



# Parliament of Victoria

## Scrutiny of Acts and Regulations Committee

# Practice Note

[No.1]

**The Committee adopted the following Practice Note on 17 October 2005.**

The Practice Note advises legal and legislation officers of the Committee's expectations in respect to information that should be provided to the Parliament concerning provisions in Bills that test or invoke the Committee's terms of reference.

In its scrutiny of Bills the Committee may initially make an adverse report to Parliament in its Alert Digest in respect to a number of legislative practices included in a Bill that appear to test or invoke the Committee's terms of reference in section 17 of the *Parliamentary Committees Act 2003* (the 'Act').

Where the Committee makes an initial adverse comment it will draw the provision to the attention of Parliament and will note that further advice will be sought from the responsible Minister. The Minister's response is published in the next Alert Digest. To avoid needless Ministerial correspondence the Committee strongly prefers that explanatory material be provided at the time a Bill is introduced in Parliament in either the Second Reading Speech and or the explanatory memorandum.

Provisions frequently of concern to the Committee include –

### **1.1 Unexplained retrospective provisions**

Where a Bill contains a provision that has retrospective operation (deeming, validating or backdated to the time of an announcement or 'press release') the Committee would expect that the Parliament will be provided with an explanation why it is desirable or necessary for the provision to be retrospective. The explanation should include the reason why a specific retrospective date is chosen, and provide sufficient information whether the retrospectivity may detrimentally affect any person. Where there is insufficient information provided to the Parliament, the grounds for an initial adverse report by the Committee will be that such a provision **may** constitute an undue trespass to rights and freedoms within the meaning of section 17(a)(i) of the Act.

### **1.2 Unexplained wide delegation of powers and functions provisions**

Where a Bill provides for a delegation of powers or functions in wide or unlimited terms, such as a delegation to 'any person', the Committee expects that Parliament will be informed as to the reasons why it is desirable or necessary to employ such a wide or unlimited delegation of powers. Where there is insufficient information provided to the Parliament the grounds for an initial adverse report by the Committee will be that such a provision **may** make rights, freedoms or obligations dependent upon insufficiently defined administrative powers within the meaning of section 17(a)(ii) of the Act.

### **1.3 Unexplained commencement by proclamation or delayed commencement in excess of 12 months**

Where a Bill provides for the commencement of an Act by proclamation and no forced commencement provision is provided OR where the commencement is more than 12 months from Royal Assent the Committee expects that Parliament will be informed as to the reasons why it is desirable or necessary to employ such a commencement provision. Where there is insufficient information provided to the Parliament the grounds for any initial adverse report by the Committee will be that such a provision **may** constitute an inappropriate delegation of legislative power within the meaning of section 17(a)(vi) of the Act.

### **1.4 Insufficient or unhelpful explanatory material**

The Committee will write to Ministers where, in the Committee's opinion, explanatory material (clause notes and/ or the Second Reading Speech) are unhelpful in describing the purpose or effect of a key provision. On one occasion the Committee noted a clause note concerning professional disciplinary matters stated 'Clause 3 amends section 23'. The Committee considers that there would be very few, if any, circumstances where such brevity could be appropriately characterised as 'explanatory'. The Committee considers that clause notes are critical, particularly where the provision deletes or substitutes certain words in a section where it would be problematic comprehending the amendment in its full context without some aide memoir as to its purpose and intent.

The Committee endorses the following remarks from a recent report of the Senate Standing Committee for the Scrutiny of Bills –

*The committee relies on the explanatory memorandum to explain the purpose and effect of the associated bill and the operation of its individual provisions. In particular, the committee expects that an explanation will be given for any provision within a bill that appears to test or infringe the committee's terms of reference and provide reasons or justification for this.\*\* Senate Standing Committee for the Scrutiny of Bills – "The Quality of Explanatory Memoranda Accompanying Bills, 24 March 2004"*

In particular the Committee will comment on deficient or inaccurate explanatory material provided in respect to the following types of legislative provisions –

- Powers of arrest, detention and deprivation of liberty
- Search and seizure powers without judicial warrant
- Creation of strict or absolute liability offences
- Reversal of onus of proof in criminal (or civil penalty) offences
- Abridgment of the right to silence or the privilege against self-incrimination
- Freedom of communication, assembly, movement, association, religion or conscience
- Infringement of the right to vote
- Denial of or failure to advise of, judicial or merits review of administrative decisions
- Denial or abridgment of the principle of 'fair trial' or the principles of natural justice
- Acquisition of property without adequate compensation
- Privacy of information and health records
- Inappropriately delegates legislative power. Examples: allow regulations to alter the provisions of an Act, or allow regulations to establish a tax (as distinct from a fee for service or penalty).

The grounds for an adverse report where an explanatory memorandum is plainly deficient or inadequate is that such a provision **may** test or invoke one or more of the Committee's terms of reference.

[The Practice Note is available on the Committee's Website - [www.parliament.vic.gov.au/sarc](http://www.parliament.vic.gov.au/sarc)]

**Committee Room,  
17 October 2005**

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