

No. 13 of 2009

Tuesday, 10 November 2009

On the

Electricity Industry Amendment (Critical
Infrastructure) Bill 2009

Fair Work (Commonwealth Powers)
Amendment Bill 2009

Gambling Regulation Amendment
(Racing Club Venue Operator Licences)
Bill 2009

Health Practitioner Regulation National
Health (Victoria) Bill 2009

Justice Legislation Miscellaneous
Amendments Bill 2009

Local Government (Brimbank City
Council) Bill 2009

Parks and Crown Land Legislation
Amendment (River Red Gums) Bill 2009

Road Legislation Amendment
Bill 2009

State Taxation Acts Further
Amendment Bill 2009

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Glossary and Symbols



- ‘**Article**’ refers to an Article of the International Covenant on Civil and Political Rights;
- ‘**Assembly**’ refers to the Legislative Assembly of the Victorian Parliament;
- ‘**Charter**’ refers to the Victorian *Charter of Human Rights and Responsibilities Act 2006*;
- ‘**child**’ means a person under 18 years of age;
- ‘**Committee**’ refers to the Scrutiny of Acts and Regulations Committee of the Victorian Parliament;
- ‘**Council**’ refers to the Legislative Council of the Victorian Parliament;
- ‘**court**’ refers to the Supreme Court, the County Court, the Magistrates’ Court or the Children’s Court as the circumstances require;
- ‘**Covenant**’ refers to the International Covenant on Civil and Political Rights;
- ‘**human rights**’ refers to the rights set out in Part 2 of the Charter;
- ‘**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 (currently one penalty unit equals \$113.42).
- ‘**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.

Useful provisions

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 imitation; 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.*

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.



Terms of Reference

Parliamentary Committees Act 2003

17. Scrutiny of Acts and Regulations Committee

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 *Information Privacy Act 2000*;
 - (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;
- (c) to consider any Act that was not considered under paragraph (a) or (b) when it was a Bill –
 - (i) within 30 days immediately after the first appointment of members of the Committee after the commencement of each Parliament; or
 - (ii) within 10 sitting days after the Act receives Royal Assent —
whichever is the later, and to report to the Parliament with respect to that Act or any matter referred to in those paragraphs;
- (d) the functions conferred on the Committee by the *Subordinate Legislation Act 1994*;
- (e) the functions conferred on the Committee by the *Environment Protection Act 1970*;
- (f) the functions conferred on the Committee by the *Co-operative Schemes (Administrative Actions) Act 2001*;
- (fa) the functions conferred on the Committee by the Charter of Human Rights and Responsibilities;
- (g) to review any Act in accordance with the terms of reference under which the Act is referred to the Committee under this Act.

The Committee has considered the following Bills –

Electricity Industry Amendment (Critical Infrastructure) Bill 2009
Fair Work (Commonwealth Powers) Amendment Bill 2009
Gambling Regulation Amendment (Racing Club Venue Operator Licences) Bill 2009
Health Practitioner Regulation National Health (Victoria) Bill 2009
Justice Legislation Miscellaneous Amendments Bill 2009
Local Government (Brimbank City Council) Bill 2009
Parks and Crown Land Legislation Amendment (River Red Gums) Bill 2009
State Taxation Acts Further Amendment Bill 2009

The Committee notes the following correspondence –

Road Legislation Amendment Bill 2009



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) presented to the Parliament. The Committee does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of non-partisan legislative scrutiny. These traditions have been developed since the first Australian scrutiny of Bills committee of the Australian Senate commenced scrutiny of Bills in 1982. They are precedents and traditions followed by all Australian scrutiny committees. Non-policy scrutiny within its terms of reference allows the Committee to alert the Parliament to the use of certain legislative practices and allows the Parliament to consider whether these practices are necessary, appropriate or desirable in all the circumstances.

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

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Electricity Industry Amendment (Critical Infrastructure) Bill 2009

Introduced	13 October 2009
Second Reading Speech	15 October 2009
House	Legislative Assembly
Member introducing Bill	Hon. Peter Batchelor MLA
Portfolio responsibility	Minister for Energy and Resources

Purpose

The Bill amends the *Electricity Industry Act 2000* (the 'Act') to create new offences involving trespass on critical electricity infrastructure land and damage or interference with critical electricity infrastructure plant, equipment or vehicles.

Content

The Bill inserts new definitions for *critical electricity infrastructure, critical generation facility and related coal mine*. The term critical electricity infrastructure is defined to mean generators with generation capacity of 1000 kVA or greater, related coal mines and water storage facilities, and substations, terminal stations and switchyards. [4]

The Bill provides a new offence for a person to be present on land or premises on which or in an enclosure in which critical electricity infrastructure is situated and who knows he or she does not have authority to be on that land or premises or in that enclosure. The maximum penalty for this offence is imprisonment for one year. [5]

Further the Bill makes it an offence for a person to damage, interfere or tamper with, or attach a thing to, plant or equipment that forms part of critical electricity infrastructure or plant or equipment or a relevant infrastructure vehicle on land or premises on which, or in an enclosure in which, critical electricity infrastructure is situated and who knows he or she does not have authority to do such an act and who is reckless as to whether such an act will result in the disruption of the generation, transmission or distribution of electricity. The maximum penalty for the two offences is imprisonment for two years. The term relevant infrastructure vehicle is defined. [5]

Charter report

Expression – Trespass on property related to electricity generation – Offence more onerous than regular trespass – Adequacy of statement of compatibility

Summary: Clause 5 creates a criminal offence that may restrict and punish certain forms of protest about electricity generation more heavily than similar protests about other matters. The Committee will write to the Minister concerning the adequacy of the statement of compatibility in relation to clause 5.

The Committee notes that clause 5, inserting a new section 79 into the *Electricity Industry Act 2000*, creates an offence of being on land or premises or in an enclosure containing large electricity generating facilities or related infrastructure without authority.

The Statement of Compatibility remarks:

The Bill does not raise any human rights issues because it simply creates new criminal offences and makes associated technical amendments.

The Committee observes that, while trespass on private land and scheduled public land is already a criminal offence,¹ new section 79 is more onerous in two respects:

- There is no defence of 'lawful excuse', 'legitimate purpose' or that the defendant 'acted under a fair and reasonable supposition that he had a right to do the act complained'.
- The penalty is one year imprisonment, rather than the six months imprisonment that applies to all other private land and scheduled public land

The creation of a new and more onerous criminal offence specific to property related to electricity generation may restrict and punish certain forms of protest about electricity generation more heavily than similar protests about other matters. The Committee therefore considers that new section 79 may engage such protesters' Charter right to expression.² While limitations on this right may be readily justified under the Charter, such a justification should be provided in the statement of compatibility.³

The Second Reading Speech remarks:

In recent times, the Latrobe Valley power stations have become a major focus of some protest groups. The actions of some protesters, however, in breaking into power stations... have the potential to disrupt production and threaten supply to the National Electricity Market...

Intruders into critical infrastructure sites are putting their lives at risk. Power stations, electricity switchyards and other critical infrastructure sites are not public places. They are industrial sites with significant inherent dangers, and access must be restricted for safety reasons. Simply being in these areas can be very dangerous and lead to serious injury and possible death.

While the purposes of protecting essential services from disruption and people from serious injury or death are clearly important enough to justify limiting human rights, the Charter requires consideration of whether the particular limitation in new section 79 is 'reasonably necessary'.⁴ Overseas courts have held that limitations on political speech must not single out particular messages and must be the minimal impairment of those messages that is consistent with the goals of the limitation.⁵ The Committee notes that new section 79 does not apply to trespass on industrial sites or critical infrastructure that are unrelated to electricity generation; and does not require proof of either a potential disruption to the electricity supply or a risk to anyone's safety.

The Committee will write to the Minister expressing its concern about the statement of compatibility. Pending the Minister's response, the Committee draws attention to new section 79.

The Committee makes no further comment.

¹ Summary Offences Act 1966, s. 9(1)(e).

² See the Committee's report and the Minister's response on the Port Services Amendment Bill 2007 (Alert Digests No 14 & 16 of 2007.)

³ Charter s. 28(3)(a) provides: "A statement of compatibility must state... whether, in the member's opinion, the Bill is compatible with human rights *and, if so, how it is compatible*".

⁴ Charter s. 15(3) provides: "Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary – (a) to respect the rights and reputation of other persons; or (b) for the protection of national security, public order, public health or public morality."

⁵ E.g. *Irwin Toy v Quebec (Attorney-General)* [1989] 1 SCR 127, Parts VI.C. & VII.D.b.ii.

Fair Work (Commonwealth Powers) Amendment Bill 2009

Introduced	13 October 2009
Second Reading Speech	15 October 2009
House	Legislative Assembly
Member introducing Bill	Hon. Rob Hulls MLA
Portfolio responsibility	Minister for Industrial Relations

Purpose

The Bill amends the workplace relations referral to the Commonwealth Parliament under the *Fair Work (Commonwealth Powers) Act 2009* to reflect proposed amendments to the *Fair Work Act 2009 (Cth)* and to address some technical matters. **[3 to 8]**

The Bill updates references to federal workplace relations laws, industrial instruments and the federal workplace relations tribunal in a number of Victorian Acts and repeals certain redundant provisions of the *Parliamentary Administration Act 2005*. **[9 to 20]**

Extract from the Second Reading Speech –

The Bill before the house today adjusts Victoria's referral to reflect changes to be made to the referral framework in the Commonwealth's Fair Work Act. These changes will accommodate the referrals from South Australia and Tasmania and address some minor technical matters.

Our referral must be amended to reflect these changes and to enable the Commonwealth to present uniform referral arrangements to all States.

...

The Bill also amends the referral to reflect a change to be made to the Commonwealth's referral framework that will allow a State to terminate its amendment reference in certain limited circumstances, whilst its other references continue to be given effect under the Commonwealth Act. In addition, the Bill will amend the referral's termination provisions for consistency with the requirement under the intergovernmental agreement for a national workplace relations system for the private sector, that referring States give six months notice to the Commonwealth of intention to terminate a referral. Again, these arrangements are expected to be adopted in referrals from other States.

...

In addition to finetuning aspects of the referral, the Bill will also update references to federal workplace relations laws and industrial instruments in various State Acts. These are technical amendments which will not alter the present schemes of these Acts.

The Committee makes no further comment.

Gambling Regulation Amendment (Racing Club Venue Operator Licences) Bill 2009

Introduced	13 October 2009
Second Reading Speech	13 October 2009
House	Legislative Assembly
Member introducing Bill	Hon. Justin Madden MLA
Portfolio responsibility	Minister for Gaming

Purpose

The Bill amends the *Gambling Regulation Act 2003* to provide for certain transitional arrangements that will apply to venue operator licences held by specified racing clubs.

Extract from the Second Reading Speech –

Honourable members will be aware that the government has recently introduced legislation to implement the new gaming machine arrangements that will take place from 2012. Under these arrangements, Victoria will transition from the current duopoly gaming operator system to a venue operator structure.

... In order to operate a gaming venue under the new gaming machine arrangements a person must hold a venue operator licence.

To protect the integrity and not-for-profit nature of clubs, the government previously introduced House amendments to the Gambling Regulation Amendment (Licensing) Act 2009 including the introduction of two types of venue operator licences, one for clubs and one for hotels.

To assist current venue operator licence-holders, the government introduced transitional provisions that allow venue operators to be deemed as either holding a club venue operator licence or a hotel venue operator licence, without requiring them to undergo an application process before renewal.

However, it appears that those transitional provisions did not deal with some of the complex legal structures of the particular racing club entities identified in this Bill. The government has considered these particular racing club entities to be bona fide clubs...The Bill before the House will amend the Gambling Regulation Act 2003 to extend the current transitional provisions to a small number of identified racing clubs⁶ and enable them the appropriate restructure to ensure they fall within the club category of venue operator licences. They will be given adequate time to do this prior to the new gaming machine arrangements to take effect in 2012.

The proposed Bill responds to concerns about the fair treatment of these racing club entities and their ability to continue to participate in the new gaming machine arrangements as clubs.

The Committee makes no further comment.

⁶ The relevant transitional provision apply to the Cranbourne Sports and Entertainment Centre Pty Ltd, Greyhound Promotions Pty Ltd, Horsham Racing Centre Pty Ltd and HRV Management Ltd.

Health Practitioner Regulation National Health (Victoria) Bill 2009

Introduced	14 October 2009
Second Reading Speech	15 October 2009
House	Legislative Assembly
Member introducing Bill	Hon. Daniel Andrews MLA
Portfolio responsibility	Minister for Health

Purpose

The Bill provides for the adoption of a National Law (the 'National Law') to establish a national registration and accreditation scheme for health practitioners. It provides a framework for the regulation of health practitioners in relation to registration, accreditation, complaints and conduct, health and performance, and privacy and information sharing.

Background

Extract from the Statement of Compatibility –

In 2008 the Council of Australian Governments signed an intergovernmental agreement for the establishment of a new national scheme for the accreditation and registration of health practitioners.

The national scheme is designed to create a modernised national regulatory system for health practitioners and deliver improvements to the quality and safety of Australia's health services.

The process agreed to bring about the national scheme involves the passage of a Health Practitioner Regulation National Law 2009 ('the National Law') in the Queensland Parliament. The National Law contains the substantive provisions of the National Scheme, including the essential powers and functions of the National Boards with respect to registration of health practitioners and complaints handling.

This Bill applies the National Law as a law of Victoria. It contains two parts and is very brief. Part 1 contains preliminary provisions. Part 2 adopts the National Law as a law of Victoria. It also defines certain terms in the National Law for the purposes of the adoption of that law in this State.

Health professions covered by the National Law

The National Law creates a single national registration and accreditation system for ten health professions. These include: chiropractors; dentists (including dental hygienists, dental prosthetists and dental therapists); medical practitioners; nurses and midwives; optometrists; osteopaths; pharmacists; physiotherapists; podiatrists; and psychologists.

The four professions of Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners, medical radiation practitioners and occupational therapists will also join the scheme from 1 July 2012.

Submissions to the Committee

The Committee received a written submission from Dr Anthony Bendall, Deputy Privacy Commissioner (the 'DPC'), Office of the Victorian Privacy Commissioner. In brief the submission covers criminal history checks, the use of spent convictions, storage of identity documents, the efficacy of mandatory reporting and on-line public registers.

The Committee reproduces this submission on its Website.

Content

The Victorian Bill in brief

The Committee observes that the Bill is an example of template legislation which is to be adopted by a number of jurisdictions to create a uniform system of medical practitioner accreditation and regulation throughout Australia.

The Bill provides that the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld) (the National Law) applies as a law of Victoria. The Schedule to the proposed Queensland Act is shown as an appendix to the Bill. [4]

The Bill provides that the responsible Tribunal in Victoria is to be the VCAT. [6]

Further the Bill declares that a number of Acts that generally apply to Victorian Acts do not apply to the National Law. These Acts include the *Ombudsman Act 1973*, the *Freedom of Information Act 1982* the *Interpretation of Legislation Act 1984* and the *Subordinate Legislation Act 1994*. It is proposed that the National Law will apply the relevant counterpart Commonwealth Act. [7]

Information Privacy

Information privacy – Criminal records, identity information, health and professional conduct information and public records – Whether provisions unduly require or authorise acts or practices that may have an adverse effect on personal privacy within the meaning of the Information Privacy Act 2000 – Parliamentary Committees Act 2003, section 17(a)(iv)

1. *Criminal history checks – Comprising all convictions, pleas or charges before or after commencement of law – Spent convictions schemes of other jurisdictions do not apply – Information privacy principle of ‘collecting only information necessary for relevant functions and activities’⁷ – Whether an arbitrary interference of privacy*

Clauses 5, 38(1)(b), 55(1)(b), 74(a), 77(3)(c), (d) and (4), 79, 109(b) and 231(g)

The Committee observes that the Act provides for mandatory criminal history checks for all health professionals and the require disclosure of records concerning convictions, a plea or finding of guilty (whether a conviction is recorded or not) and every charge for an offence made against the person. The checks apply on first registration and then by annual declaration made by the health professional. There is no limitation on the type of offence (conviction, charge or plea) that must be provided to or declared to the relevant board.

Further the Committee notes that any relevant ‘spent conviction scheme’ of the Commonwealth, State⁸ or Territory does not apply to the obligations under the proposed law. Further the obligations apply to convictions, pleas or charges made before or after the commencement of the proposed National Law.

The Committee notes that Victoria does not have a ‘spent convictions’ regime in place.

⁷ *Information Privacy Act 2000, Schedule 1 – The Information Privacy Principles (‘IPP’) – IPP 1.1 ‘An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.*

⁸ Example: *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) in essence providing that at the expiration of a period of time from the date of conviction for a criminal offence a person is not obligated to disclose that spent conviction and other persons may also be prohibited from disclosing such convictions. Further, officials considering a person’s character and fitness for a position may be required to disregard such spent convictions.

The Committee notes the submission made by the Deputy Privacy Commissioner (the 'DPC').

The Committee notes this extract from the Statement of Compatibility –

The very nature of the role of a health practitioner and their unsupervised access to the public, means that it is important for a Board to refer to a wide range of information. For example, an applicant's criminal history may disclose numerous charges for indecent exposure to a member of the public. Although no conviction resulted, this information could give a national board cause to make further inquiries or to seek further information from an applicant, in determining the person's suitability to practise. The expectation is that in the vast majority of cases, non-conviction information would not be taken into account when determining an application for registration. The ability to access this information will, however, guard against the rare likelihood that this information may prevent a registration being granted to a person whose registration would not be in the public interest.

An important safeguard on a person's right to privacy in the National Law is the relevance test. A National Board may only refuse registration on the basis of criminal history that is relevant to an individual practising the profession (clauses 55, 74). Registration standards will be developed by national boards that include information on how an individual's criminal history may be relevant to the practice of the profession (clause 38(1)(b)). In addition, where a National Board is considering refusing an application for registration it must give the applicant notice inclusive of reasons and invite the applicant to make a written or verbal submission (clause 81).

National Boards will be required to handle information about applicants' criminal history in accordance with the requirements set out in the Privacy Act (Cth).

Moreover, clause 216 of the National Law will make it a criminal offence for a person performing functions under the National Law to disclose information about an individual's criminal record except in the circumstances specified by the National Law (see Division 2 of Part 10).

The right to privacy protects against unlawful and arbitrary interferences with privacy. The criminal history provisions do not amount to such an interference. The provisions serve a legitimate aim, namely to determine whether an applicant may pose a risk to a member of the public. The provisions are not unlawful. Moreover, the inclusion of a relevance test means that only information that has a bearing on a health practitioner's ability to safely deliver health services to the public will be taken into account when registering a health practitioner under the National Law thus creating a nexus between the purpose of obtaining criminal history information and its use.

A National Board's decision to refuse registration is reviewable by the VCAT (clause 199). The provisions are therefore not an arbitrary interference with an applicant's right to privacy.

The Committee draws attention to the provisions.

2. *Identity information – Proof of applicant's identity – Identity documents – Whether documents should be retained or sighted, recorded and not retained*

Clauses 77(2)(c), 78, 134 and 231

The Committee notes that there are a number of provisions requiring applicants to provide proof or information relevant to the person's personal identity.

The Committee notes the submission made by the DPC concerning the retention of documentary evidence of personal identity. That submission argues that an alternative less obtrusive scheme may be the sighting and recording of proof of identity rather than a retention of documents and that where retention of identity documents (copies) is the preferred legislative option then data security may be a critical matter to consider. However, the Committee has no information to suggest that identity document storage access and

security is inadequately covered under the proposed National Law or other relevant Commonwealth Acts.

The Committee draws attention to the provisions.

3. *Mandatory notifications by other professionals that health professional has incapacity, has engaged in misconduct or has departed from accepted professional standards*

Clauses 140 – 143

The Committee notes that the National Law provides a number of mandatory reporting obligations.

A registered health practitioner must make a notification to the national agency in two circumstances –

- *where the practitioner forms a reasonable belief that another registered health practitioner has behaved in a way that constitutes 'notifiable conduct' which is defined in the Act to mean that the practitioner has practised while intoxicated by alcohol or drugs, engaged in sexual misconduct in connection with the practice, placed the public at risk of substantial harm in the practitioner's practice or placed the public at risk of harm because the practitioner has practised in a way that constitutes a significant departure from professional standards.*
- *where the practitioner forms a reasonable belief that a student has an impairment that, in the course of the student undertaking clinical training, places the public at a substantial risk of harm.*

There are similar counterpart mandatory reporting responsibilities on employers and education providers.

The Committee notes the submission made by the DPC. One of the concerns expressed in this submission is the prospect that professionals, being aware of the mandatory reporting scheme under the proposed National Law may conceal any impairment or professional issue to the ultimate detriment of the public.

The Committee notes this extract from the Statement of Compatibility –

These provisions engage the right to privacy as a notification may disclose information about a health practitioner's alcohol or drug use, or sexual conduct in connection with their practice.

The right to privacy protects against unlawful and arbitrary interferences with privacy. The mandatory *notification* provisions do not amount to such an interference. They are not unlawful and they are appropriately circumscribed to require only notifications that reveal information that has a bearing on a health practitioner's ability to safely deliver health services to the public.

The Committee considers that whether the mandatory reporting scheme is likely to be efficient or counterproductive is a policy matter for Parliament to consider.

The Committee draws attention to the provisions.

4. *Public registers available for inspection – Whether register appropriately limited to protect personal privacy*

Clauses 222 – 228

The Committee notes the provisions concerning the registers of registered health practitioners to be kept under the National Law that may be accessed by the public.

The Committee notes the concerns expressed by the DPC in his submission concerning the inclusion in these registers of health professional's unique identifiers and other matters. The

DPC also expressed concern at the provision, on application of a copy of an 'entire register' and the inappropriate use of such a copy.

The Committee notes this extract from the Statement of Compatibility –

Recognising that publishing information about a practitioner could place some individuals at risk because of their personal circumstances, a National Board may decide not to record information about a practitioner in a register if a practitioner requests that the information not be published and the board reasonably believes that the inclusion of the information in the register would present a serious risk to the health or safety of the practitioner (clause 222(3)). A National Board may also decide not to include information about a condition or undertaking relating to a practitioner's impairment if it is necessary to protect the practitioner's privacy and there is no overriding public interest for the conditions or the details of the undertaking to be published.

Similarly, the National Board may decide to remove information that discloses a registered health practitioner has been reprimanded if it considers that is no longer necessary or appropriate for the information to be recorded on the register.

Division 3 of Part 10 does not limit a person's right to privacy because it does not authorise an interference that is unlawful or arbitrary. This is because any interference serves the legitimate purpose of protecting the public and the clauses adequately specify the circumstances in which these interferences may occur.

The Committee will write to the Minister to seek further advice as to whether the content of these registers are appropriately limited or sufficiently circumscribed to achieve no more than their legitimate policy objectives.

Pending the Minister's response the Committee draws attention to the provisions.

Absence of explanatory material – Henry VIII clauses – whether inappropriate delegation of legislative power – Parliamentary Committees act 2003, section 17(a)(vi)

The Committee notes that other than the enabling clauses of the Victorian Bill there are no explanatory materials provided for the substance of the Bill being the Appendix to the Bill comprising the relevant schedules. The Committee notes that explanatory material was provided in the counterpart Queensland Bill.

In particular the Committee notes that there is no explanation in respect to clauses 213, 215 and 235 which appear to allow regulations to modify primary legislation. The Committee observes that the explanatory material provided to the Parliament of Queensland gave some justification for the inclusion of these clauses.

The National Law will allow regulations to modify the application of the following Acts, *Privacy Act 1988 (Cth)*, *Freedom of Information Act 1982* and the *Ombudsman Act 1976 (Cth)*.

The Committee accepts that the inclusion of a power to allow regulations to modify an Act may be justified in certain circumstances including to give effect to the application of national schemes of legislation. **[213, 215 and 235]**

The Committee will draw the attention of the Minister to the absence of any explanatory material other than for clauses 1 to 7.

National scheme legislation – whether insufficiently subjects the exercise of legislative power to parliamentary scrutiny – Parliamentary Committees Act 2003, section 17(a)(vii)

In previous reports the Committee has noted the difficulty faced by parliaments in the scrutiny of template, model or mirror legislation (national scheme legislation). National scheme legislation most frequently arises from inter-governmental agreements at ministerial council level such as from the Council of Australian Governments (COAG). The difficulty is briefly expressed in this standing notation in the Alert Digests of the Australian Senate Standing Committee for the Scrutiny of Bills –

Essentially, these difficulties arise because ‘national scheme’ bills are devised by Ministerial Councils and are presented to Parliaments as agreed and uniform legislation. Any requests for amendment are seen to threaten that agreement and that uniformity.

The Committee further observes the caution in respect to national scheme legislation carried frequently in Alert Digests of the Queensland Parliament –

The committee noted that the bill raised concerns regarding national scheme legislation:

- *The authority of a State government to respond to, or the capacity to distance itself from, the actions of a joint Commonwealth and State regulatory authority; and*
- *The effect of executive pressure upon the Parliament to merely ratify the legislation without question.*

The Committee notes that the Scrutiny of Legislation Committee of the Queensland Parliament considers the broad issue of Parliamentary Sovereignty under a terms of reference requiring it to consider whether ‘legislation has sufficient regard to the institution of Parliament pursuant to the *Legislative Standards Act 1992*, section 4(2(b)).

The Committee notes that scrutiny committees in every jurisdiction that provides for a scrutiny of Bills function have constantly drawn attention to the problem faced by such committees in a federal system when national scheme legislation comes before them for consideration analysis and report to their respective parliaments.

The Committee notes that to date no workable solution has been developed to allow parliaments to maintain a full measure of sovereignty when national scheme legislation comes before them.

The Committee refers to the Parliament the question whether the Bill *insufficiently subjects the exercise of legislative power to parliamentary scrutiny and whether the Bill has sufficient regard to the institution of Parliament.*

Disallowance by Parliament – whether Bill insufficiently subjects the exercise of legislative power to parliamentary scrutiny – Parliamentary Committees Act 2003, section 17(a)(vii)

The Committee notes that the Bill excludes the operation of the *Subordinate Legislation Act 1994* which include the Victorian provisions enabling Parliament to disallow regulations. The Committee observes that a National Law regulation may be disallowed in a participating jurisdiction by a House of the Parliament. However if a regulation is disallowed it will remain in force unless it is disallowed in a majority of jurisdictions. The regulation would cease to have effect in all jurisdictions when the last jurisdiction forming the majority disallows the regulation. [246 and 247]

Presumption of innocence – Rights or freedoms – Criminal history checks – use of charges where no conviction – Parliamentary Committees Act 2003, section 17(a)(i)

The National Law contains a number of clauses that permit a National Board to consider an applicant's criminal history. Criminal history is defined to include every conviction, every plea of guilty and every charge made against a person before or after the commencement of the National Law made in a participating jurisdiction or elsewhere. **[5, 55, 74, 77, 79, 109, 135 and 231]**

The National Law requires a person to disclose their criminal history when applying for registration and upon renewal and a Board may refuse accreditation or renewal based on the applicant's relevant criminal history. A Board may obtain a criminal history report at any time.

A National Board's decision to refuse to accredit, refuse to renew and a number of other critical Board decisions are reviewable by VCAT. **[199 – appellable decisions]** (Refer to Charter Report).

In respect to the use of charges / acquittals the Statement of Compatibility states that –

Although no conviction resulted, this information could give a National Board cause to make further inquiries or to seek further information from an applicant, in determining the person's suitability to practise. The expectation is that in the vast majority of cases, non-conviction information would not be taken into account when determining an application for registration. The ability to access this information will, however, guard against the rare likelihood that this information may prevent a registration being granted to a person whose registration would not be in the public interest.

An important safeguard on a person's right to privacy in the national law is the relevance test. A National Board may only refuse registration on the basis of criminal history that is relevant to an individual practising the profession (clauses 55, 74). Registration standards will be developed by National Boards that include information on how an individual's criminal history may be relevant to the practice of the profession (clause 38(1)(b)). In addition, where a National Board is considering refusing an application for registration it must give the applicant notice inclusive of reasons and invite the applicant to make a written or verbal submission (clause 81).

Health assessments

A National Board may require a registered health practitioner or student to undergo a health or performance assessment which may consist of a medical, physical, psychiatric or psychological examination or test, if the board reasonably believes that the practitioner or student has, or may have, an 'impairment' for the purposes of the Act. **[5, 168 to 177]**

Rights or freedoms – Powers of entry, search and seizure based on reasonable suspicion – Parliamentary Committees Act 2003, section 17(a)(i)

Schedules 5 and 6 of the National Law make provision for entry, search and seizure powers for investigators and inspectors for purposes of enforcing compliance under the National Law. In respect to entry the National Law provides that inspectors and investigators may enter a place including a home, for example, a home where the practitioner undertakes their practice. Entry may only be made by consent or by warrant. A magistrate may issue a search warrant when satisfied that an investigator or inspector has a *reasonable suspicion* there is evidence about a thing being investigated or that may provide evidence of an offence against the National Law. **[Schedule 5 clause 6, Schedule 6 clause 6]**

Rights or freedoms – Search warrants where officer has a 'reasonable suspicion'

The Committee notes the use of the lower threshold test of 'reasonable suspicion' rather than the test of 'reasonable belief'.

The Committee has previously commented on the lower threshold test for the granting of search warrants and has accepted previously the proposition that a lower threshold may be justified in regulatory schemes involving public safety or public health.

The Committee draws attention to the provisions.

Rights or freedoms – Common law presumptions – Right to carry on a trade, business or profession⁹ – Manner of carrying one’s trade¹⁰ – Commercial advertising restrictions – Parliamentary Committees Act 2003, section 17(a)(i)

The National Law includes commercial advertising restrictions for a relevant regulated health service by prohibiting a person (or business) from advertising a regulated health service in a particular manner that may be harmful to the public. The restrictions include the use of testimonials or in certain circumstances the offering of gifts, discounts or other inducements to use a particular health service. [133]

The Statement of Compatibility observes that –

this limited restriction on commercial advertising in clause 133 is a restriction reasonably necessary for the protection of public health. The purpose of this provision is to protect the public from accessing health services through advertising that is misleading or deceptive or in some other way detrimental to public health. This is considered necessary given the public health risks associated with some forms of health service.

The Committee observes that a similar provision currently exists in section 94 of the *Health Professions Registration Act 2005*.

Rights or freedoms – Privilege against self-incrimination – Parliamentary Committees Act 2003, section 17(a)(i)

The National Law provides for the appointment of investigators and inspectors and requires that persons required to give specified information, attend before an investigator or inspector on notice, answer questions, give information or provide documents. The relevant provisions however provide for the privilege against self-incrimination to apply if the answer, information or document may incriminate the individual. [163, 238, Schedule 5 Part 1 and Schedule 6 Part 1]

Rights or freedoms – Equality before the law – Immunity from prosecution – Parliamentary Committees Act 2003, section 17(a)(i)

The Committee notes that the Bill provides immunity for certain individuals (‘protected persons’ as defined by the National Law) performing functions and duties under the National Law to be cloaked with a personal immunity from legal proceedings. In each case the legal liability attaches instead to the relevant National Agency. [236]

Persons making a notification or providing information *in good faith* pursuant to the provisions of the National Law are also shielded from any form of personal liability for actions in defamation, breach or professional etiquette, ethics or professional conduct. [237]

⁹ *Commonwealth v Progress Advertising and Press Co Pty Ltd* (1909) 10 CLR 457.

¹⁰ *Committee of Direction of Fruit Marketing v Collins* (1925) 36 CLR 410.

Charter report

Privacy – Presumption of innocence – National Boards may have regard to criminal charges resolved in an applicant’s favour

Summary: The Health Profession Regulation National Law (Victoria) allows National Boards to gather and have regard to criminal charges resolved in an applicant’s favour when making registration decisions. The Committee is concerned that the Law may arbitrarily limit the privacy of applicants and may limit their right to be presumed innocent.

The Committee notes that clauses 77(3), 79, 109(1)(b), 135 & 231 of the proposed Health Profession Regulation National Law (Victoria) permit or require National Boards to request, check or record the criminal history of applicants and registrants. Clause 5 of that Law defines criminal history to include, not only convictions, guilty pleas and findings of guilt, but also:

every charge made against the person for an offence, in a participating jurisdictions or elsewhere, and whether or after the commencement of this Law.

This formulation covers charges that have not yet been adjudicated, charges that are dropped or quashed and charges that resulted in acquittals. Clause 38(1)(b) requires each National Board to develop guidelines about ‘the matters to be considered in deciding whether an individual’s criminal history is relevant to the practice of the profession’. Clauses 55(1)(b) and 74(a) permit National Boards to refuse registration having regard to relevant aspects of an applicant’s criminal history.

The Statement of Compatibility remarks:

The requirement of an applicant to disclose their criminal history, and its subsequent treatment by a national board, engages the right to privacy. Criminal history is defined broadly to include charges and acquittals. The criminal history check may disclose information that is arguably not relevant to registering in a health profession.

However, a criminal history check is the only available objective mechanism to identify the existence of both charges and findings of guilt that are relevant to determining the risk an applicant may pose to members of the public. The very nature the role [sic] of a health practitioner and their unsupervised access to the public, means that it is important for a Board to refer to a wide range of information. For example, an applicant’s criminal history may disclose numerous charges for indecent exposure to a member of the public. Although no conviction resulted, this information could give a national board cause to make further inquiries or to seek further information for an applicant, in determining the person’s suitability to practice.

While the Committee considers that facilitating National Boards’ access to unresolved criminal charges is not an arbitrary limit on applicants’ right to privacy, it is concerned that the same cannot be said for access to charges that have been resolved in favour of the applicant.

In addition, the Committee considers that a denial of registration on the basis of criminal charges that have been resolved in the applicant’s favour may engage the Charter right of charged persons ‘to be presumed innocent until proven guilty according to law’. While the Victorian Supreme Court has held that a health regulator can consider the subject-matter of unresolved charges when making registration decisions,¹¹ different considerations may apply in relation to finalised criminal charges, especially acquittals. In particular, the European Court of Human Rights has held that the presumption

¹¹ *Sabet v Medical Practitioners Board of Victoria* [2008] VSC 346.

of innocence will be infringed if a government body acts in a way that casts doubt on the correctness of a verdict of acquittal.¹²

The Committee notes that a factual scenario that was very similar to the example given in the Statement of Compatibility was considered in 2005 by an English judge, who dismissed a claim based on the rights to privacy and the presumption of innocence.¹³ However, late last year, a unanimous ruling of the European Court's Grand Chamber held, in a different context, that the indefinite retention on a state investigative database of data about unconvicted persons on the same basis as data on convicted persons is incompatible with the right to privacy.¹⁴

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

- 1. clauses 5, 77(3), 79, 109(1)(b), 135 & 231 of the proposed Health Profession Regulation National Law (Victoria), by permitting or requiring the gathering of information about criminal charges resolved in an applicant's favour are an arbitrary interference with those applicants' privacy.**
- 2. clauses 5, 38(1)(b) 55(1)(b) & 74(a) of that Law, by permitting National Boards to have regard to criminal charges resolved in an applicant's favour when making registration decisions, are compatible with the Charter right of those applicants to be presumed innocent until proven guilty.**

National cooperative scheme – Application of Charter

Summary: The Committee draws Parliament's attention to the reduced operation of the Charter's provisions on statements of compatibility, review of statutory rules, Ombudsman inquiries, interpretation and obligations of public authorities in relation to the proposed Health Practitioner Regulation National Law (Victoria.)

The Committee observes that the proposed Health Practitioner Regulation National Law (Victoria) is part of a national cooperative scheme. Previous Alert Digests have noted the potential for such schemes to reduce the operation of the Charter's protection for Victorians' human rights.¹⁵

In this instance, clause 4(c) of the Bill provides that the Health Practitioner Regulation National Law, although it appears in a schedule to an Act of the Queensland Parliament, nevertheless 'applies as if it were part of this Act'. This formulation appears to ensure that the Health Practitioner Regulation National Law is a 'statutory provision' for the purposes of the Charter,¹⁶ meaning that both the Law and the National Boards will be subject to the Charter's provisions on interpretation, declarations of inconsistent interpretation and public authorities.¹⁷

¹² *Sekanina v Austria* [1993] ECHR 37, [30]: "The voicing of suspicions regarding an accused's innocence is conceivable as long as the conclusion of criminal proceedings has not resulted in a decision on the merits of the accusation. However, it is no longer admissible to rely on such suspicions once an acquittal has become final." See also *Rushiti v Austria* [2000] ECHR 106.

¹³ *D v Secretary of State for Health* [2005] EWHC 2884 (Admin). Although the judge, citing the issue's uncertainty and importance, granted leave to the doctor concerned to appeal the ruling, no such judgment has eventuated.

¹⁴ *S & Marper v UK* [2008] ECHR 1581, [122]

¹⁵ See the reports on the National Gas (Victoria) Bill 2008 (Alert Digests No 6 & 9 of 2008); the Energy Legislation Amendment (Australian Energy Market Operator) Bill 2009 (Alert Digests 6 & 8 of 2009); the *Fair Work (Commonwealth Powers) Act 2009* (Alert Digests No 7 & 12 of 2009) and the Personal Property Securities (Commonwealth Powers) Bill 2009 (Alert Digests No 10 & 12 of 2009).

¹⁶ Charter s. 3.

¹⁷ Charter ss. 4(1)(b), 32, 36 and 38.

However, the Committee observes that the terms of the Law may nevertheless circumscribe some of those provisions in practice. The effect of the Charter's interpretation provision is likely to be reduced by clause 7 of Schedule 7 of the Law, which requires preference to be given to an interpretation that best achieves the Law's purpose.¹⁸ Likewise, the effect of the Charter's provision on the obligations of public authorities may be limited by clause 7 of the Law, which provides that National Boards are a 'single national entity', arguably making it unreasonable for such Boards to conduct themselves differently in Victoria.¹⁹

Also, no statement of compatibility will be required for bills amending the Law;²⁰ regulations will not be accompanied by human rights certificates or committee scrutiny for compatibility with human rights;²¹ and the Ombudsman will not be able to inquire into or report on whether any administrative action under the Law is incompatible with human rights.²²

The Committee therefore draws Parliament's attention to the reduced operation of the Charter's provisions on statements of compatibility, review of statutory rules, Ombudsman inquiries, interpretation and obligations of public authorities in relation to the proposed Health Practitioner Regulation National Law (Victoria.)

The Committee makes no further comment.

¹⁸ This is a stronger rule than s. 35(a) of the *Interpretation of Legislation Act 1984*.

¹⁹ Charter s. 38(2).

²⁰ Charter s. 28 is limited to bills introduced in the Victorian Parliament, whereas bills amending the Law will be introduced in the Queensland Parliament.

²¹ Clause 7(j) excludes the application of the *Subordinate Legislation Act 1994* (including ss. 12A & 21(1)(ha)) to 'instruments made under' the Law.

²² Clause 7(g) excludes the application of the *Ombudsman Act 1973* (including s. 13(1A)) to the Law and instruments made under it.

Justice Legislation Miscellaneous Amendments Bill 2009

Introduced	13 October 2009
Second Reading Speech	15 October 2009
House	Legislative Assembly
Member introducing Bill	Hon. Peter Batchelor MLA
Minister responsible	Hon. Bob Cameron MLA
Portfolio responsibility	Minister for Police and Emergency services

Purpose

The Bill amends the –

- *Crimes Act 1958* in relation to the digital recording of records of interview with suspects in indictable matters and the misuse of records of interview. **[3 to 5]**
- *Criminal Procedure Act 2009* to remove a technical limitation on the use of the new interlocutory appeals process where the appeal concerns a decision made before a trial commences. **[6]**
- *Major Crime (Investigative Powers) Act 2004* and the *Major Crime Legislation Amendment Act 2009* in relation to the coercive questioning regime to ensure that the provisions apply to persons already held in custody and for other purposes. **[7 to 11]**
- *Sheriff Act 2009* to clarify the powers of entry for civil warrants **[13]**; clarify the operation of the provisions dealing with the simultaneous execution of multiple warrants (warrants to imprison and infringement warrants) **[18 to 20]**; and ensure that the offences contained in Part 5 of the Act include offences committed against appropriately trained justice employees **[21 to 25]**; make a number of minor grammatical amendments to the Act; and repeal certain provisions in other Acts that contain incorrect references to the Sheriff and Deputy Sheriff. **[12, 14 to 17, 26 to 31]**
- *Telecommunications (Interception) (State Provisions) Act 1988* to ensure consistency with the *Telecommunications (Interception and Access) Act 1979 (Cth)*. **[32 to 39]**
- *Infringements Act 2006* to enable a defendant who has previously applied for revocation of an enforcement order to re-apply; create a mechanism for a prisoner to call in warrants to imprison for non-payment of court-imposed fines; enable an infringement warrant to be stayed while a defendant is complying with an order to pay outstanding fines, and to become enforceable again if the defendant defaults. **[40 to 61]**

Background

Extracts from the Second Reading Speech –

Crimes Act 1958

The Bill will establish appropriate legislative support for the digital evidence capture project. This project has upgraded Victoria Police's analogue audio-only recording equipment to digital audiovisual recording equipment to facilitate the recording of interviews with suspects in indictable matters. It essentially replaces outdated audio cassette tapes with DVDs.

... The new equipment is capable of creating three full audiovisual copies of an interview in digital format that is recorded to blank DVDs. It also enables the third DVD to be an audio-only copy of the record of the interview.

... The Bill creates a number of summary offences related to knowingly possessing a recording; playing a recording to another; supplying a recording to another; copying a recording; knowingly or recklessly erasing, tampering or modifying a recording; and publishing a recording.

... Police will be required to maintain a copy of a recording for a minimum period of seven years. This will ensure that a copy of a recording is always available after criminal proceedings have been resolved if it becomes subsequently necessary to examine the circumstances of an interview. At the expiration of seven years, subject to a further direction of a court (if any), police will determine the ongoing retention of a recording or its disposal.

Importantly, police will continue to be subject to the retention and disposal processes required in relation to public records as well as other organisational requirements that determine the maintenance and disposal of corporate records. **[3 to 5]**

Major Crime Legislation

The Bill will ensure that the relevant provisions of the Major Crime (Investigative Powers) Act 2004 will apply to persons who are already in custody and who are brought before the Chief Examiner for an examination by way of an order of the Supreme Court or of the Chief Examiner. Such provisions will apply to a person in custody who is ordered to attend for an examination in the same manner as those provisions currently apply to a person who is at liberty and who is required to attend for an examination under a summons. **[7 to 11]**

Telecommunication (Interception) (State Provisions) Act 1988

The Bill makes a range of technical amendments to the State Act which governs telecommunications interceptions, essentially to bring Victoria's provisions into line with the Telecommunications (Interception and Access) Act 1979 of the Commonwealth. The Commonwealth Act has been the subject of various sets of amendments over recent years. As a consequence, there are now certain discrepancies between the two Acts and it is appropriate to rectify these to remove confusion and eliminate unnecessary duplication.

The Bill includes telecommunications interception amendments that will eliminate superfluous record-keeping requirements, align the definition of 'restricted record' with the Commonwealth definition, ensure that Ministerial reporting lines reflect legislation administration arrangements and clarify that, for the purposes of the State Act, the term 'warrant' refers only to telecommunications interception warrants and not to stored communications warrants, which are solely regulated under the Commonwealth Act. **[32 to 39]**

Infringements Act 2006

... The Bill amends the Infringements Act 2006 to enable a defendant who has previously applied (unsuccessfully) for revocation of an enforcement order to re-apply.

The Bill creates a mechanism for a prisoner to call in warrants to imprison for non-payment of court-imposed fines. It also provides for outstanding warrants relating to infringements and court-imposed fines to be processed together, and enables an order for a term of imprisonment in lieu of payment of an outstanding warrant to commence on the date on which the prisoner signed the form requesting that such an order be made.

... The Bill also enables an infringement warrant to be stayed while a defendant is complying with an order to pay outstanding fines, and to become enforceable again if the defendant defaults. **[40 to 61]**

Charter report

Expression – Fair hearing – Regulation of recordings of police questioning

Summary: Clause 4 introduces new offences of possessing, playing, supplying, copying, modifying or publishing recordings of police questioning. Aspects of clause 4 may engage the Charter's right to a fair hearing or may be arbitrary limits on freedom of expression. The Committee will write to the Minister seeking further information.

The Committee notes that clause 4 introduces new offences of possessing, playing, supplying, copying, modifying or publishing recordings of police questioning.

The Statement of Compatibility remarks:

As these provisions restrict a person's freedom to seek, receive and impart records of interview, the right to freedom of expression is engaged. However, to the extent that the right is engaged, it is clear that these provisions would fall within the permissible limitations set out in s 15(3) for the protection of the rights and reputation of other person and for the protection of public order. Restricting the proliferation of these records is reasonably necessary to protect the privacy of persons connected with police interviews, such as the identity of victims and witnesses which may be revealed during the course of an interview, as well as the identities of the interviewee and police investigators themselves. As the records of interview now incorporate a visual medium, it is much easier for a person's identity to be revealed than on the older audio-only analogue recordings. There is also the possibility that trials may be jeopardised if jurors are exposed to material published on the internet, especially if such records have been manipulated or doctored using digital editing software.

While the Committee considers that protecting privacy and trials are purposes that justify limiting Charter rights to freedom of expression, it has a number of concerns about the details of clause 4.

First, in relation to distribution of recordings within the justice system, while clause 4 authorises numerous state employees to possess, play, receive or copy recordings without court permission, the only private persons who are similarly authorised are lawyers who represent the interviewee or a co-accused.²³ So:

- All non-state parties or prospective litigants in both criminal and civil matters will need to apply to a court for permission to supply a recording to any private individual other than their own legal representative (e.g. supplying the recording to an expert for analysis or emailing a copy of it to a witness, colleague or friend for advice.) Indeed, although the recording can be supplied to a co-accused's legal representative, a court's permission will be needed before anyone (including that representative) can supply a recording to the co-accused himself or herself.
- New section 464JA(4) may interfere with the obligations of police and prosecutors to disclose relevant recordings to criminal defendants other than the interviewee (e.g. unrepresented co-accused, persons charged instead of the interviewee, or persons charged in separate matters where the recording is nonetheless relevant.)²⁴
- There is no provision for unrepresented co-accused or any other potential litigants other than the interviewee to ask a court to extend the period for mandatory period for recordings that are relevant in their proceedings.²⁵

Clause 4 may therefore engage the Charter's right to a fair hearing for criminal defendants and parties to civil proceedings.²⁶

Second, in relation to distribution outside the justice system:

- New section 464JA(7)'s prohibition on publishing recordings uses a broad definition of 'publish' that includes 'insert in a newspaper or other publication' or 'bring to the notice of the public... by any other means'.²⁷ It may therefore limit, not only the distribution of recordings themselves, but also the distribution of information they contain, e.g. transcripts of the interview and summaries of what was said.

²³ New section 464JA(1), definition of 'authorised person', paras (g) and (h).

²⁴ Disclosure obligations in the *Criminal Procedure Act 2009* are subject to s. 363(2) of that Act, which provides that: "Nothing in this Act requires the prosecution to disclose to the accused material which the prosecution is required or permitted to withhold under this or any other Act or any rule of law."

²⁵ New section 464JC(4).

²⁶ Charter s. 24(1).

²⁷ New section 464JA(1), paras (a) & (c) of 'publish'. A similar formulation forms part of the definition of 'publish' in the *Prostitution Control Act 1994*, where it is used to regulate the communication of information about sex services to the public.

- New section 464JB's provision for a court to make directions permitting the distribution of recordings doesn't provide any criteria on how that discretion is to be applied. In Western Australia, judges have taken divergent approaches in applying a similar provision and have accordingly differed on matters such as the release of a tape of a deceased suspect to his grieving family and the publication of a police interview that led to a notorious miscarriage of justice.²⁸
- Clause 4 lacks any transitional provision. It therefore may apply to existing recordings that have already been disseminated or published. If that is correct, then any non-authorized person who currently possesses such a recording will commit an offence unless they destroy it prior to the bill receiving Royal Assent and a publisher will require permission from a court to republish a previously published recording.²⁹

Clause 4 may therefore operate in an arbitrary or disproportionate fashion, contrary to the Charter's requirement that restrictions on freedom of expression be 'lawful'.³⁰

The Committee observes that the Western Australian law that clause 4 broadly resembles has been criticised by the Chief Justice of Western Australia as 'unusual when compared to analogous legislation in other comparable jurisdictions'.³¹ In South Australia, the problem of dissemination of recordings outside of the criminal justice system is dealt with through a significantly less restrictive provision:³²

A person must not play to another person a videotape or audiotape containing an interview or part of an interview recorded under this Part except where the videotape or audiotape is played—

- (a) *for purposes related to the investigation of an offence; or*
- (b) *for the purposes of, or purposes related to, legal proceedings, or proposed legal proceedings, to which the interview is relevant; or*
- (c) *with the permission of a court before which the videotape or audiotape has been tendered in evidence*

Moreover, the Western Australian provisions are themselves less restrictive than clause 4 in that they:

- ban only the 'broadcast' of a recording, not other forms of publication.³³
- contain specific exceptions for police and prosecutors' discovery obligations.³⁴
- permit anyone to apply for an extension of the mandatory retention period for recordings.³⁵
- With the exception of the broadcasting offence, are punishable only by fine.³⁶

²⁸ *Horsman v Commissioner of Police* [2002] WASC 81; *Re Commissioner of Police; Ex parte Artemis International Pty Ltd* [2006] WASC 56; *Ex parte West Australian Newspapers Ltd* [2008] WASCA 209.

²⁹ This issue did not arise in Western Australia, because the regulation of recordings was introduced simultaneously with the requirement for mandatory recordings in Chapter LXA, *Criminal Code Act Compilation Act 1913* (WA).

³⁰ Charter s. 15(3).

³¹ *Ex parte West Australian Newspapers Ltd* [2008] WASCA 209, [59].

³² *Summary Offences Act 1953* (SA), s. 74F.

³³ *Criminal Investigation Act 2006* (WA), s. 121.

³⁴ *Criminal Investigation Act 2006* (WA), ss. 120(2)(d) & (5)(d).

³⁵ *Criminal Investigation Act 2006* (WA), s. 123(2).

³⁶ *Criminal Investigation Act 2006* (WA), ss. 120

The Committee will write to the Minister seeking further information as follows:

- 1. Does clause 4 interfere with police and prosecutors' disclosure obligations in relation to defendants other than the interviewee?**
- 2. Does clause 4 restrict the publication of transcripts or summaries of recordings?**
- 3. What criteria will govern the exercise of the discretion in new section 464JB?**
- 4. Does clause 4 apply to recordings made before the commencement of the Act?**

Pending the Minister's response, the Committee draws attention to clause 4.

The Committee makes no further comment.

Local Government (Brimbank City Council) Bill 2009

Introduced	13 October 2009
Second Reading Speech	13 October 2009
House	Legislative Assembly
Member introducing Bill	Hon. Richard Wynne MLA
Portfolio responsibility	Minister for Local Government

Purpose

The purpose of this Bill is to dismiss the Brimbank City Council and provide for the appointment of a panel of administrators for the Council, and to provide for a general election in November 2012 for the Council.

Content

The Bill provides that –

- the Brimbank City Council is dismissed and that the persons holding office as Councillors of the Council cease to hold office. [5]
- the Bill does not affect the continuity of the Council as constituted by the administrator appointed under the Original Order or the continuity of the Council as constituted by the panel of administrators appointed under the Subsequent Order in Council. [5]
- the panel of administrators constitutes the Brimbank City Council and subject to any conditions of their appointment, the panel must perform all the functions, powers and duties of the Council, which are to be treated as if they were performed by the Council. [7]
- an administrator, subject to any conditions of his or her appointment, must perform all the functions, powers and duties of a Councillor of the Council, which are to be treated as if they were performed by a Councillor of the Council. [7]
- the Chairperson of the panel of administrators, subject to any conditions of his or her appointment, must perform all the functions, powers and duties of the Mayor of the Council, which are to be treated as if they were performed by the Mayor of the Council. [7]

Note: Extract from the *Constitution Act 1975* –

74A Local government

(1) *Local government is a distinct and essential tier of government consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.*

...

(2) *A Council cannot be dismissed except by an Act of Parliament relating to the Council.*

(3) *Parliament may make laws for or with respect to —*

- (a) *the suspension of a Council; and*
- (b) *the administration of a Council during a period in which the Council is suspended or dismissed; and*
- (c) *the re-instatement of a Council which has been suspended; and*
- (d) *the election of a Council if a suspended Council is not re-instated; and*
- (e) *the election of a Council where a Council has been dismissed.*

Extract from the *Local Government Act 1989* –

219 Suspension of Councillors

- (1) *The Minister may recommend to the Governor in Council that all the Councillors of a Council be suspended, if the Minister is satisfied on reasonable grounds —*
- (a) *subject to subsection (1A), that there has been a serious failure to provide good government; or*
 - (b) *that the Council has acted unlawfully in a serious respect.*
- ...
- (9) *On the expiry of the Order in Council, the Councillors resume office and the administrator goes out of office unless —*
- (a) *the Minister has fixed the date on which a general election for the Council is to be held and has published notice of that date in the Government Gazette; or*
 - (b) *a Bill to dismiss the Council has been introduced into the Parliament.*

The Committee makes no further comment.

Parks and Crown Land Legislation Amendment (River Red Gums) Bill 2009

Introduced	14 October 2009
Second Reading Speech	15 October 2009
House	Legislative Assembly
Member introducing Bill	Hon. Peter Batchelor MLA
Minister responsible	Hon. Gavin Jennings MLC
Portfolio responsibility	Minister for Environment and Climate Change

Purpose

The Bill will –

1. create new park areas in the River Red Gum area of northern Victoria under the *National Parks Act 1975* and the *Crown Land (Reserves) Act 1978*; **[18 to 23]**
2. declares that the amendments made to the *National Parks Act 1975* are not intended to affect native title rights and interests other than where they are affected or are authorised to be affected by or under the *Native Title Act 1993 (Cth)*. **[17]**
3. insert transitional provisions in the *National Parks Act 1975* and the *Crown Land (Reserves) Act 1978* associated with the creation of the new park and reserve areas; the transitional provisions preserve certain licences, permits and authorities. **[18 and 31]**
4. insert provisions in the *National Parks Act 1975* and the *Crown Land (Reserves) Act 1978* associated with the ongoing management of the new park areas; **[5 to 9, 13]**
5. deem the new parks under the *Crown Land (Reserves) Act 1978* to be 'restricted Crown land' under the *Mineral Resources (Sustainable Development) Act 1990* and amend the definition of that term; **[42]**
6. create a framework under the *Conservation, Forests and Land Act 1987* for the establishment of Traditional Owner Majority Boards of management for areas of public land; **[4, 25, 34, 37 to 41]**
7. insert strict liability offences in the *Forests Act 1958* relating to campfires and barbecues; the offences involve leaving a campfire or barbecue unattended; insufficient ground or airspace around campfires or barbecues; and without written authorisation having a campfire or barbecue above a certain size. **[33 and 36]** (*refer to extract below*).
8. make other, related or miscellaneous amendments to the *National Parks Act 1975*, *Crown Land (Reserves) Act 1978*, *Forests Act 1958*, *Land Act 1958* and *Wildlife Act 1975*. **[3, 14, 35]**

Background

Extracts from the Second Reading Speech –

The Parks and Crown Land Legislation Amendment (River Red Gums) Bill 2009 will significantly expand the State's parks and reserves system in the River Red Gum area of northern Victoria ... The Bill will create four new national parks and other park areas totalling more than 150 000 hectares.

In particular, the Bill will amend the National Parks Act 1975 to:

- *create Barmah, Gunbower, Lower Goulburn and Warby Ovens national parks on the Murray, Goulburn and Ovens rivers;*
- *create Gadsen Bend, Kings Billabong and Nyah-Vinifera parks on the Murray River; and*

- *expand the existing Hattah-Kulkyne, Mount Buffalo, Murray-Sunset and Terrick Terrick national parks, Leaghur State Park and Murray-Kulkyne park. The additions to Terrick Terrick National Park also include important remnant native grasslands of the northern plains.*

The Bill will also amend the Crown Land (Reserves) Act 1978 to:

- *create Kerang and Shepparton regional parks; and*
- *establish the legislative framework for the creation of the Murray River Park by the Governor in Council when the detailed surveying of the park boundaries is completed (this is similar to the approach taken with the creation of the Otway Forest Park).*

The new parks created under the Crown Land (Reserves) Act will be specified as restricted Crown land under the Mineral Resources (Sustainable Development) Act 1990, and the definition of that term updated.

...

Licensed stock grazing will not be permitted in the new park areas. To assist licensees to adjust, grazing will be progressively phased out across the parks by no later than 30 September 2014. ...Apiculture will be permitted to continue in the new park areas. The Bill saves any existing apiary licences and permits.

...

A key element of the Bill is to provide a legislative basis for the creation of Traditional Owner Majority Boards of management for areas of public land. This reflects the government's commitment to involving traditional owners in the management of public land and to helping traditional owners achieve their long-held aspirations to be involved in caring for country. Establishing traditional owner majority boards of management will bring a number of benefits. Of particular importance, boards will facilitate the incorporation of traditional owner knowledge into the management of the land for which they are appointed. They will help to recognise traditional owner groups' unique relationship to the land and to promote partnerships and reconciliation between traditional owner groups, the state and the public who use the appointed land. ... Each board will comprise a majority of traditional owners or their representatives. The Minister must ensure that a board comprises persons with appropriate experience and skills for the board's operations.

Content

The Bill provides a number of strict liability offences concerning campfires and barbecues in any State forest, protected public land or national park (new sections 66A to 66C). The offences do not require the prosecution to prove any mental intent as an element of the offence.

The offences involve –

- leaving certain campfires or barbecues unattended,
- not having sufficient clear ground or airspace around a fire clear of flammable material,
- having, without proper authority, a fire area more than a certain area or dimension.

The penalty for each offence is a maximum penalty of 100 penalty units. In each case the Committee accepts that 'a reasonable excuse defence' is applicable where the defendant points to some relevant evidentiary material raising the defence to the alleged conduct. [36]

The Committee notes this extract from the Second Reading Speech –

The government recognises that campfires are an integral part of the camping experience for many visitors to our parks and forests, including along the Murray River. However, with that enjoyment comes the responsibility for ensuring that the fire is safe and is not left unattended.

Three offences that relate to maximum fire size and clearance around a camp fire or barbecue currently attract high penalties (including imprisonment) and require prosecution before a

court. To assist in the enforcement of responsible camp fire use, the Forests Act 1958 will be amended to convert these offences into strict liability offences for which a penalty infringement notice can be issued. The existing Forests (Fire Protection) Regulations 2004 will be amended as necessary. A fourth strict liability offence will also be created for leaving a camp fire or solid fuel barbecue unattended. The offences will apply in State forest, protected public land and parks under the National Parks Act 1975.

Rights or freedoms – Presumption of innocence – Strict liability offences – Parliamentary Committees Act 2003, section 17(a)(i)

The Committee has previously recognised that strict liability offences may be justified where some element, such as the common law defences of necessity, duress or lawful authority may be in the peculiar knowledge of the defendant, where the offence is a regulatory offence involving issues connected with public health or safety and where the penalty of imprisonment is not involved.

The Committee draws attention to the provisions.

The Committee makes no further comment.

State Taxation Acts Further Amendment Bill 2009

Introduced	13 October 2009
Second Reading Speech	15 October 2009
House	Legislative Assembly
Member introducing Bill	Hon. Tim Holding MLA
Minister responsible	Hon. John Lenders MLC
Portfolio responsibility	Treasurer

Purpose

The Bill amends the –

- *First Home Owner Grant Act 2000* to impose a cap of \$750,000 on the value of homes that will be eligible for the First Home Owner Grant from 1 January 2010 but excludes primary production land purchased as a first home buyer's principal place of residence from that cap. **[3]**
- *Payroll Tax Act 2007* to introduce new nexus provisions to clarify when and where wages are taxable. (also refer to extract below) **[15 to 22]**
- *Taxation Administration Act 1997* to –
 1. to impose a penalty where a taxpayer fails to notify the Commissioner of certain matters in accordance with the *Land Taxation Act 2005*. **[30 to 35]**
 2. permit the disclosure of information obtained under the administration of a taxation law for the purposes of administering the *First Home Owner Grant 2000* and the *Unclaimed Money Act 2008*; **[36]**
 3. confirm that the Commissioner of State Revenue is able to serve Victorian court processes in the same manner that the Commissioner serves documents for the purposes of a taxation law. **[37]**
 4. subsume the *Taxation (Reciprocal Powers) Act 1987* into the *Taxation Administration Act 1997* and repeal the 1987 reciprocal powers Act. **[23 to 29, 38]**

Extract from the Second Reading Speech –

The Taxation (Reciprocal Powers) Act 1987 provides the administrative framework by which other jurisdictions are able to enter Victoria and conduct investigations into their tax laws. It also allows Victoria to disclose Victorian taxpayer information to other jurisdictions for the purpose of administering their taxation laws. ... The Taxation (Reciprocal Powers) Act 1987 is over 20 years old and no longer represents best practice. As such, it has been the subject of an extensive review... Consequently, the Bill repeals the Taxation (Reciprocal Powers) Act 1987 and subsumes its powers and responsibilities into the Taxation Administration Act 1997, which provides for the general administration and enforcement of Victoria's taxation laws. ...It takes account of the advent of privacy legislation and the Charter of Human Rights. In practice, these changes will not significantly alter the operation of the current cross-border investigation and/or information sharing schemes. Similar amendments have already been enacted by all of the other jurisdictions.

- *Land Tax Act* to –
 1. require taxpayers to notify the State Revenue Office if there is an error or omission in their land tax assessment. For example, where land is subject to the tax but not included in the notice of assessment or where in relation to exempt land the land is not used as a principal place of residence. **[14]**
 2. clarify certain matters that have arisen from the replacement of the *Land Tax Act 1958* with the *Land Tax Act 2005*. **[13]**

3. confirm who should pay land tax in circumstances of nil consideration, that is, a gift and unregistered transfers, and confirm a tax refund where unoccupied land is subsequently used as a principal place of residence and no other principal place of residence exemption had been claimed. [7, 11]
4. clarify that those who lease or use Crown land should not, generally speaking, enjoy the benefit of the Crown's exemption from land tax liability. This will not impose a liability for retail premises leases under the *Retail Premises Act 2003*. [6, 8, 12]
5. limit the availability of the principal place of residence concession where there is substantial business activity. [10]
6. confirm that there are separate assessments for implied and constructive trusts where trustees hold different land for different beneficial owners and in their own right and that a failure to notify that land is held on trust is a tax default. [4, 5 and 9]

Content

Commencement provisions [2]

Division 1 of Part 3 (implied and constructive trusts) is deemed to have commenced on 1 January 2006. This is the date that the land tax provisions to which the relevant Division relates, came into operation. The provisions relate to implied and constructive trusts. [4 and 5]

Extract from the Explanatory Memorandum –

The purpose of the amendments is to ensure that trustees of implied and constructive trusts are not disadvantaged.

New section 46M provides that a trustee of an implied or constructive trust who pays any land tax on land subject to the trust is entitled to recover that amount from any trust property.

Part 4 (Payroll tax) is deemed to have to have come into operation at the commencement of the new financial year on 1 July 2009. [15 to 22]

Extract from the Second Reading Speech –

The amendment to the Payroll Tax Act 2007 is a retrospective uniform amendment adopted by all jurisdictions. The changes are intended to bring greater certainty to the tax liability for various components of wages for itinerant employees and to eliminate potential double taxation. These nexus provisions are of fundamental importance – they establish in which jurisdiction payroll tax must be paid where employees operate in more than one jurisdiction in a month. They should be warmly welcomed as they will not increase taxation or impose additional burdens but lead to easier administration for multi-jurisdictional employers.

Retrospective application of laws

The Committee notes the retrospective application of these amendments. The Committee accepts that there are occasions where retrospective commencement is acceptable including in respect to taxation laws where no additional taxation liability is imposed on individuals.

The Committee makes no further comment.

Ministerial Correspondence

Road Legislation Amendment Bill 2009

The Bill was introduced into the Legislative Assembly on 31 March 2009 by the Hon. Tim Pallas MLA. The Committee considered the Bill on 4 May 2009 and made the following comments in Alert Digest No. 5 of 2009 tabled in the Parliament on 5 May 2009.

Committee's Comments

Charter report

Right to life – Tyre deflation device – Whether use subject to the Charter

Summary: *The Committee is concerned that the placement of tyre deflation devices on roads is not subject to the Charter's obligation for police officers to act in a way that is compatible with the right to life. It will write to the Minister seeking further information.*

The Committee notes that clause 17, amending s. 63B(1) of the Road Safety Act 1986, expands the circumstances when police may be authorised to use a tyre deflation device. While the Committee appreciates that tyre deflation devices in general, and clause 17 in particular, are designed to mitigate the dangers of illegal driving and police pursuits, it observes that poorly used tyre deflation devices may also cause road accidents and fatalities. The Committee therefore considers that clause 17 engages the Charter's right to life.

Existing subsection 63B(2) provides that:

A provision made by or under this or any other Act that would operate to prohibit or restrict the placement or deployment on or near a road or road related area of a tyre deflation device does not apply to the placing or deploying of a tyre deflation device by a member of the police force acting in the exercise of his or her duties.

The Committee is concerned that this provision may mean that the placement of tyre deflation devices on roads is not subject to the Charter's obligation for police officers to act in a way that is compatible with the right to life. The Committee observes that similar provisions in other statutes specifically exclude the Charter from their ambit.

The Committee will write to the Minister seeking further information as to whether or not the placement of tyre deflation devices is subject to the Charter's obligation for police to act in a way that is compatible with the right to life.

Pending the Minister's response, the Committee draws attention to clause 17 and, in particular, to existing sub-section 63B(2) of the Road Safety Act 1986.

Error in statement of compatibility

Summary: *The Committee will write to the Minister about an error in the Statement of Compatibility.*

The Committee notes that the Statement of Compatibility states that clause 23, inserting a new section 73A into the Road Safety Act 1986, makes it an offence to 'insult' an operator

of a road safety camera or speed measuring device. However, clause 23 as introduced only makes it an offence to 'obstruct, hinder, threaten, abuse or intimidate' such operators.

The Committee observes that an offence of insulting an operator could raise significant issues with respect to the Charter's right to freedom of expression. However, an offence limited to the present terms of clause 23 does not.

The Committee will write to the Minister about the error in the Statement of Compatibility.

Minister's Response

Thank you for your letter dated 6 May 2009 regarding the Road Legislation Amendment Bill 2009 (the Bill). I apologise for the delay in responding to your letter.

Your letter requests my response to the matter raised in the Committee's report tabled in Parliament on 5 May 2009 concerning the compatibility of the Bill with the Charter of Human Rights and Responsibilities Act 2006 (the Charter). This matter concerns the right to life in relation to tyre deflation devices.

My response to this issue is set out below.

Clause 17 and the right to life

Clause 17 of the Bill amends section 63B(1) of the Road Safety Act 1986 (the Act) to allow police to use tyre deflation devices to prevent the use of a vehicle for the purpose of escaping from lawful custody or avoiding arrest. Section 63B currently only authorises the use of such devices during a pursuit.

The Committee has observed that while tyre deflation devices in general, and clause 17 in particular, are designed to mitigate the dangers of illegal driving and police pursuits, poorly used tyre deflation devices may also cause road accidents and fatalities. The Committee therefore considers that clause 17 engages section 9 of the Charter which provides that "[e]very person has the right to life and has the right not to be arbitrarily deprived of life".

The Committee also expressed concern that section 63B(2) of the Act (which is not amended by the Bill) may mean that the placement of tyre deflation devices on roads is not subject to the Charter's obligation for police officers to act in a way that is compatible with the right to life.

Section 63B(2) of the Act provides that:

A provision made by or under this or any other Act that would operate to prohibit or restrict the placement or deployment on or near a road or road related area of a tyre deflation device does not apply to the placing or deploying of a tyre deflation device by a member of the police force acting in the exercise of his or her duties.

The Committee has sought further information as to whether or not the placement of tyre deflation devices is subject to the Charter's obligation for police to act in a way that is compatible with the right to life.

The fact that the poor use of a tyre deflation device may cause road accidents and fatalities is not a sufficient basis for concluding that the right to life is engaged by a provision which permits the use of these devices. There are two key factors that need to be considered in relation to this issue.

The first is that the main purpose of a tyre deflation device is to deflate tyres in a controlled manner. It is not to inflict death or injury. In the Second Reading speech for the Road Safety (Further Amendment) Bill 2005, which inserted section 63B into the Act, the then Minister for Transport stated that "[t]esting of road spikes by Victoria Police at speeds of up to 140 kilometres per hour found no evidence of tyre 'blowout', no sudden loss of steering control and no debris from tyre deflation". The Minister also referred to a key objective of

using tyre deflation devices, which is to reduce "the number of pursuits which result in injuries to those persons pursued or to innocent bystanders".

The second factor to be considered is that there are many devices or things which, if poorly used, may cause death. An obvious example is that of a motor vehicle which, if mishandled, is quite likely to cause death or injury.

If the right to life were to be regarded as being engaged simply on the basis that death may be caused if the device or thing which is the subject of the legislative provision is poorly used, then section 9 of the Charter could potentially apply to a vast array of provisions that permit the use of devices or things. Were this to occur, the right to life could be found to apply to matters that few would consider appropriate, with the result that the right would be trivialised.

I therefore argue that clause 17 does not engage the right to life.

Nevertheless, there is a further issue as to whether section 63B(2) of the Act precludes the application of section 38 of the Charter. Section 38 makes it unlawful for a public authority (which includes Victoria Police) to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

Section 63B(2) was introduced into the Act by the Road Safety (Further Amendment) Act 2005 prior to the commencement of the Charter in 2007. Its purpose was to ensure that provisions in other legislation (such as section 62 of the Road Management Act 2004 which concerns obstructing the use of a road) did not prohibit or restrict the use of a tyre deflation device by the police for law enforcement purposes.

In the absence of a provision limiting its application, section 38 of the Charter would require the police to consider the right to life in the deployment of a tyre deflation device.

While it is clear from the Second Reading speech referred to above that Victoria Police are committed to only using tyre deflation devices to safeguard human life, I will nevertheless direct my Department to consider, in consultation with the Department of Justice and Victoria Police, whether section 63B(2) of the Act should be amended in a later Bill to confirm that the Charter does apply to the placing or deploying of a tyre deflation device by a member of the police.

Statement of compatibility and clause 23

I also acknowledge the Committee's comments in relation to the error in the description of one of the offences referred to in the Statement of Compatibility and thank the Committee for drawing this to my attention.

If you require any further information please contact Timothy Lunn on Tel: 9854 1968 or Michele Fazande on Tel: 98542352.

Tim Pallas MP
Minister for Roads and Ports

20 October 2009

Committee Room
9 November 2009

Appendix 1

Index of Bills in 2009

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Assisted Reproductive Treatment Bill 2008	1
Bushfires Royal Commission (Report) Bill 2009	4
Bus Safety Bill 2008	1, 5
Casino Legislation Amendment Bill 2009	7
Cemeteries and Crematoria Amendment Bill 2009	9
Children Legislation Amendment Bill 2009	5
Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2009	6
Courts Legislation Amendment (Judicial Resolution Conference) Bill 2009	9, 11
Courts Legislation Amendment (Sunset Provisions) Bill 2009	8, 10
Crimes Amendment (Identity Crime) Bill 2009	4, 6
Criminal Procedure Amendment (Consequential and Transitional Provisions) Bill 2009	12
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Crown Land Acts Amendment (Lease and Licence Terms) Bill 2009	6
Deakin University Bill 2009	12
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Education and Training Reform Amendment (School Age) Bill 2009	11
Electricity Industry Amendment (Critical Infrastructure) Bill 2009	13
Electricity Industry Amendment (Premium Solar Feed-in Tariff) Bill 2009	4, 5
Energy and Resources Legislation Amendment Bill 2009	10
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National Parks Amendment (Point Nepean) Bill 2009	7
Occupational Health and Safety Amendment (Employee Protection) Bill 2008	1, 7, 9
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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 further correspondence with the appropriate Minister.

Alert Digest Nos.

Section 17(a)

(i) trespasses unduly upon rights or freedoms

Local Government Amendment (Conflicting Duties) Bill 2009	9
Personal Property Securities (Commonwealth Powers) Bill 2009	10

(ii) makes rights, freedoms or obligations dependent upon insufficiently defined administrative powers

Personal Property Securities (Commonwealth Powers) Bill 2009	10
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(iii) makes rights, freedoms or obligations dependent upon non-reviewable administrative decisions

Tobacco Amendment (Protection of Children) Bill 2009	8
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(iv) unduly requires or authorises acts or practices that may have an adverse effect on privacy within the meaning of the *Information Privacy Act 2000*

Health Practitioner Regulation National Health (Victoria) Bill 2009	13
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(vi) inappropriately delegates legislative power

Bus Safety Bill 2008	1, 5
Criminal Procedure Bill 2008	1, 3
Personal Property Securities (Commonwealth Powers) Bill 2009	10
Health Practitioner Regulation National Health (Victoria) Bill 2009	13

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

Health Practitioner Regulation National Health (Victoria) Bill 2009	13
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(viii) is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities

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Statement of Compatibility – Committee concerns

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(i) and (ii) repeals, alters or varies the jurisdiction of the Supreme Court

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Criminal Procedure Bill 2008	1
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Major Transport Projects Facilitation Bill 2009	10

Appendix 3

Ministerial Correspondence

Table of correspondence between the Committee and Ministers during 2008-09

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Assisted Reproductive Treatment Bill 2008	Health	06.11.08 08.12.08	12 of 2008 1 of 2009
Major Crime Legislation Amendment Bill 2008	Attorney-General	02.12.08 23.02.09	15 of 2008 3 of 2009
Primary Industries Legislation Amendment Bill 2008	Agriculture	02.12.08 10.03.09	15 of 2008 4 of 2009
Relationships Amendment (Caring Relationships) Bill 2008	Attorney-General	02.12.08 19.12.08	15 of 2008 1 of 2009
Bus Safety Bill 2008	Public Transport	04.02.09 30.03.09	1 of 2009 5 of 2009
Criminal Procedure Bill 2008	Attorney-General	04.02.09 23.02.09	1 of 2009 3 of 2009
Occupational Health and Safety Amendment (Employee Protection) Bill 2008	Industrial Relations	04.02.09 29.06.09 23.06.09 30.07.09	1 of 2009 7 of 2009 7 of 2009 9 of 2009
Salaries Legislation Amendment (Salary Sacrifice) Act 2008	Finance	04.02.09 21.04.09	1 of 2009 5 of 2009
Transport Legislation Amendment (Driver and Industry Standards) Act 2008	Public Transport	04.02.09 30.03.09	1 of 2009 5 of 2009
Salaries Legislation Amendment (Salary Sacrifice) Act 2008 AND Transport Legislation Amendment (Driver and Industry Standards) Act 2008	WorkCover Public Transport	04.02.09	1 of 2009
Serious Sex Offenders Monitoring Amendment Act 2009	Corrections	26.02.09 22.04.09	2 of 2009 5 of 2009
Major Sporting Events Bill 2009	Minister for Sport & Recreation	20.03.09 01.04.09	3 of 2009 5 of 2009
Crimes Amendment (Identity Crime) Bill 2009	Attorney-General	31.03.09 04.05.09	4 of 2009 6 of 2009
Electricity Industry Amendment (Premium Solar Feed-in Tariff) Bill 2009	Energy and Resources	31.03.09 09.04.09	4 of 2009 5 of 2009

Scrutiny of Acts and Regulations Committee

Bill Title	Minister/ Member	Date of Committee Letter / Minister's Response	Alert Digest No. Issue raised / Response Published
Statute Law Amendment (Charter of Human Rights and Responsibilities) Bill 2009	Attorney-General	31.03.09 04.06.09	4 of 2009 7 of 2009
Justice Legislation Amendment Bill 2009	Racing	08.05.09 29.05.09	5 of 2009 6 of 2009
Road Legislation Amendment Bill 2009	Roads and Ports	06.05.09 20.10.09	5 of 2009 13 of 2009
Energy Legislation Amendment (Australian Energy Market Operator) Bill 2009	Energy and Resources	02.06.09 15.07.09	6 of 2009 8 of 2009
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Justice Legislation Further Amendment Bill 2009	Police and Emergency Services Corrections	01.09.09	10 of 2009
Local Government Amendment (Offences and Other Matters) Bill 2009	Local Government	01.09.09 25.09.09	10 of 2009 12 of 2009
Major Transport Projects Facilitation Bill 2009	Roads and Ports	01.09.09 09.09.09	10 of 2009 11 of 2009
Personal Property Securities (Commonwealth Powers) Bill 2009	Attorney-General	01.09.09 14.09.09 01.09.09 29.09.09	10 of 2009 12 of 2009
Education and Training Reform Amendment (School Age) Bill 2009	Education	15.09.09	11 of 2009
Criminal Procedure Amendment (Consequential and Transitional Provisions) Bill 2009	Attorney-General	13.10.09	12 of 2009

Electricity Industry Amendment (Critical Infrastructure) Bill 2009	Energy and Resources	10.11.09	13 of 2009
Health Practitioner Regulation National Health (Victoria) Bill 2009	Health	10.11.09	13 of 2009
Justice Legislation Miscellaneous Amendments Bill 2009	Police and Emergency Services	10.11.09	13 of 2009