PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee

Alert Digest No. 3 of 2022

March 2022

On the following Bills

Conservation, Forests and Lands Amendment Bill 2022

Drugs, Poisons and Controlled Substances Amendment (Decriminalisation of Possession and Use of Drugs of Dependence) Bill 2022

Justice Legislation Amendment (Trial by Judge Alone and Other Matters) Bill 2022

Road Safety Amendment (Hoon Events) Bill 2021

The Committee

Ms Kat Theophanous MLA
Chairperson
Member for Northcote

Mr Neale Burgess MLA
Deputy Chairperson
Member for Hastings

Ms Sarah Connolly MLA
Member for Tarneit

Mr David Morris MLA
Member for Mornington

Ms Fiona Patten MLC
Member for Northern Metropolitan

Ms Sonja Terpstra MLC
Member for Eastern Metropolitan

Ms Sheena Watt MLC
Member for Northern Metropolitan

Parliament House, Spring Street
Melbourne Victoria 3002

Telephone: (03) 8682 2836
Facsimilie: (03) 8682 2858
Email: sarc@parliament.vic.gov.au
Web: www.parliament.vic.gov.au/sarc

Committee Staff

Ms Helen Mason, Executive Officer
Mr Simon Dinsbergs, Business Support Officer
Ms Sonya Caruana, Office Manager
Professor Jeremy Gans, Human Rights Adviser

Terms of Reference - Scrutiny of Bills

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

(a) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament as to whether the Bill directly or indirectly –

- (i) trespasses unduly upon rights or freedoms;
- (ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers;
- (iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions;
- (iv) unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Privacy and Data Protection Act 2014*;
- (v) unduly requires or authorises acts or practices that may have an adverse effect on privacy of health information within the meaning of the *Health Records Act 2001*;
- (vi) inappropriately delegates legislative power;
- (vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny;
- (viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities;

(b) to consider any Bill introduced into the Council or the Assembly and to report to the Parliament –

- (i) as to whether the Bill directly or indirectly repeals, alters or varies section 85 of the *Constitution Act 1975*, or raises an issue as to the jurisdiction of the Supreme Court;
- (ii) if a Bill repeals, alters or varies section 85 of the *Constitution Act 1975*, whether this is in all the circumstances appropriate and desirable;
- (iii) if a Bill does not repeal, alter or vary section 85 of the *Constitution Act 1975*, but an issue is raised as to the jurisdiction of the Supreme Court, as to the full implications of that issue;

***Parliamentary Committees Act 2003*, section 17**

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Scrutiny of Acts and Regulations Committee

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Useful information

Role of the Committee

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

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

Interpretive use of Parliamentary Committee reports

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

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

When may human rights be limited

Section 7 of the *Charter* provides –

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

Glossary and Symbols

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

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

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

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

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

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

'PCA' refers to the *Parliamentary Committees Act* 2003

'penalty units' refers to the penalty unit fixed from time to time in accordance with the *Monetary Units Act* 2004 and published in the government gazette (as at 1 July 2021 one penalty unit equals $181.74)

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

'VCAT' refers to the Victorian Civil and Administrative Tribunal

[ ] denotes clause numbers in a Bill

Alert Digest No. 3 of 2022

Conservation, Forests and Lands Amendment Bill 2022

Member	Hon Lily D'Ambrosio MP	**Introduction Date**	22 February 2022
Portfolio	Energy, Environment and Climate Change	**Second Reading Date**	23 February 2022

Summary

The Bill amends the *Conservation, Forests and Lands Act* 1987 (CFL Act). The Bill:-

- Provides that a Code of Practice may apply, adopt or incorporate any matter contained in any document, standard, rule, specification or method as amended from time to time;
- Provides that a Code of Practice may confer a discretionary authority on the Minister or the Secretary;
- Provides that a Code of Practice may leave any matter or thing to be from time to time approved, determined, dispensed with or regulated by the Minister or the Secretary.

Part 2 – Amendment of CFL Act

Part 5 of the CFL provides generally for Codes of Practice. The Bill provides that a Code of Practice may apply, adopt or incorporate any matter contained in any document, standard, rule, specification or method as amended from time to time. **[3]** (See PCA comments.)

Clause **[3]** inserts new subsection (4) after section 31(2) of the CFL Act to expressly enable Codes of Practice to confer a discretionary authority on the Minister or the Secretary. **[3]**

New Subsection (4) of section 31 is set out:-

> (4) A Code of Practice may do the following—
>
> (a) confer a discretionary authority on the Minister or the Secretary;
>
> (b) leave any matter or thing to be from time to time approved, determined, dispensed with or regulated by the Minister or the Secretary.

The Committee notes the Explanatory memorandum:- 'New section 31(4) is similar to provisions in other Acts that provide a broad head of power to authorise a Code or similar subordinate instrument to confer or delegate authority to the discretion of another person.'

The Committee also notes the Second Reading Speech:-

> Similarly, providing a clearer power, in express and broad terms, to enable a Code to specify matters that will be left to the discretion of the Minister or the Secretary will enable the Code to authorise discretionary approvals as a means of establishing greater regulatory certainty. The Code may provide, for example, that the Secretary may approve certain measures or plans, compliance with which will be sufficient to discharge the duty or obligation in the Code to apply the precautionary principle, in the particular circumstances to which those measures apply.
>
> These reforms are not about changing any obligations that regulated entities have to comply with. Obligations to comply with a Code are fixed by or under other relevant laws, which are not amended by this Bill. These reforms are instead to enable the Code to provide greater regulatory certainty about

> how generally described obligations or duties in the Code can be satisfied, whether generally or in a particular case. Enabling clear and specific guidance that can respond to events that change the context of forest management is absolutely critical to ensuring certainty for the timber industry while maintaining the high standards of conservation we must continue to provide our native forests.

The Committee notes a Code of Practice may confer a discretionary authority on the Minister or Secretary. A Code of Practice may also leave any matter or thing to be from time to time approved, determined, dispensed with or regulated by Minister or Secretary.

Comments under the PCA

Insufficiently subjects the exercise of legislative power to Parliamentary scrutiny – (s. 17(a)(vii), PCA)

Code of Practice to incorporate materials and documents as published from time to time

Background

Part 5 of the CFL Act makes provision for Codes of Practice. Section 31 of the CFL Act sets out the power to make Codes of Practice. Provision is made for variation or revocation and advertisement[1] of a Code of Practice[2] unless it is of a fundamentally declaratory or machinery nature. Submissions may be made[3] and must be considered by the Minister.[4] The making of a Code of Practice, variation or revocation of a Code of Practice must be published.[5] A Code of Practice, variation or revocation of a Code of Practice must be tabled in each House of Parliament and is subject to disallowance by the Parliament.[6] Paragraphs 6 and 6.1 of Schedule 2 of the *Subordinate Legislation (Legislative Instruments) Regulations* 2021 prescribe a Code of Practice made under section 31(1) of the CFL Act to be a legislative instrument for the purposes of the *Subordinate Legislation Act* 1994.

Existing provision

Section 31 is set out:-

> 31 Power to make Codes of Practice
>
> (1) The Minister, in accordance with this Part, may make Codes of Practice which specify standards and procedures for the carrying out of any of the objects or purposes of a relevant law.
>
> (2) A Code of Practice may apply, adopt or incorporate any matter contained in any document, standard, rule, specification or method, formulated, issued, prescribed or published by any person whether—
>
> (a) wholly or partially or as amended by the Code of Practice; or
>
> (b) as formulated, issued, prescribed or published at the time the Code of Practice is made or at any time before then.

Amendment of section 31

It amends section 31 to insert subsection (c) after section 31(2)(b) so that it reads:-

> (c) as formulated, issued, prescribed or published from time to time.

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1 See section 33 of the CFL Act. See section 33(2) A notice under subsection (1) must be published in (a) in the Government Gazette; and (b) in a newspaper circulating generally throughout the State.

2 See section 32 of the CFL Act.

3 See section 33 of the CFL Act.

4 See section 34 of the CFL Act.

5 See section 37 of the CFL Act.

6 See section 37A of the CFL Act.

Accordingly, a Code of Practice may apply, adopt or incorporate any matter contained in any document, standard, rule, specification or method as formulated, issued, prescribed or published at the time the Code of Practice is made or any time before then and published from time to time. An amended document adopted or incorporated by a Code of Practice is not taken to be so amended until notice of the amendment is published in the Government Gazette. It must be published on the Internet site of the Department. **[4]** Note the Second Reading Speech:-

> The precautionary principle is a foundation principle in environmental law, adopted by the 1992 Rio Declaration of the United Nations Conference on Environment and Development. Victoria's Code of Practice for Timber Production 2014 includes a mandatory action to apply the precautionary principle to timber harvesting activities.
>
> The precautionary principle provides that, if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. That is, if there are threats of severe or irreversible damage, but the science is not yet settled, the precautionary principle requires us to put in place protective measures to ensure we don't have regrets in the future…
>
> These reforms will enable practical guidance to be given to timber harvesters on the actions they will need to take to meet the requirements of the precautionary principle, particularly in the event of natural disasters that rapidly change the context for management of our forests…
>
> A Code may already incorporate matters from other documents. The Bill enables the Code to incorporate matters from other documents as they are amended from time to time. It is intended, for example, to enable the Code to incorporate 'compliance standards', as published and maintained by the Minister or the Secretary. The Code may provide that complying with measures from the compliance standards will discharge a particular duty or obligation in the Code such as, for example, to apply the precautionary principle. Being able to amend the document from time to time enables the standards to be kept up to date with changing circumstances…
>
> The Code currently includes an incorporated document, which is the Management standards and procedures for timber harvesting operations in Victoria's State Forests 2021 (the MSPs). The MSPs contain many of the Code's prescriptive environmental protections. I want to be clear that I am not proposing increased flexibility for changes to the MSPs.
>
> It is critical that this reform enables incorporated documents to be amended from time to time to allow the new compliance standard guidance for meeting Code clauses to be responsive. However, I do not consider it suitable for the MSPs to be subject to such flexibility – both the timber industry and community environment groups need to be involved in any changes to these rules.
>
> It is my intent to move the MSPs into the Code so that they are part of the Code itself and no longer an incorporated document. If the proposed amendment is adopted, future changes to the MSPs will be subject to the same process as amendments to the Code itself, which involves a statutory consultation period and is open to parliamentary disallowance.

The Committee notes the Explanatory memorandum:-

> New section 31(2)(c) will allow a Code of Practice to incorporate matters from documents as they are amended from time to time, without having to vary the Code under section 32 of the Principal Act. Any amendments to an incorporated document would only take effect as part of the Code to the extent authorised by the Code in providing for the incorporated document.
>
> Subclause (3) inserts new subsections (3) and (4) into section 31 of the Principal Act.
>
> New subsection (3) limits new section 31(2)(c) by requiring notice of any amendment to a document incorporated by the Code of Practice to be published in the Government Gazette before it is to be taken to have been amended for the purpose of the Code. That is, any amendment to an incorporated document is not taken to have effect until the required notice is published in the Government Gazette.

Committee comments – Parliamentary oversight

In the context of Parliamentary oversight, Paragraphs 6 and 6.1 of Schedule 2 of the *Subordinate Legislation (Legislative Instruments) Regulations 2021* prescribe a Code of Practice made under section

31(1) of the CFL Act to be a legislative instrument for the purposes of the *Subordinate Legislation Act* 1994. The Committee notes the explanation that 'New section 31(2)(c) will allow a Code of Practice to incorporate matters from documents as they are amended from time to time, without having to vary the Code under section 32 of the Principal Act.'

The Committee notes it appears that incorporation of matters from documents from time to time in the manner specified in new subsections 31(2)(c) and 31(3) in a Code of Practice will not be considered a formal variation of the Code pursuant to section 32 of the CFL Act. Such amendments will be published on the internet site of the Department and will not be effective until the required notice is published in the Government Gazette.

However, in the context of Parliamentary oversight, the Committee will write to the Minister to seek further information as to whether a Code of Practice which applies, adopts or incorporates material pursuant to new section 31(2)(c) will be sent to it as prescribed in paragraphs 6 and 6.1 of Schedule 2 of the *Subordinate Legislation (Legislative Instruments) Regulations* 2021 and for the purposes of the *Subordinate Legislation Act* 1994.

Charter Issues

Participation in public life – Codes that apply, adopt or incorporate other matter

Summary: *The effect of clause 3(2) may be that a Code of Practice that adopts other matter may include requirements arising from later amendments, without further advertising, submissions or potential disallowance. The Committee will write to the Minister seeking further information.*

Relevant provisions

The Committee notes that clause 3(2), inserting a new para 31(2)(c) into existing s. 31, provides that a 'Code of Practice may apply, adopt or incorporate any matter contained in any document, standard, rule, specification or method… as formulated, issued, prescribed or published from time to time.' Clause 3(3), amending existing s. 31, provides that incorporated matter is not taken to be amended until notice of the amendment is published in the Government Gazette. Clause 4, amending existing s. 38, provides that amended matter must be published on a Department website.[7] Codes of Practice specify standards or procedures for carrying any of the objects or purposes of the Act and other Victorian statutes specified in Schedule 1. A person may be required to comply with a Code of Practice if it is adopted or incorporated by one of those statutes[8] or an authority under one of those statutes specifies compliance as a condition (e.g. of a licence.)

The Explanatory Memorandum explains:

> Currently, the Principal Act allows the incorporation of matters contained in a document published at the time and it is necessary to vary a Code under section 32 of the Principal Act to incorporate matters contained in updated or new versions of that document. New section 31(2)(c) will allow a Code of Practice to incorporate matters from documents as they are amended from time to time, without having to vary the Code under section 32 of the Principal Act. Any amendments to an incorporated document

7 Existing s. 32(4) of the *Interpretation of Legislation Act 1984* requires that any notice of any amendments to matter incorporated in a 'subordinate instrument' – including a Code of Practice: see *Subordinate Legislation (Legislative Instrument) Regulations 2021*, Schedule 2, 6.1 – must be lodged with the Clerk of the Parliaments and laid before each House of the Parliament.

8 See existing s. 67; *Sustainable Forests (Timber) Act 2004*, s. 46; *Victorian Plantations Corporation Act 1993*, ss. 24(2) & 27E(2). The Second Reading Speech remarks: 'These reforms are not about changing any obligations that regulated entities have to comply with. Obligations to comply with a Code are fixed by or under other relevant laws, which are not amended by this Bill.'

> would only take effect as part of the Code to the extent authorised by the Code in providing for the incorporated document.

Existing s. 32 provides that Codes of Practice may be made, varied and revoked at any time by the Ministers for either Agriculture; Energy, Environment and Climate Change; Fishing and Boating; or Water. Existing ss. 33, 34 and 36 generally require that any variations be advertised in the Gazette and a newspaper, that the Minister must consider any submissions received, and that any variation be tabled in Parliament for potential disallowance.

The Committee observes that the effect of clause 3(2) may be that a person who is required to comply with a Code of Practice that applies, adopts or incorporates other matter as published from time to time may be required to comply with requirements arising from later amendments to that matter after they are notified in the Gazette, without further decisions by a Minister or further advertising, submissions or potential disallowance.

Charter analysis

The Statement of Compatibility remarks:

> The Bill does not engage any human rights protected by the Charter.

However, the Committee notes that clause 3(2), to the extent that it allows for the requirements of a Code of Practice to be varied without complying with the advertising, submission and disallowance provisions in existing ss. 33, 34 and 36, may engage Victorians' Charter right to participate in the conduct of public affairs.[9]

Relevant comparisons

The Committee notes that similar provisions to clause 3(2) apply to Codes of Practice under the *Accident Towing Services Act* 2007; *Bus Safety Act* 2009; *Child Employment Act* 2003; *Commercial Passenger Vehicle Industry Act* 2017; *Dairy Act* 2000, *Dangerous Goods Act* 1985; *Equipment (Public Safety) Act* 1984; *Essential Services Commission Act* 2001, *Greenhouse Gas Geological Sequestration Act* 2008; *Labour Hire Licensing Act* 2018; *Marine Safety Act* 2010; *Meat Industry Act* 1993; *Mental Health Act* 2014; *Mineral Resources (Sustainable Development) Act* 1990; *Petroleum Act* 1998; *Road Management Act* 2004; *Road Safety Act* 1986; *Seafood Safety Act* 2003; and *Therapeutic Goods (Victoria) Act* 2010.[10] A majority of those are accompanied by express provisions in similar terms to existing ss. 34 and/or 36.[11]

The Committee also notes that similar provisions to existing s. 31 apply to Codes of Practice under the *Domestic Animals Act* 1994; and *Prevention of Cruelty to Animals Act* 1986.[12] The latter is accompanied by express provisions in similar terms to s. 36.

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9 Charter s. 18(1).

10 *Accident Towing Services Act* 2007, s. 205; *Bus Safety Act* 2009, s. 59; *Child Employment Act* 2003, s. 30; *Dairy Act* 2000, s. 31; *Commercial Passenger Vehicle Industry Act* 2017; s. 28; *Dangerous Goods Act* 1985, s. 56; *Equipment (Public Safety) Act* 1994, s. 33; *Essential Services Commission Act* 2001, s. 48; *Greenhouse Gas Geological Sequestration Act* 2008, s. 301; *Labour Hire Licensing Act* 2018, s. 109; *Marine Safety Act* 2010, ss. 219 & 272; *Meat Industry Act* 1993, s. 13A; *Mental Health Act* 2014, s. 369; *Mineral Resources (Sustainable Development) Act* 1990, s. 89A; *Petroleum Act* 1998, s. 250; *Road Management Act* 2004, ss. 26 & 53; *Road Safety Act* 1986, s. 99A(5); *Seafood Safety Act* 2003, s. 19; *Therapeutic Goods (Victoria) Act* 2010, s. 22.

11 *Bus Safety Act* 2009, s. 71; *Commercial Passenger Vehicle Industry Act* 2017; s. 35; *Dairy Act* 2000, s. 32; *Dangerous Goods Act* 1985, s. 57; *Marine Safety Act* 2010, s. 278; *Mineral Resources (Sustainable Development) Act* 1990, s. 89A; *Road Management Act* 2004, s. 30; *Seafood Safety Act* 2003, s. 20; *Therapeutic Goods (Victoria) Act* 2010, s. 28. See also Subordinate Legislation (Legislative Instruments) Regulations 2021, Sch 2, cl 5.2.

12 *Domestic Animals Act* 1994, ss. 59 & 63AC; *Prevention of Cruelty to Animals Act* 1986, s. 7.

Conclusion

The Committee will write to the Minister seeking further information as to whether or not clause 3(2) is compatible with Victorians' Charter right to participate in the conduct of public affairs.

Drugs, Poisons and Controlled Substances Amendment (Decriminalisation of Possession and Use of Drugs of Dependence) Bill 2022

Member	Fiona Patten MP	**Introduction Date**	9 February 2022
Private Member's Bill		**Second Reading Date**	23 February 2022

Summary

The Bill amends the *Drugs, Poisons and Controlled Substances Act* 1981. The Bill:-

- Reduces to 1 penalty unit the penalty for the offence of possessing a drug of dependence in a quantity that is not more than the small quantity applicable to that drug;
- Reduces to 1 penalty unit the penalty for the offence of using or attempting to use a drug of dependence;
- Makes the offence of using or attempting to use a drug of dependence a summary offence;
- Provides for those offences to be dealt with by way of a drug education or treatment notice. Note the Second Reading Speech:-

> Under my proposal, Victoria Police will issue a drug education or treatment notice, that refers a person to drug education or treatment, if that person is believed on reasonable grounds to have used a drug of dependence, or possessed a small quantity of a drug of dependence. Compliance with a drug education or treatment notice, will result in no finding of guilt and no recorded criminal outcome… This is a concise mechanism to treat drug use and possession as a health issue with a health solution.

Part 2

It inserts a definition of a drug education or treatment notice. It inserts new Division 3 of Part V of the *Drugs, Poisons and Controlled Substances Act* 1981 to provide for drug education and treatment notices. A drug or treatment notice may specify the services and programs with which a drug education or treatment notice may require engagement, provide for outcomes and drug education and other prescribed matters. A police officer may serve the drug education or treatment notice. It sets out the effect of compliance with the drug education or treatment notice. A person may elect to have the matter heard by a court. **[5,13]**

It amends section 73[13] so that section applies only to possession of more than a small quantity of a drug of dependence. It inserts new section 73A to make it an offence to possess a small quantity of a drug of dependence without a particular kind of legal authority[14] (eg: licensed under this Act or

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[13] See Part V of the *Drugs, Poisons and Controlled Substances Act* 1981 which provides generally for Drugs of dependence and related matters. Provisions refer to Schedule 11 which set out various quantities of drugs related to traffickable quantity, small quantity, large commercial quantity etc. Section 73 makes provision for possession of a drug of dependence in respect of an indictable offence if not authorised or licensed under that Act or the regulations.

[14] 73A Possession of a drug of dependence in not more than a small quantity

(1) A person must not have in the person's possession a drug of dependence in a quantity that is not more than the small quantity applicable to that drug, without being authorised by or licensed under—
  (a) this Act or the regulations; or
  (b) the *Voluntary Assisted Dying Act 2017* or the regulations under that Act.
  Penalty: 1 penalty unit.

(2) No proceeding may be commenced against a person for an offence against subsection (1) unless—
  (a) the person has been served a drug education or treatment notice under section 80AAC in respect of the offence; and
  (b) that notice has not been withdrawn under section 80AAF; and

regulations or the *Voluntary Assisted Dying Act* 2017). **[8]** It substitutes section 75 which currently makes it an indictable offence to use a drug of dependence without a particular kind of legal authority. It makes the same conduct a summary offence and fixes the maximum penalty at 1 penalty unit. It sets out the circumstances for the offence of using a drug of dependence. **[9]** The accused must first have been served a drug education or treatment notice, and must have either failed to comply with it or elected to have a charge for the offence heard and determined in a court. An offence against new section 75(1) can be commenced within 24 months of the date of the offence. Note the Explanatory memorandum:- '*This allows time for compliance with a drug education or treatment notice before a proceeding for an offence can be commenced.*' Adjourned bonds may be given in certain cases. **[10]**

Comments under the PCA

The Committee makes no comment pursuant to its terms of reference under section 17 of the *Parliamentary Committees Act* 2003.

Charter Issues

Reduction of penalties – Possession of a small quantity of a drug of dependence – Use of drug of dependence

Summary: *The effect of clauses 7, 8 and 9 may be to reduce the maximum penalties for possession of small quantities of a drug of dependence and use of a drug of dependence, from either imprisonment or 5 penalty units to 1 penalty unit. The Committee will write to the member seeking further information.*

Relevant provisions

The Committee notes that clauses 7 and 8, amending existing s. 73 and inserting a new section 73A, limit the existing offence of possessing a drug of dependence (punishable by a maximum of either 5 penalty units, 1 year in prison or 5 years in prison[15]) to possession of more than a small quantity of a drug of dependence and provide for a new offence of possession of not more than a small quantity of a drug of dependence, punishable by 1 penalty unit. A 'small quantity' is an amount specified for a drug of dependence in existing Parts 2 and 3 of Schedule 11.

The Committee also notes that clause 9 substitutes existing s. 75 (which currently provides for an offence of use of drug of dependence, punishable by a maximum of either 5 penalty units or 1 year in prison[16]) with an offence of use of drug of dependence, punishable by a maximum of 1 penalty unit.

The Committee observes that the effect of clauses 7, 8 and 9 may be to reduce the maximum penalties for possession of small quantities of a drug of dependence and use of a drug of dependence, from either imprisonment (for non-cannabis drugs of dependence) or 5 penalty units (for cannabis) to 1 penalty unit.

(c) either—
(i) the person has failed to comply with that notice; or
(ii) the person has elected, under section 80AAE, to have a charge for the offence heard and determined in a court.

(3) Notwithstanding anything to the contrary in any Act, a proceeding for an offence against subsection (1) may be commenced in accordance with subsection (2) no later than 24 months after the commission of the alleged offence.

15 Depending on whether or not the drug was a small quantity of cannabis or the defendant can prove that the possession was not for the purpose of trafficking: see existing ss. 73(1)(a), (b) & (c).

16 Depending on whether or not the drug was a small quantity of cannabis: see existing s. 75(a) & (b).

Charter analysis

The Statement of Compatibility remarks:

> The Drugs, Poisons and Controlled Substances Amendment (Decriminalisation of Possession and Use of Drugs of Dependence) Bill 2022 does not limit any human right, rather it engages and promotes the right to equality before the law set out in section 8 of the charter.

However, the Committee notes that clauses 7, 8 and 9 may engage Charter s. 27(3), which provides:[17]

> If a penalty for an offence is reduced after a person committed the offence but before the person is sentenced for that offence, that person is eligible for the reduced penalty.

The Committee observes that existing s. 114(2) of the *Sentencing Act* 1991 provides:

> If an Act (including this Act) or subordinate instrument reduces the penalty or the maximum or minimum penalty for an offence, the reduction extends to offences committed before the commencement of the provision effecting the reduction for which no penalty had been imposed at that commencement.

The Committee notes that, while existing s. 114(2) may apply to people who have committed but are yet to be sentenced for the existing offence of use of drug of dependence (which has the same elements as substituted section 75),[18] it may not apply to people who committed but are yet to be sentenced for the existing of offence of possession of a drug of dependence in relation to a small quantity of that drug (because the existing offence lacks one element of the new section 73A – that the amount possessed be 'not more than a small quantity'.[19])

Relevant comparisons

The Committee notes that, in the ACT, the recent reduction of the maximum penalty for the possession of between 50g and 150g of harvested cannabis from 2 years imprisonment to 1 penalty unit was provided for in similar terms to clauses 7 and 8.[20]

The Committee also notes that in South Australia, where people alleged to have committed various offences (including the possession or cultivation of small amounts of cannabis) may expiate the offence by paying a small fine, the scheme provides that it 'applies in relation to offences committed before or after the commencement of' the expiation law.[21]

Conclusion

The Committee will write to the member seeking further information as to the compatibility of clauses 7, 8 and 9 with Charter s. 27(3).

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17 The Explanatory Memorandum to the Charter Bill explained that Charter s. 27(3) is based on Article 15 of the *International Covenant on Civil and Political Rights*, which concludes: 'If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.'

18 See *Kotsifas v The Queen* [2021] VSCA 368, [12].

19 See *R v Bowen* [2008] VSCA 33, [14]; *Driver v The Queen* [2012] VSCA 242, [34]-[35]; *Saner v The Queen; Kamal v The Queen* [2014] VSCA 134, n 140.

20 *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* (ACT), s. 6, which substituted then s. 171 of the *Drugs of Dependence Act 1989* (ACT) with new sections 171 and 171AA.

21 *Expiation of Offences Act 1996* (SA), s. 5(2) (and see *Controlled Substances Act 1984* (SA), s. 45A.)

Justice Legislation Amendment (Trial by Judge Alone and Other Matters) Bill 2022

Member	Attorney-General	**Introduction Date**	22 February 2022
Portfolio	Hon Jaclyn Symes MP	**Second Reading Date**	23 February 2022

Summary

The Bill:-

- Amends the *Criminal Procedure Act* 2009 to provide temporary arrangements for trial by judge alone on an order made or applied for while a pandemic declaration is in force;
- Amends the *Crimes (Mental Impairment and Unfitness to be Tried) Act* 1997 to provide temporary arrangements for special hearings by judge alone on an order made or applied for while a pandemic declaration is in force and to temporarily provide for extensions of the time limits within which special hearings must be held;
- Amends various Acts to delay the repeal of provisions enacted to temporarily change the operation of those Acts in response to the COVID-19 pandemic.

Part 2 – Trial by judge alone – Part 3 – Other matters – Extension of COVID-19 temporary measures

It inserts a new Chapter 9 (sections 420A to 420ZL) into the *Criminal Procedure Act* 2009 which makes further provision for temporary arrangements for trial alone by a judge while a pandemic declaration is in force. (See PCA comments) **[3]** It inserts new Part 11 into the *Crimes (Mental Impairment and Unfitness to be Tried) Act* 1977 to allow proceedings to be conducted with greater flexibility during the COVID-19 pandemic by allowing a special hearing under that Act to be heard by a judge alone if it is in the interests of justice to do so.[22] **[6,7]**

It amends various Acts to delay the repeal of various provisions enacted in response to the COVID-19 pandemic. It extends Part 16 of the *Occupational Health and Safety Act* 2004 for a further six months which maintains the ability of WorkSafe Inspectors to take enforcement action in relation to the occupational health and safety risks posed by COVID-19.[23] **[10]** It extends the operation of section 42JA(2A) of the *Evidence (Miscellaneous Provisions) Act* 1958 which requires an adult accused in custody to attend a summary contested hearing or a committal hearing by audio visual link by default for a further twelve months. **[8]** It extends Part 8.5A, section 600S and 600T of the *Children, Youth and Families Act* 2005 for a further twelve months which allow for the use of audio visual link to satisfy reporting requirements under that Act. It delays the commencement of de novo appeal reforms until July 2025. **[9]**

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22 Note the Second Reading Speech:- 'In addition, the Bill will make amendments to address concerns raised by key stakeholders that the three-month timeframe for special hearings is presenting considerable challenges as the pandemic continues. The CMIA provides that if the accused is found not fit to stand trial and the judge determines that the accused is not likely to become fit within the next 12 months, the court must proceed to hold a special hearing within three months. The Bill will allow for one extension to the three-month period to be granted, if it is in the interests of justice. The court may extend the time for a period that is reasonable, taking into account all the circumstances of the case and submissions from the prosecution and defence. This will ensure the extension will only be for the minimum period necessary to allow for the matter to be prepared, considering the individual circumstances of the case. In alignment with the judge alone trial model, these changes will be time limited, and will be repealed 12 months after they commence.'

23 See the Committee's report at page 9 in *Alert Digest No. 9 of 2020* in relation to the common law rule against double jeopardy principle which provides a person may not be tried for the same offence twice. <https://www.parliament.vic.gov.au/sarc/publications/details/41/268>

Note the Second Reading Speech:-

> In 2019, Parliament passed laws to modernise Victoria's summary criminal appeal system. The *Justice Legislation Amendment (Criminal Appeals) Act* 2019 will abolish de novo appeals of criminal cases to the County Court and replace them with new processes that will enhance efficiency and transparency and reduce the burden on witnesses and victims… However, the ongoing effects of COVID-19 on the court system and the significant time and resources required to implement the reforms make it necessary to further delay the commencement of the de novo appeal reforms until July 2025.

Comments under the PCA

Trial by judge alone of any Victorian indictable offences – Rights and freedoms – (s. 17(a)(i), PCA)

It inserts a new Chapter 9 into the *Criminal Procedure Act* 2009 which makes further provision for temporary arrangements for trial alone by a judge while a pandemic declaration is in force. The Committee notes that provisions largely mirror the temporary provisions enacted in 2020.[24] Commonwealth indictable offences will continue to be tried by jury. The provisions will be repealed a year after commencement. **[3,4]** The Committee reported on the original provisions in 2020.[25] The Committee notes the Second Reading Speech:-

> Currently, criminal trials in Victoria must be heard by a jury, reflecting the longstanding and fundamental role of juries in the criminal justice system. Jury trials are running in both the Supreme Court and the County Court, and the courts are implementing measures to ensure these trials run as safely as possible, for example by establishing testing facilities for jurors and other trial participants (including legal practitioners) in Melbourne, the use of rapid antigen tests on circuit and re-purposing trial and jury rooms to allow for appropriate social distancing. The courts are also conducting most non-jury work remotely, to reduce the number of users physically present at court.
>
> Despite these efforts, the courts continue to face significant trial backlog and disruptions, which continue to be exacerbated by the ongoing impacts of the COVID-19 pandemic… Accordingly, with the support of key stakeholders including the courts, this Bill will reintroduce the temporary judge alone trial model, which operated between April 2020 and April 2021 (the 2020 model). This scheme operated effectively and is already known to the courts and legal profession.
>
> Like the 2020 model, these reforms will be time limited, and will be repealed 12 months after they commence. The key substantive difference from the 2020 model will be to provide that an order for a judge alone trial may only be made when a pandemic declaration under the Public Health and Wellbeing Act 2008 is in force.

The Committee notes the above.

Charter Issues

Equality – Rights of criminal defendants – Special hearing by judge alone – Judge may specify longer period in which special hearing must be held

Summary: *The effect of clauses 6 and 7 is that, up to a year after royal assent, a court may extend the period when a special hearing must be held; and, if an application is made while a pandemic declaration*

[24] Note the Explanatory memorandum:- 'The trial by judge alone are substantively the same as the temporary provisions enacted in 2020, except …the transitional provision have been clarified to make it clear when trials may proceed by judge alone if the court makes an order, notwithstanding the repeal date or expiry of a pandemic declaration.'

[25] See *Alert Digest No 5 of 2020*, COVID-19 Omnibus (Emergency Measures) Act 2020, p. 26. <https://www.parliament.vic.gov.au/sarc/publications/details/41/264>

is in force, order that a special hearing be conducted by a judge alone. The Committee will write to the Attorney-General seeking further information.

Relevant provisions

The Committee notes that clause 6, inserting a new section 94 into the *Crimes (Mental Impairment and Unfitness to be Tried) Act* 1997, provides that a court may, if it considers that it is in the interests of justice, order that a special hearing may be conducted by a judge alone, without a jury. There is no express provision that the accused must consent to the order. Existing s. 15 provides that the purpose of a special hearing is to determine whether, on the evidence available, the accused is either not guilty of the offence, not guilty because of mental impairment, or committed the offence charged or an alternative offence. Existing s. 16(1) provides that 'A special hearing is to be conducted as nearly as possible as if it were a criminal trial'.

The Committee also notes that new sections 116, 117, 118 and 119 each provide existing sub-ss. 12(5), 13(3)(c), 14F(5) and 14G(3)(c) – which each provide that a judge 'must' conduct a special hearing 'within 3 months' if an accused is found unfit to be tried and unlikely to become fit to be tried within 12 months – are subject to a court specifying 'a period that is longer than 3 months if the court is of the opinion that it is in the interests of justice to do so'. The court 'may specify a longer period that the court considers is reasonable' after hearing submissions from the prosecution and the accused. There is no express time limit on that period; however, the court may extend the period 'only once'.

New sections 94, 116, 117, 118 and 119 are all repealed one year after the Act receives royal assent. However, clause 7, inserting a new clause 16D into Schedule 3 of the Crimes (Mental Impairment and Unfitness to be Tried Act) 1997, provides that an application made before the repeal may be determined and acted upon as if the repeal had not occurred. Likewise, although new section 94(2) provides that an application for a special hearing by judge alone may only be made when a pandemic declaration is in force, new sections 114 and 115 provide that an application made before the pandemic declaration ceases may be determined and acted upon as if the declaration had not ceased.

The Committee observes that the effect of clauses 6 and 7 is that:

- **up to a year after royal assent, a court may specify a longer period that the court considers is reasonable when a special hearing must be held after an accused person has been found unlikely to become fit to be tried; and**
- **if an application is made up to a year after royal assent while a pandemic declaration is in force, a judge may order that a special hearing be conducted by a judge alone, without a jury**

in either instance if the court considers that doing so is in the interests of justice, and without any express requirement for the accused's consent.

Charter analysis

The Statement of Compatibility remarks:

> The Bill will make changes to the CMIA to allow a special hearing to be heard by a judge alone if it is in the interests of justice to do so. These amendments are necessary to ensure CMIA proceedings can be conducted with greater flexibility throughout the COVID-19 pandemic, and in a timely way. A special hearing is a modified form of trial, and it is important to avoid unreasonable delay to these hearings for the same reasons as trials. Further, accused persons who are dealt with under the CMIA will be either severely mentally impaired or mentally ill and are therefore particularly vulnerable.
>
> As with amendments to allow judge alone criminal trials, these amendments engage the right to a fair hearing in section 24 of the Charter and rights in criminal proceedings in section 25 of the Charter.
>
> The Bill will allow a judge alone special hearing only if the court considers that it is in the interests of justice to do so. The Bill will also allow the court to consider the views of both the prosecution and the

> accused when the court is determining whether to order that a special hearing be conducted by judge alone. In alignment with the judge alone trial model, these changes will be time limited, and will be repealed 12 months after they commence. In addition, an order for a judge alone special hearing may only be made when a pandemic declaration is in force. This is appropriate given these reforms are aimed at responding to the COVID-19 crisis and its continuing effect on the court system.

However, the Committee notes that the effect of new section 114 is that an order for a judge alone special hearing may be made after a pandemic declaration has ceased to be in force (and, indeed, after the new provisions have been revealed), so long as the application was made while the declaration was in force.

The Statement of Compatibility does not address the compatibility of clause 6 with the Charter's equality rights.[26] In a letter to the Committee in relation to the *COVID-19 Omnibus (Emergency Measures) Act* 2020, which provided for a new section 101 in similar terms to new section 94, the Premier remarked:[27]

> These Charter rights are likely to be engaged by the amendment because new section 101 has the effect that a court may order that the special hearing be conducted by the judge alone even if an accused person (who, in these circumstances, will be impaired due to cognitive disability or mental illness) does not consent. In contrast, an accused person without such an impairment may choose whether to consent to a trial by a judge alone.

The Committee notes that the Court of Appeal subsequently held:[28]

> Although, of course, the special hearing procedure is available only in a case in which an accused person's disability has rendered them unfit to be tried, and thus treats them differently to those without a disability who are accused of a criminal offence, it is not discriminatory because it is a beneficial procedure, established specifically for the benefit of those with a mental impairment.
>
> Furthermore, it is evident that, when introducing Part 11 into the CMI Act — and s 101 in particular — Parliament evinced an intention that special hearings would continue to be conducted throughout the period of the emergency created by the pandemic if it were not be possible to empanel a jury. Section 101 allows for the continued operation of special hearings, and allows for special hearings to take place within the prescribed timeframes, in circumstances where the pandemic has made it practically impossible to empanel a jury. It is a temporary measure taken for the purpose of ensuring that during the course of the pandemic special hearings can take place with respect to those suffering mental impairment.
>
> Although, by permitting a hearing by judge alone, s 101 changes the extent to which the special hearing procedure resembles the procedure in a criminal trial, that does not necessarily translate to the unfit accused person being treated unfavourably. There are benefits to the accused arising from the procedure that must be weighed against the supposed prejudice arising from loss of a jury. In particular, a person in the applicant's position is not left in a state of limbo. And he or she has available the potential benefits (set out in s 18) that flow from a finding under s 17(1) of the CMI Act. (Additionally, of course, any alleged victim of an accused person's offending is the beneficiary of a final determination of his or her allegations.)

The Committee observes that, while the Court of Appeal's ruling may mean that new section 94 is generally compatible with the Charter's equality rights, the Committee notes that the Court's ruling was specific to special hearings that are conducted during 'the period of the emergency created by the pandemic' and 'in circumstances where the pandemic has made it practically impossible to empanel a jury'. By contrast, new sections 114 and 115, as well as new clause 16D of schedule 3, permit special hearings by judge alone to be ordered and held after any pandemic declaration, and new section 94, has ceased to be in force.

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26 Charter s. 8.

27 Scrutiny of Acts and Regulations Committee, *Alert Digest No. 2 of 2021*, pp 38-39 (letter dated 29 June 2020.)

28 *Carson (a Pseudonym) v The Queen* [2020] VSCA 202, [59]-[61].

In relation to new sections 116, 117, 118 and 119, the Statement of Compatibility remarks:

> In addition, the Bill will also make amendments to address concerns raised by stakeholders that the three-month timeframe in section 12(5) of the CMIA is presenting considerable challenges as the pandemic continues.

The Statement does not address the Charter entitlement, without discrimination, of a person charged with a criminal offence 'to be tried without unreasonable delay'.[29]

The Committee notes that, in its 2014 review of the Act, the Victorian Law Reform Commission remarked:[30]

> The Commission acknowledges that from a practical or operational perspective it can be difficult for courts and the parties to proceed with matters within a strict timeframe. However, on balance, the Commission does not recommend a change to the three month period following a permanent finding of unfitness (for example, by providing for a power for the court to extend the period). As submitted by the Criminal Bar Association, the timeframes set out in the CMIA are for the benefit of the accused. The Explanatory Memorandum to the Crimes (Mental Impairment and Unfitness to be Tried) Bill, for example, states:
>
> > These time frames are provided to ensure that persons who are unfit to stand trial have the issues in relation to them determined as soon as possible to ensure that if appropriate treatment or services are required to assist the person they can be provided as soon as possible.
>
> In situations where an accused has been found permanently unfit to stand trial, and therefore there is no possibility of them becoming fit within a reasonable period, their interests are best served by a resolution of the matter and the commencement of their treatment as soon as practicable. This is consistent with the Commission's threshold recommendation for measures to avoid unreasonable delay... Maintaining a limit of three months before the special hearing protects this group of people who, due to their unfitness, are unlikely to be able to advocate for timeframes favourable to them to be adhered to. It will minimise any stress caused by the legal process for both the accused and victims. It could also minimise any deterioration in the accused's mental condition. Further…, accused with an intellectual disability who may be unfit are sometimes held on remand in prison. It is crucial that any period spent in prison is minimised for people who are unfit.

Relevant comparisons

The Committee notes that, in the Northern Territory, a special hearing must ordinarily be held within three months of a finding of long-term unfitness to be tried, but the court may (on its own initiative or on application) extend that period for not more than three months, and may do so repeatedly.[31]

The Committee also notes that the remaining jurisdictions that hold special hearings do not expressly require that the special hearing be held within a particular period, although NSW requires that the hearing be held 'as soon as practicable'.[32]

Conclusion

The Committee will write to the Attorney-General seeking further information as to the compatibility of clauses 6 and 7 with the Charter's equality rights and the Charter entitlement, without discrimination, of people charged with a criminal offence to be tried without unreasonable delay.

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29 Charter s. 25(2)(c).

30 Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*, June 2014, [9.18]-[9.19].

31 *Criminal Code 1983* (NT), Schedule 1, s. 43V.

32 *Mental Impairment and Cognitive Health Forensic Provisions Act 2020* (NSW), s. 55(1).

Road Safety Amendment (Hoon Events) Bill 2021

Member	Stuart Grimley MP	**Introduction Date**	16 November 2021
Private Member's Bill		**Second Reading Date**	23 February 2022

Summary

The Bill amends the *Road Safety Act* 1986 in relation to events involving hoon driving and related activities. Note the Second Reading Speech:-

> The partnership between VicPol and local council has to be absolutely commended… We've also included very plain-English definitions for both 'hoon event' and 'hoon driving' which again has been modelled off successful implementation by local Councils.

It inserts new section 65AB(1) which provides a person must not organise, participate in, promote or attend a hoon event without a reasonable excuse. The penalty is 8 penalty units. New section 65AB(2) provides that the driver or person in charge of a motor vehicle must not stop or park in close proximity to an area where a hoon event is taking place, without reasonable excuse. The penalty is 8 penalty units. **[3]**

A 'hoon event' is defined to mean an event where more than one person participates in or gathers for the purpose of participating in hoon driving. 'Hoon driving' means dangerous, illegal driving of a motor vehicle, including but not limited to driving a motor vehicle in a manner that involves a loss of traction of the motor vehicle; racing a motor vehicle, time trials for driving a motor vehicle or driving a motor vehicle in a manner that causes undue noise or smoke. **[3]**

Comments under the PCA

Presumption of innocence – Strict liability offence – (section 17(a)(i), PCA)

New section 65AB(2) inserted by clause **[3]** provides that a driver or person in charge of a motor vehicle must not stop or park in close proximity to an area where a hoon event it taking place, without a reasonable excuse.[33] The penalty is 8 units. An offence is one of strict liability where it provides for people to be punished for doing something, or failing to do something whether or not they have guilty intent.[34]

Note the Second Reading Speech:-

> The second offence is to assist police where hoon meets become more versatile. Basically, what happens is the cars will meet at a particular street or car park, then the cops will inevitably get a call and turn up and then the hoon participants and spectators obviously get moving in order to evade police.
>
> … then, an organiser or other participants will usually arrange an alternative meeting place to continue with the event, and everyone will move to the new location. At this point, police are helpless with the current legislation as there is no current offence of a spectator or organiser of a hoon event to be charged with.

The Committee will write to the Member to seek further information as to whether the offence is a strict liability offence.

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[33] Note the Explanatory memorandum:- '…the Bill includes a very important reference to a defence of 'without a reasonable excuse' in clause 3 (both offences) to allow those who have been misinterpreted as being hoon event attendees to excuse their behaviour and provide reason as to why they are not captured under the Bill.'

[34] A person charged with a strict liability offence has recourse to the common law defence of mistake of fact.

Charter Issues

Movement – Rights in criminal proceedings – Stopping or parking in close proximity to a hoon event – Reasonable excuse

Summary: *The effect of new sub-section 65AB(2) may be that a person who is charged with stopping or parking a car in close proximity to an area where people have gathered to drive dangerously or illegally may be convicted unless the accused presents or points to evidence that would establish a reasonable excuse. The Committee will write to the member seeking further information.*

Relevant provisions

The Committee notes that clause 3, inserting a new sub-section 65AB(2), provides:

> The driver or person in charge of a motor vehicle must not stop or park in close proximity to an area where a hoon event is taking place, without a reasonable excuse.

The maximum penalty is 8 penalty units (currently nearly $1500.)

A 'hoon event' is one 'where more than one person participates in or gathers for the purpose of participating in… dangerous or illegal driving of a motor vehicle'. There is no definition of 'stop', 'close', 'area', 'illegal' or 'reasonable excuse'.

The Explanatory Memorandum explains that this offence:

> is intended to capture those who cannot be captured under subsection (1), but where the person may be in close proximity to the hoon event in their car, waiting to participate in drag races or similar dangerous behaviour.

New sub-section 65AB(1) makes it an offence to 'organise, participate in, promote or attend a hoon event'.

The Committee observes that, while new sub-section 65AB(1) may require proof that the accused intended to be involved in dangerous or illegal driving and intended or knew that the dangerous or illegal driving would occur, new sub-section 65AB(2) may not require proof that the accused intended to be involved or was aware that others had gathered for dangerous or illegal driving; however, an accused who didn't intend to be involved or wasn't aware may have a 'reasonable excuse'. Existing sub-s. 72(1) of the *Criminal Procedure Act* 2009 provides:

> If—
>
> (a) an Act or subordinate instrument creates an offence and provides any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence; and
>
> (b) the accused wishes to rely on the exception, exemption, proviso, excuse or qualification—
>
> the accused must present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the exception, exemption, proviso, excuse or qualification.

Accordingly, the Committee observes that the effect of new sub-section 65AB(2) may be that a person who is charged with stopping or parking a car in close proximity to an area where people have gathered to drive dangerously or illegally may be convicted for an offence unless the driver presents or points to evidence that suggests a reasonable possibility of a reasonable excuse (e.g. that the driver did not intend to attend at, or did not know of, the dangerous or illegal driving.)

Charter analysis

The Statement of Compatibility remarks:

> I believe this Bill is compliant with the Charter of Human Rights and Responsibilities 2006 (the Charter) as these offences recognise the right for citizens to be safe and hooning behaviour is by definition dangerous and/or illegal. The people in attendance at such events give the drivers an audience which encourages hoon driving.
>
> This Bill does not infringe on the right to Peaceful Assembly and Freedom of Association (the Charter, s16) as the nature of hoon events are dangerous and not peaceful. This Bill does not intend to capture those who meet peacefully with or without their cars.
>
> Lastly, the Bill includes a very important reference to a defence of 'without a reasonable excuse' in clause 3 (both offences) to allow those who have been misinterpreted as being hoon event attendees to excuse their behaviour and provide reason as to why they are not captured under the Bill. This also adheres to s24 of the Charter which pertains to a persons' right to a fair hearing.

The Committee notes that new sub-section 65AB(2), to the extent that it requires people 'who have been misinterpreted as being hoon event attendees to excuse their behaviour and provide reason to why they are not captured under the Bill', may engage the Charter right of people charged with a criminal offence 'to be presumed innocent until proved guilty according to law'.[35]

The Committee also notes that the Statement of Compatibility does not address the compatibility of new sub-section 65AB(2), to the extent that it requires people who park or stop at certain locations to have a reasonable excuse to do so, with Victoria's Charter right 'to move freely within Victoria'.[36]

Relevant comparisons

The Committee notes that two Councils have similar provisions to new sub-section 65AB(2).[37] As well, the City of Greater Dandenong provides that '[t]he driver of a motor vehicle must not stop or park within 200 metres of a vehicle involved in a Hoon Event.'[38] Each Council defines a 'hoon event' to mean 'one or more vehicles being driven in a manner involving either, the loss of traction, racing, time trials, or by which undue noise or smoke is caused.'[39]

The Committee also notes that NSW makes it an offence to 'willingly participate in' or photograph or film or 'view any group activity involving the operation of one or more vehicles… on a road in such a manner as to cause the vehicle to undergo sustained loss of traction by one or more of the driving wheels… of the vehicle.'[40] However, it does not make it an offence to stop or park a motor vehicle near such an activity.

Conclusion

The Committee will write to the member seeking further information as to whether or not new sub-section 65AB(2) is compatible with the Charter rights of drivers to move freely within Victoria and to be presumed innocent until proved guilty according to law.

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35 Charter s. 25(1).

36 Charter s. 12.

37 Brimbank City Council, *General Local Law 2018*, Local Law No. 2, s 26.2; Frankston City Council, *Community Local Law 2020*, s. 2.6(b).

38 City of Greater Dandenong, *General Local Law*, Local Law No. 2, s. 47(2).

39 Brimbank City Council, *General Local Law 2018*, Local Law No. 2, s 26.2; City of Greater Dandenong, *General Local Law*, Local Law No. 2, s. 47(2) (which also requires intent or recklessness as to the outcome); Frankston City Council, *Community Local Law 2020*, s. 2.6(b) (which also requires that the driving be 'on a road or in a public place').

40 *Road Transport Act 2013* (NSW), s. 116.

Appendix 1
Index of Bills and Subordinate Legislation in 2022

Appendix 2
Committee Comments classified by Terms of Reference

This Appendix lists Bills under the relevant Committee terms of reference where the Committee has raised issues requiring clarification from the appropriate Minister or Member.

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights or freedoms

Road Safety Amendment (Hoon Events) Bill 2021 3

(vii) insufficiently subjects the exercise of legislative power to parliamentary scrutiny

Conservation, Forests and Lands Amendment Bill 2022 3

(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities

Casino and Gambling Legislation Amendment Act 2021 15 of 2021, 1
Children, Youth and Families Amendment (Child Protection) Bill 2021 13 of 2021
Circular Economy (Waste Reduction and Recycling) Bill 2021 15 of 2021
Conservation, Forests and Lands Amendment Bill 2022 3
Constitution Amendment (State of Emergency and State of Disaster) Bill 2021 15 of 2021
Drugs, Poisons and Controlled Substances Amendment (Decriminalisation of Possession and Use of Drugs of Dependence) Bill 2022 3
Equal Opportunity (Religious Exceptions) Amendment Act 2021 15 of 2021, 1
Health Legislation Amendment (Quality and Safety) Bill 2021 1
Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Bill 2021 15 of 2021
Justice Legislation Amendment (Trial by Judge Alone and Other Matters) Bill 2022 3
Mental Health Amendment (Counsellors) Bill 2021 13 of 2021
Public Health and Wellbeing Amendment (Pandemic Management) Act 2021 15 of 2021, 2
Road Safety Amendment (Hoon Events) Bill 2021 3
Sex Work Decriminalisation Bill 2021 14 of 2021, 1
Terrorism (Community Protection) Amendment Act 2021 [House Amendment] 15 of 2021
Transport Legislation Miscellaneous Amendments Bill 2021 5 of 2021
Windfall Gains Tax and State Taxation and Other Acts Further Amendment Act 2021 14 of 2021, 1

Appendix 3
Table of Ministerial Correspondence

Table of correspondence between the Committee and Ministers or Members

This Appendix lists the Bills where the Committee has written to the Minister or Member seeking further advice, and the receipt of the response to that request.

Bill Title	**Minister/ Member**	**Date of Committee Letter / *Minister's Response***	**Alert Digest No. Issue raised / *Response Published***
Transport Legislation Miscellaneous Amendments Bill 2021	Public Transport	06-05-21	5 of 2021
Children, Youth and Families Amendment (Child Protection) Bill 2021	Child Protection	13-10-21	13 of 2021
Mental Health Amendment (Counsellors) Bill 2021	Georgie Crozier MP	13-10-21	13 of 2021
Sex Work Decriminalisation Bill 2021	Consumer Affairs, Gaming and Liquor Regulation	27-10-21 *06-02-22*	14 of 2021 *1 of 2022*
Windfall Gains Tax and State Taxation and Other Acts Further Amendment Act 2021	Treasurer	27-10-21 *14-12-21*	14 of 2021 *1 of 2022*
Terrorism (Community Protection) Amendment Bill 2021 [House Amendment]	Attorney-General	28-10-21 17-11-21	*15 of 2021* 15 of 2021
Casino and Gambling Legislation Amendment Act 2021	Consumer Affairs, Gaming and Liquor Regulation	17-11-21 *13-12-21*	15 of 2021 *1 of 2022*
Circular Economy (Waste Reduction and Recycling) Bill 2021	Energy, Environment and Climate Change	17-11-21	15 of 2021
Constitution Amendment (State of Emergency and State of Disaster) Bill 2021	Hon David Davis MLC	17-11-21	15 of 2021
Equal Opportunity (Religious Exceptions) Amendment Act 2021	Attorney-General	17-11-21 *02-12-21*	15 of 2021 *1 of 2022*
Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Bill 2021	Attorney-General	17-11-21	15 of 2021
Public Health and Wellbeing Amendment (Pandemic Management) Act 2021	Health	16-11-21 30-11-21	15 of 2021 *2 of 2022*

Bill Title	**Minister/ Member**	**Date of Committee Letter / *Minister's Response***	**Alert Digest No. Issue raised / *Response Published***
Health Legislation Amendment (Quality and Safety) Bill 2021	Health	08-02-22	1 of 2022
Conservation, Forests and Lands Amendment Bill 2022	Energy, Environment and Climate Change		3 of 2022
Drugs, Poisons and Controlled Substances Amendment (Decriminalisation of Possession and Use of Drugs of Dependence) Bill 2022	Fiona Patten MP		3 of 2022
Justice Legislation Amendment (Trial by Judge Alone and Other Matters) Bill 2022	Attorney-General		3 of 2022
Road Safety Amendment (Hoon Events) Bill 2021	Stuart Grimley MP		3 of 2022