinate Legislation Act 1994* (Vic) a Minister must ensure that independent advice as to the adequacy of a Regulation Impact Statement

and of the assessment included in the Regulation Impact Statement is obtained. While there is currently no requirement under the *Subordinate Legislation Act 1994* (Vic) to provide the Regulation Review Subcommittee with a copy of that independent advice, the Subcommittee prefers to receive a copy of that independent advice. This assists the Regulation Review Subcommittee in its assessment of whether there has been compliance with the requirements of the *Subordinate Legislation Act 1994* (Vic).

Legislative Instruments outside the Subordinate Legislation Act 1994

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

Provision of Documentation to Regulation Review Subcommittee

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

The Regulation Review Subcommittee notes that frequently it does not receive the required documentation promptly and Subcommittee staff have to follow up the missing materials. The Regulation Review Subcommittee reminds department and agency officers of the need for all documentation to be sent to it as provided for in Part 14 of the *Notes for the Guidance of Legislation Officers* issued by the Office of the Chief Parliamentary Counsel Victoria, on 1 March 1999. Part 14 provides as follows –

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

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

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

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

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

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

Recommendations

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